

*Confidential*



# **POWER PURCHASE AGREEMENT (PPA)**

**BETWEEN**

**CERIM LUDERITZ ENERGY (PTY) LTD**

**AND**

**NAMIBIA POWER CORPORATION (PTY) LTD**

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**PREAMBLE:**

**THIS POWER PURCHASE AGREEMENT (PPA)** is entered into between:

- (1) CERIM LUDERITZ ENERGY (PROPRIETY) LIMITED, a company incorporated in terms of the Laws of Namibia (registered under company registration number: 20230352) and having its registered office at 24 Orban Street, Klein Windhoek, Windhoek, Namibia (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 participated and has been awarded a bid issued by NamPower for the development of a wind power plant, on a Build, Own and Operate basis and in accordance with NamPower's requirements set forth in the Employer's Requirements in Annexure P (Employer's Requirements).
- (B) The Seller shall submit an application for the Generation Licence to build, own and operate the Power Plant to the ECB within 45 days after the Signature Date.
- (C) The Seller intends to develop the Power Project with a Contracted Capacity of 50 MW within the boundaries of the Project Site.
- (D) 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.
- (E) The Seller wishes to sell the Net Energy from the Power Plant to NamPower and NamPower is willing to purchase the Net Energy of the Power Plant from the Seller.
- (F) 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.
- (G) The Parties intend to stipulate in this PPA the terms and conditions upon and subject to which NamPower agrees to purchase Net Energy from the Seller.

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- (H) The Seller acknowledges that the ECB exercises regulatory oversight over this PPA and may make any necessary recommendations and/or comments thereof. The Parties further acknowledge that the ECB's regulatory oversight extends to amendments to this PPA and that any amendments to this PPA must be submitted to the ECB for regulatory oversight prior to signature thereof.
- (I) This PPA is subject to the applicable Modified Single Buyer (MSB) Market Rules.
- (J) NamPower intends to transfer to the Seller the Environmental Clearance Certificate that has been issued by the relevant Competent Authority relating to the Power Project.
- (K) NamPower has facilitated the development and execution of a Land Lease Agreement for the Project Site between the Seller and the Competent Authority.

**WHEREBY THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS**

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

1.1.1. **"Affected Party"** means a Party affected by a Force Majeure event as contemplated in clause 17;

1.1.2. **"Affiliate"** means in respect of either Party, any person (excluding any government), hereinafter referred to as 'company' which directly or indirectly:

1.1.2.1. is controlled by such Party; or

1.1.2.2. controls such Party; or

1.1.2.3. is controlled by a company which directly or indirectly controls such Party.

For the purposes of the foregoing definition:

1.1.2.3.1. 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

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- shareholders' meetings of the former company, and
- 1.1.2.3.2. 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;
- 1.1.3. **"AFSA"** means the Arbitration Foundation of Southern Africa;
- 1.1.4. **"AFSA Rules"** means the arbitration rules of AFSA in force from time to time;
- 1.1.5. **"Agreed Interest Rate"** means the prime rate from time to time determined by Bank of Namibia correlated with overdraft facilities;
- 1.1.6. **"Annual Indexation"** means the indexation in accordance with clause C.5 of Annexure C (Energy Payment);
- 1.1.7. **"Approved Provider"** means:
- 1.1.7.1. Bank Windhoek, Development Bank of Namibia, Nedbank Namibia, First National Bank (Namibia), Rand Merchant Bank Namibia, or Standard Bank Namibia; or
- 1.1.7.2. any financial institution, corporate or other entity approved in writing by NamPower or Lender, as the case may be;
- 1.1.8. **"Artefact"** means heritage resources which are of cultural significance or have other special value for the present community and for future generations and which may include places, buildings, structures and equipment of cultural significance; archaeological and paleontological sites; landscapes and natural features of cultural significance and graves and burial grounds;

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- 1.1.9. **"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;
- 1.1.10. **"Availability Declaration"** means the forecast level of generation of the Net Energy for each Contract Year in such format as may be prescribed by NamPower from time to time;
- 1.1.11. **"Balancing Charge"** the charge used to determine the Balancing Payment to be made by a licensed producer that is out of balance;
- 1.1.12. **"Balancing Payment"** means any payments incurred by the MSB in meeting the demand as a result of the deviation by the Seller from the Hourly Generation Forecast, which payments are recoverable from the Seller;
- 1.1.13. **"Base Case Financial Model"** means the financial model as defined under the Finance Documents, which shall be provided at Financial Close and the same which has to be approved by the ECB, and attached as Annexure N (Base Case Financial Model);
- 1.1.14. **"Base Case IRR"** means the IRR as reflected in the Base Case Financial Model;
- 1.1.15. **"Base Tariff"** means the base tariff provided at bidding of NAD 0.8785 per kWh as of Commercial Operation Date, and adjusted from time to time in accordance with clause C.5 of Annexure C (Energy Payment);
- 1.1.16. **"Bid Submission Date"** means the deadline for submission of bids for the development of a wind power plant, on a build, own and operate basis, with bid document reference number G/OIB/NPWR-06/2022;
- 1.1.17. **"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:
- 1.1.17.1. the first Billing Period shall commence on the Commercial Operation Date or the Deemed Commercial Operation Date, if applicable and

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end on the last day of the month in which the Commercial Operation Date or the Deemed Commercial Operation Date, if applicable occurs; and

1.1.17.2. 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;

1.1.18. **"Business Day"** means any day except a Saturday, a Sunday or a public holiday in Namibia;

1.1.19. **"Change in Costs"** means the event of any Change in Law resulting in a change in cost which materially changes the economic position of the Seller in accordance with clause 16.1.2;

1.1.20. **"Change in Law"** means:

1.1.20.1. the adoption, enactment, execution, modification, promulgation, ratification, repeal or reinterpretation after the Bid Submission Date by any Competent Authority of any Law; or

1.1.20.2. the requirement for a Consent that was not required on the Bid Submission Date; or

1.1.20.3. after the date of grant of any Consent, a change (other than for cause) in the terms and conditions attaching to such Consent or the attachment of any new terms or conditions to such Consent which are materially less favourable than those previously granted; or

1.1.20.4. for the avoidance of doubt, a change in Tax shall be deemed to be a Change in Law, including, without limitation, any enactment, promulgation, execution, ratification of, or any change in or amendment to any Tax associated with the impact of electricity generation, transmission, distribution and consumption on the environment, including but not limited to any carbon tax or carbon credit scheme or arrangement;

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- 1.1.21. **"Commercial Operation Certificate"** means the certificate issued to the Seller by NamPower on which the whole Power Plant has been confirmed ready for generation of Net Energy and which satisfies all of the following requirements:
- 1.1.21.1. has achieved its Connection Date;
  - 1.1.21.2. the Seller and NamPower have confirmed the Metering Equipment readings; and
  - 1.1.21.3. the Seller has issued to its EPC Contractor the respective Taking-Over Certificate after completion of the Tests on Completion;
- 1.1.22. **"Commercial Operation Date"** means the date as stated in the Commercial Operation Certificate;
- 1.1.23. **"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, 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, the Lenders or the shareholders of the Seller, any aspect of the Power Project or this PPA (or any transaction or agreement contemplated herein);
- 1.1.24. **"Conditions Precedent"** means the listed conditions set out in clause 4.2, which must each be met or waived in order to achieve the Effective Date;
- 1.1.25. **"Confidential Information"** means any and all information and data disclosed by either Party in connection with this PPA in any form whatsoever, and including this PPA itself;
- 1.1.26. **"Connection Date"** has the meaning given to it under the Transmission Connection Agreement;
- 1.1.27. **"Connection Facilities"** has the meaning given to it under the Transmission Connection Agreement;

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- 1.1.28. **"Connection Offer Letter"** has the meaning given to it under the Transmission Connection Agreement;
- 1.1.29. **"Connection Works"** has the meaning given to it under the Transmission Connection Agreement;
- 1.1.30. **"Consent" or "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 (Consents);
- 1.1.31. **"Construction Programme"** means the programme for construction of the Power Project as set out in Annexure L (Construction Programme), which specifies certain Milestones for the construction of the Power Project and the due dates for such Milestones;
- 1.1.32. **"Contract Year"** means each period of one (1) calendar year which falls within the Term, provided that:
- 1.1.32.1. the first Contract Year shall commence on the Commercial Operation Date or Deemed Commercial Operation Date and end on the last of the calendar year in which the Commercial Operation Date or Deemed Commercial Operation Date occurs; and
  - 1.1.32.2. 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 PPA is terminated early in accordance with its terms) on the Termination Date;
- 1.1.33. **"Contracted Capacity"** means the maximum allowable net export capacity of 50MW;

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- 1.1.34. **"Contracted Performance Guarantees"** means the performance guarantees of the Power Plant as specified and guaranteed by the Seller in accordance with Annexure I (Performance Guarantees);
- 1.1.35. **"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 PPA, including any sub-contractors appointed by any person who falls within this definition;
- 1.1.36. **"day"** means a calendar day;
- 1.1.37. **"Deemed Commercial Operation Date"** has the meaning given to it in clause 6.3.1;
- 1.1.38. **"Deemed Commercial Operation Period"** means the period commencing on the Deemed Commercial Operation Date and ending on the Commercial Operation Date;
- 1.1.39. **"Deemed Energy Payment"** has the meaning given to it in clause 6.3.2.3 and clauses C.3 and C.4 of Annexure C (Energy Payment), which shall be applicable in all Events of Deemed Availability, *mutatis mutandis*;
- 1.1.40. **"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 at a rate of zero-point two five percent (0.25%) of the total EPC Cost for every week or part thereof from the Target Commercial Operation Date to the Commercial Operation Date;
- 1.1.41. **"Delivery Point"** means the battery limit between the Seller and NamPower, as indicated on Annexure I (Single Line Diagram of Power Plant);
- 1.1.42. **"Direct Agreement"** means the agreement to be entered into by the Seller and NamPower with the Lenders in relation to this PPA and attached as Annexure O (Direct Agreement);

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- 1.1.43. **"Dispute"** means any dispute or disagreement of any kind whatsoever between the Parties arising under, in connection with, or relating to, this PPA or the transactions contemplated herein;
- 1.1.44. **"ECB"** means the Electricity Control Board, the Namibian regulatory authority for electricity established in terms of the Electricity Act, 4 of 2007 or any successor thereto;
- 1.1.45. **"ECB Levy"** means all levies as may be imposed from time to time on the provision of electricity for the benefit of the ECB;
- 1.1.46. **"Effective Date"** means the date on which all of the Conditions Precedent have been satisfied or duly waived by both Parties in accordance with clauses 4.2 and 4.3;
- 1.1.47. **"Energy Charge"** means the amount in Namibia Dollar payable by NamPower to the Seller for Net Energy in accordance with Annexure C (Energy Payment);
- 1.1.48. **"Energy Payment"** means the total amount payable by NamPower to the Seller under this PPA in any Billing Period, as calculated in accordance with clause 9.2 and Annexure C (Energy Payment), including ECB Levy, NEF Levy and any other levy that may be applicable by Law;
- 1.1.49. **"Environmental Credits"** means any and all financial benefits, credits, rights, entitlements or interests of an environmental nature that are created or otherwise arise from the Power Project;
- 1.1.50. **"Environmental Impact Assessment" or "EIA"** means the environmental impact assessment conducted by NamPower in terms of the provisions of the Environmental Management Act (Act No.7 of 2007) for the Project Site;
- 1.1.51. **"Environmental Clearance Certificate" or "ECC"** means the environmental clearance certificate issued by the environmental commissioner in terms of the provisions of the Environmental Management Act (Act No.7 of 2007) on 13 September 2021, valid for three years from the issue date;
- 1.1.52. **"Environmental Management Plans"** means the approved environmental management plans in terms of the provisions of the Environmental Management Act

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(Act No.7 of 2007) relevant to the construction and operational activities of the Power Project;

- 1.1.53. **"EPC Contract"** means the engineering, procurement and construction contract entered into between the Seller and the EPC Contractor, and in the case of a disaggregated contract structure (i.e. wind turbine supply and install contract, civil works contract, electrical works contract and/or balance of plant contract) it means all of them collectively and/ or individually;
- 1.1.54. **"EPC Contractor"** means the person appointed by the Seller to undertake the engineering, procurement and construction of the Power Plant, and in the case of a disaggregated contract structure (i.e. wind turbine supply and install contractor, civil works contractor, electrical works contractor and/or balance of plant contractor) it means all of them collectively and/ or individually;
- 1.1.55. **"EPC Cost"** means the sum of cost for all contractors, equipment suppliers and service providers as included in the Base Case Financial Model;
- 1.1.56. **"Event of Deemed Availability"** means each of the following events:  
1.1.56.1. a NamPower Transmission Default; or  
1.1.56.2. a NamPower Event of Default;
- 1.1.57. **"Finance Documents"** means all the agreements and other documents relating to the provision by the Funders of the limited recourse credit facilities required by the Seller to finance or refinance the Power Project, as typically defined in the common terms agreement;
- 1.1.58. **"Financial Close"** means the date as stated in the Financial Close Certificate;
- 1.1.59. **"Financial Close Certificate"** means the notice issued by the Lenders to the Seller confirming that all of the conditions to the first availability of funds under the Finance Documents have been satisfied or

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waived and the Lender's participation, as described in the Finance Documents, is in full force and effect;

- 1.1.60. **"Financial Institution"** means any Lender, other bank, trust fund or other local, regional or international entity engaged in the business of dealing with financial and monetary transactions such as deposits, loans, investments, and currency exchange;
- 1.1.61. **"Final Dispatch Schedule"** has the meaning given to it in the MSB Market Rules;
- 1.1.62. **"Fixed Annual Escalation Rate" or "FAER"** means a fixed annual escalation rate determined by the Seller and agreed by NamPower, which is 0.5% (zero point five percent), denoting a fixed percentage and shall be used as an escalation rate for the duration of this PPA on annual basis, as set out in clause C.2 of Annexure C (Energy Payment);
- 1.1.63. **"Force Majeure Event"** has the meaning given to it in clause 17.1.1;
- 1.1.64. **"Funders"** means the Lenders and/or Shareholders providing the facilities required by the Seller to finance or refinance the Power Project;
- 1.1.65. **"Generation Licence"** means the generation licence issued or to be issued to the Seller by the ECB in exercise of its powers conferred to it by section 20 of the Electricity Act 4 of 2007;
- 1.1.66. **"Government"** means the Government of the Republic of Namibia and all its agencies as applicable;
- 1.1.67. **"Government Action"** means:
- 1.1.67.1. 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

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act of such Competent Authority that materially adversely affects:

1.1.67.1.1. the enjoyment by the Seller of any of the rights and benefits contemplated by this PPA, or

1.1.67.1.2. the performance by the Seller of any of its obligations under or pursuant to this PPA, or

1.1.67.2. in the case of NamPower, the reorganisation, restructuring or privatisation of NamPower or the sale of the Government's controlling interest in NamPower, unless the Lenders' consent was given in accordance with clause 23.2;

- 1.1.68. **"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 and as updated from time to time;
- 1.1.69. **"Hourly Generation Forecast"** means the Seller 's estimate of the forecast level of Net Energy expected to be generated for each of the 24 hours for the same Day, starting at midnight (00:00) in accordance with clause 12.1.3;
- 1.1.70. **"Independent Expert"** means an independent person appointed in accordance with clause 16.2, or clause 18 or clause 24 and which will be nominated from a list of pre-approved experts as set out in Annexure G (List of Pre-approved and Independent Experts);
- 1.1.71. **"Indexed Tariff"** means the Base Tariff indexed as specified in clause C.2 (Energy Payment) and clause C.3 (Calculation of Deemed Energy Payment) of Annexure C (Energy Payment), as the case may be;
- 1.1.72. **"Installed Capacity" or "Nameplate Capacity" or "Rated Capacity"** means the full load design, licensed, installed and nameplate capacity which a Unit or the Power Plant, in MW, can produce under ideal conditions;
- 1.1.73. **"IRR"** means the real post tax internal rate of return on the investment of the Power Project;

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- 1.1.74. **"kW"** means kilowatt;
- 1.1.75. **"kWh"** means kilowatt hour;
- 1.1.76. **"Land Lease Agreement"** means the agreement to be entered into between the Seller and the Government (acting through the Ministry of Environment, Forestry and Tourism) in terms of the utilisation of the Project Site by the Seller for the purposes of the Power Project;
- 1.1.77. **"Law"** means the constitution and any statute, ordinance, treaty, decree, proclamation, by-law, regulation, notice, circular, code, rule, direction, delegated or subordinated legislation or other legislative measure including 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;
- 1.1.78. **"Lenders"** means the persons from time to time making credit facilities available to the Seller and its facility agents (other than the shareholders of the Seller);
- 1.1.79. **"Long Stop Commercial Operation Date"** means the date falling nine (9) months after the Target Commercial Operation Date;
- 1.1.80. **"Long Stop Effective Date"** means the date nine (9) months from the Signature Date;
- 1.1.81. **"Losses"** means any and all losses, damages, claims, liability, payment or obligation (including any indirect or consequential loss, damage, liability, payment, claim or obligation, and all expenses);
- 1.1.82. **"Make-up Period"** means the period which the Term shall be extended on a day-for-day basis for all periods which an Affected Party is unable to perform its obligations pursuant to a Force Majeure Event,

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and is relieved of its obligations to so perform in accordance with clause 17;

- 1.1.83. **"Market Rules"** means the rules which govern the operation and management of the MSB Market as imposed in terms of the Electricity Act, 4 of 2007, and any updates from time to time;
- 1.1.84. **"Maximum Export Capacity"** has the meaning given to it in the Transmission Connection Agreement;
- 1.1.85. **"Metering Equipment"** has the meaning given to it in the Transmission Connection Agreement;
- 1.1.86. **"Milestone"** means each key stage during the construction period as identified in Annexure L (Construction Programme);
- 1.1.87. **"Monthly Generation Forecast"** means the Seller's estimate of the forecast level of Net Energy expected to be generated for each hour for a respective calendar month, starting on the first day of the month and ending at 24:00 hours on the last day of the month, on the hour every hour) and in accordance with clause 12.1.1;
- 1.1.88. **"Modified Single Buyer" or "MSB"** means the new modified market structure, adopted by the Government, in April 2019;
- 1.1.89. **"MW"** means megawatt;
- 1.1.90. **"MWh"** means megawatt hours;
- 1.1.91. **"NAD" or "Namibia Dollar"** means the official currency of the Republic of Namibia;
- 1.1.92. **"NamPower's EC Payment"** shall have the meaning set forth in Annexure E (Environmental Credits);
- 1.1.93. **"NamPower Event of Default"** has the meaning set forth in clause 19.3;
- 1.1.94. **"NamPower Foundation"** means NamPower's Corporate Social Investment (CSI) arm which was created with the objective to manage and coordinate NamPower's corporate social investment;

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- 1.1.95. **"NamPower Letter of Credit"** means an irrevocable, transferable, stand-by letter of credit:
- 1.1.95.1. in the form set out in clause 10.5 (NamPower Letter of Credit) and Annexure H (NamPower Letter of Credit) issued by an Approved Provider; or
  - 1.1.95.2. any other similar instrument in a form requested and agreed by the Lender;
- 1.1.96. **"NamPower Letter of Credit Amount"** means, subject to clause 10.5:
- 1.1.96.1. prior to the first anniversary of the Commercial Operation Date, an amount of NAD equal to the aggregate Energy Payments forecast in the Base Case Financial Model for the first three (3) months from the Commercial Operation Date; and
  - 1.1.96.2. at all times thereafter, an amount equal to:
    - 1.1.96.2.1. three (3) times the monthly average of the payments invoiced by the Seller to NamPower in accordance with this PPA during the preceding three (3) consecutive months; less
    - 1.1.96.2.2. at the relevant time, any amount drawn and held by the Seller pursuant to clause 10.5.5 as security for amounts payable or which may become payable under this PPA (and which have not been utilised in or towards satisfaction of any amounts payable to the Seller under this PPA);
- 1.1.97. **"NamPower Transmission Default"** means a breach by NamPower under the Transmission Connection Agreement;
- 1.1.98. **"National Control Centre"** means the centre for control and coordination of power flows within Namibia;
- 1.1.99. **"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,

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on the provision of electricity for the benefit of the National Energy Fund;

- 1.1.100. **"Net Energy"** Means, for any period, the electrical output of the Power Plant measured in kWh by the Metering Equipment not exceeding the Contracted Capacity at any given time;
- 1.1.101. **"Notice of Intention to Terminate"** means a notice issued by one Party to the other Party specifying the reason which permits such Party to terminate this PPA pursuant to clause 19.2, 19.3 or 19.4.1;
- 1.1.102. **"Notice of Termination"** means a notice issued by one Party to the other Party specifying the reason which permits such Party to terminate this PPA;
- 1.1.103. **"Operating Committee"** means the committee described in clause 12.6.2 and Annexure B (Operating Committee);
- 1.1.104. **"Operations and Maintenance Agreement"** means the agreement for the operation and maintenance of the Power Plant to be entered between the Seller and the operations and maintenance Contractor;
- 1.1.105. **"Parties"** means the Seller and NamPower, or their successors-in-title, and 'Party' shall be construed accordingly;
- 1.1.106. **"Performance Bonds"** means the on-demand performance bonds, to be procured by the Seller in the form set out in Annexure Q (Performance Bonds), and as per clause 6.5 (Performance Bonds) in favour of NamPower in respect of the Seller's obligations under the PPA so as to ensure that:
- 1.1.106.1. the Effective Date is achieved by the Long Stop Effective Date; and
- 1.1.106.2. the Power Project is not delayed beyond the Target Commercial Operation Date;
- 1.1.107. **"Power Plant"** means the wind power plant with the Contracted Capacity located at the Project Site, including each Unit, from which Net Energy will be generated by the Seller and sold to NamPower pursuant to this PPA, up to and including the Seller's Battery Limit;

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- 1.1.108. **"Power Project"** means the development, construction and operation of the Power Plant, located at the Project Site;
- 1.1.109. **"Previously Disadvantaged Namibians"** shall have the meaning as designated and defined in section 18 of the Affirmative Action (Employment) Act, Act No 29 of 1998;
- 1.1.110. **"Acceptance Test"** means the acceptance test(s) of the Power Plant, to be conducted and completed by the Seller prior to Commercial Operation Date and to be witnessed by NamPower in accordance with Annexure D (Testing Schedule);
- 1.1.111. **"Power Purchase Agreement" or "PPA"** means this Power Purchase Agreement including its recitals and annexures, amended or modified from time to time in accordance with the terms hereof;
- 1.1.112. **"Project Documents"** means this PPA, the EPC Contract, Transmission Connection Agreement, the Generation Licence, the Consents, the Operation and Maintenance Agreement, and any other agreements or contracts in relation to the Power Project;
- 1.1.113. **"Project Insurances"** shall have the meaning set forth in clause 21.1 (Insurances and Information);
- 1.1.114. **"Project Site"** means the location of the Power Project as described in clause 5.1;
- 1.1.115. **"Prudent Industry Practice"** means the practices, methods and acts engaged by a utility in the electricity supply 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 wind 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:

1.1.115.1. complying with:

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- 1.1.115.1.1. recognised standards pertaining to that activity;
- 1.1.115.1.2. manufacturers' instructions and operating manuals; and
- 1.1.115.1.3. the terms of this PPA; and

1.1.115.2. taking reasonable steps to ensure that:

- 1.1.115.2.1. adequate materials, resources and supplies are available at the necessary places under normal conditions associated with existing operations;
- 1.1.115.2.2. 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;
- 1.1.115.2.3. 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;
- 1.1.115.2.4. appropriate monitoring and testing is carried out to ensure that equipment will function properly under normal and emergency conditions;
- 1.1.115.2.5. equipment is operated and maintained in a manner safe for workers, the general public, and the environment; and

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- 1.1.115.2.6. 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;
- 1.1.116. **"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;
- 1.1.117. **"Right of First Refusal"** means the right granted to NamPower to have the first opportunity to acquire the Seller's interest or part of its interest in the Power Project as contemplated in clause 30.2
- 1.1.118. **"Scheduled Connection Date"** has the meaning given to it in the Transmission Connection Agreement;
- 1.1.119. **"Scheduled Outage"** means a Scheduled Transmission System Outage and/or a Scheduled Plant Outage;
- 1.1.120. **"Scheduled Plant Outage"** means a pre-scheduled interruption in the generating capacity of the Power Plant agreed between the Parties (in accordance with clause 12.7 (Maintenance) and clause 12.8 (Scheduled Plant Outages), as the case may be);
- 1.1.121. **"Scheduled Transmission System Outage"** means a pre-scheduled interruption in the transmission capacity of the Transmission System agreed between the Parties (in accordance with clause 12.10, as the case may be) due to Transmission Maintenance;

- 1.1.122. **"Seller Event of Default"** has the meaning set forth in clause 19.2 (Seller Event of Default);
- 1.1.123. **"Seller's Regulated Equity Return"** has the meaning set forth in Annexure F (Calculation of the Termination Amount);
- 1.1.124. **"Seller's Revised Tariff"** has the meaning set forth in clause 16.1 (Effects of a Change in Costs);
- 1.1.125. **"Signature Date"** means the date this PPA is duly signed and dated by the last Party signing it;
- 1.1.126. **"Socio-Economic Development Contribution (SEDC)"** means the contribution pledged by the Seller to benefit the community(ies) within the Republic of Namibia in which the Seller commits to channel an amount equal to 0.9% (zero point nine percent) of its annual electricity sales to NamPower, via the NamPower Foundation, which amount shall be set-off from the final invoice payable by NamPower every Year during the Term of the PPA;
- 1.1.127. **"Taking-Over Certificate"** means the certificate issued by the Seller to the EPC Contractor on which the whole Power Plant is considered complete and the contractual requirements in accordance with the EPC Contract have been satisfied;
- 1.1.128. **"Target Commercial Operation Date"** means the intended commercial operation date being eighteen (18) months from the Effective Date;
- 1.1.129. **"Tax" or "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;
- 1.1.130. **"Term"** means the period commencing on the Commercial Operation Date and ending after twenty-five (25) years;
- 1.1.131. **"Termination Amount"** has the meaning set forth in Annexure F (Calculation of The Termination Amount);

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- 1.1.132. **"Termination Date"** means the date of the expiry of the Term or the date of the earlier termination of this PPA, as the case may be;
- 1.1.133. **"Termination Notice"** means a written notice of termination served by the Seller or NamPower to the other Party pursuant to clause 4.5 (Non-fulfilment of Conditions Precedent) or clause 19.5 (Consequences of Termination), as the case may be;
- 1.1.134. **"Tests on Completion"** means the tests which are specified in the EPC Contract to be completed by the EPC Contractor before the whole Power Plant is taken over by Seller. The Tests on Completion, as a minimum in accordance with Annexure D (Testing Schedule), shall include:
- 1.1.134.1. mechanical completion;
  - 1.1.134.2. pre-commissioning tests;
  - 1.1.134.3. commissioning tests;
  - 1.1.134.4. supervisory control and data acquisition (SCADA) system tests with National Control; and a
  - 1.1.134.5. trial operation of at least hundred-and-sixty-eight (168) hours.
- 1.1.135. **"Trading Period"** has the meaning given to it in the Modified Single Buyer Market Rules;
- 1.1.136. **"Transmission Connection Agreement" or "TCA"** 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;
- 1.1.137. **"Transmission Maintenance"** means scheduled maintenance of the Transmission System required to be performed by NamPower;
- 1.1.138. **"Transmission System Outage"** means a disruption or failure of the Transmission System;
- 1.1.139. **"Transmission Unavailability"** means the aggregate number of hours in a Contract Year during which the Transmission System fails to allow the injection and transmission of the electrical energy generated

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by the Power Plant into and through the Transmission System;

- 1.1.140. **"Transmission Unavailability Threshold"** means six percent (6%) of Transmission Unavailability per Contract Year;
- 1.1.141. **"Unit"** means any wind turbine generator unit forming part of the Power Plant;
- 1.1.142. **"Unscheduled Outage"** means an Unscheduled Transmission System Outage and/or an Unscheduled Plant Outage;
- 1.1.143. **"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;
- 1.1.144. **"Unscheduled Transmission System Outage"** has the meaning given to it in the Transmission Connection Agreement;
- 1.1.145. **"Week"** means the period between 00:00 hours on a Monday and 24:00 hours on the following Sunday;
- 1.1.146. **"Year"** means the period starting 01 July and ending 30 June annually

## 2. INTERPRETATION

2.1. In this PPA, unless the context clearly indicates a contrary intention:

- 2.1.1. The headings are for convenience only and shall not form part of the interpretation of this PPA;
- 2.1.2. The singular includes the plural and vice versa;
- 2.1.3. References to clauses and annexures are, unless the context otherwise requires or states, references to clauses of, and annexures to, this PPA; and references to clauses are, unless the context otherwise requires or states, references to clauses in the annexures to this PPA;

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- 2.1.4. 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;
- 2.1.5. 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;
- 2.1.6. A gender shall include the other gender;
- 2.1.7. A natural person shall include a juristic person, and vice versa;
- 2.1.8. All provisions contained in this PPA 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 PPA;
- 2.1.9. This PPA 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 PPA 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;
- 2.1.10. Where figures are in this PPA described both in numerals and in words, the words shall prevail in the event of any conflict between the two;
- 2.1.11. Should this PPA 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
- 2.1.12. Any reference to a month shall mean a calendar month.

## 2.2. Inclusion of Dates

- 2.2.1. When any number of days are prescribed in this PPA 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

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or public holiday in Namibia, in which case the last day shall be the next successive Business Day,

**2.3. Construction**

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

**2.4. Annexures**

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

**3. DURATION OF AGREEMENT**

**3.1. Term**

3.1.1. This PPA shall come into force in accordance with clause 4 (Conditions Precedent) and, subject to the other provisions of this PPA, shall continue in effect for the duration of its Term, unless extended in accordance with the provisions of the PPA.

**3.2. Make-up Period**

3.2.1. Without limiting the generality of clause 3.1, in case of a Force Majeure, the Term shall be extended with 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 PPA, and the respective rights and obligations of the Parties shall remain unchanged for the duration of the Make-up Period.

**4. CONDITIONS PRECEDENT**

**4.1. On Signature Date**

4.1.1. The rights and obligations of the Parties under this PPA set out in clause 2 (Interpretation), clause 4 (Conditions Precedent), clause 5.5 (General Development Obligations), clause 13 (Additional Obligations), clause 14 (Representations and Warranties), clause 15 (Applicable Law and Jurisdiction), clause 16 (Change in Costs), clause 17 (Force Majeure),

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clause 18 (Dispute Resolution), clause 19 (Termination), clause 20 (Liability for Damage or Loss), clause 22 (Waiver of Sovereign Immunity), clause 23 (Cession and Assignment), clause 24 (Direct Agreement), clause 25 (Severability), clause 26 (Anti-Corruption Measures), clause 27 (Confidentiality), clause 28 (Survival), clause 29 (Notices and Domicillium), clause 30 (Shareholding in Seller), clause 31 (General and Miscellaneous); and clause 12.6.2 (Establishment of an Operating Committee) shall come into full force and effect on and from the Signature Date.

- 4.1.2. None of the other provisions of this PPA shall be effective until each of the Conditions Precedent enumerated in clause 4.2 have either been fulfilled or waived by the Parties.

#### 4.2. On Effective Date

- 4.2.1. The remainder of the rights and obligations of the Parties under this PPA shall come into full force and effect on the Effective Date, upon the fulfilment or waiving of each of the following Conditions Precedent:
- 4.2.1.1. The Seller having obtained all Consents as listed in clause A.2 of Annexure A (Consents) required for it to perform its obligations under this PPA and all such Consents being in full force and effect;
- 4.2.1.2. The Seller and NamPower having entered into a Transmission Connection Agreement;
- 4.2.1.3. The Seller obtaining and holding a valid Generation Licence and such Generation Licence is in full force and effect. A copy of the valid Generation Licence and its conditions shall be copied to NamPower;
- 4.2.1.4. The Seller having achieved Financial Close and providing a certificate to NamPower from the Funders (or an agent thereof) in this respect;
- 4.2.1.5. In the event whereby the Seller is financing the Project on its balance sheet, the Seller having provided the following:

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- 4.2.1.5.1. A letter, acceptable to NamPower, from a Financial Institution confirming availability of such funds; and
- 4.2.1.5.2. A board resolution, acceptable to NamPower, confirming that the funds are reserved/ allocated for the development of the Power Project.
- 4.2.1.6. NamPower having obtained all Consents as listed in clause A.1 of Annexure A (Consents) required for it to perform its obligations under this PPA and all such Consents being in full force and effect;
- 4.2.1.7. Approval by ECB of the Base Tariff, tariff structure and Base Case Financial Model as set out in Annexure C (Energy Payment) and Annexure N, respectively;
- 4.2.1.8. The Seller and the respective Competent Authority (acting through the Ministry of Environment, Forestry and Tourism) having entered into a Land Lease Agreement and such Land Lease Agreement being in full force and effect, with all the conditions contained therein having been fulfilled by any applicable deadlines, and which is not subject to conditions inconsistent with the Seller's rights and obligations under this PPA;
- 4.2.1.9. The Seller having entered into an EPC Contract with the EPC Contractor, and such EPC Contract being in full force and effect. A copy of the executed EPC Agreement shall be submitted to NamPower;
- 4.2.1.10. The Seller having obtained the transferred Environmental Clearance Certificate and approval for the Environmental Management Plans from the Competent Authority. A copy of the Environmental Clearance Certificate and approvals shall be submitted to NamPower; and
- 4.2.1.11. Issuance of the Performance Bond No.2 in the prescribed format.

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**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 (On Effective Date).
- 4.3.2. The Parties shall use their reasonable endeavours to cause the Conditions Precedent enumerated in clause 4.2 (On Effective Date) to be satisfied by the Long Stop Effective Date.
- 4.3.3. NamPower shall provide the Seller with such reasonable cooperation as may be necessary to assist the Seller in satisfying the Conditions Precedent listed in clause 4.2 above.
- 4.3.4. In the event of a failure of a Party to satisfy the Conditions Precedent due to Force Majeure, Change in Law or Government Action, the Parties by agreement may extend the Long Stop Effective Date for a period to be agreed between the Parties.

**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 Effective Date.
- 4.4.3. A Party shall promptly inform the other Party in writing when any and each 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 PPA.

**4.5. Non-fulfilment of Conditions Precedent**

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- 4.5.1. If the Conditions Precedent are not satisfied or waived on or before the Long Stop Effective Date, and if the Long Stop Effective Date has not been extended by mutual agreement between the Parties as set out in clause 4.3.4, then either Party shall have the right to terminate this PPA by issuing a Termination Notice to the other Party, within a period of thirty (30) days after the occurrence of the Long Stop Effective 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 PPA and subject to its rights under the applicable Performance Bond as contemplated in clause 6.5.2.
- 4.5.2. In any event as provided for in clause 4.3.4 and clause 4.5.1, the Long Stop Effective Date shall only be extended up to three (3) times, whereafter this PPA shall terminate. 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 PPA.
- 4.5.3. Subject to clause 4.3.4 and notwithstanding the provisions of clause 4.5.2, NamPower shall be entitled to exercise its rights under the Performance Bond No. 1, and in accordance with the provisions of clause 6.5, to cover any damages it may have suffered as a result of the termination of this PPA due to the Seller's failure to meet any of the Conditions Precedent as set forth in clause 4.2.1.1, 4.2.1.3, 4.2.1.4, 4.2.1.5, 4.2.1.9, and 4.2.1.11 on or before the Long Stop Effective Date.

## 5. CONSTRUCTION AND DEVELOPMENT OF THE POWER PROJECT

### 5.1. Project Site

- 5.1.1. The Power Plant shall be located at the area generally described as:
- 5.1.1.1. **Site:** CERIM Luderitz Wind Park
- 5.1.1.2. **Town:** Approximately 16 km from Luderitz
- 5.1.1.3. **Location/ District:** Tsau //Khaeb (Sperrgebiet) National Park (TKNP), Karas Region

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5.1.1.4. **GPS Coordinates:**

Lat	Long	Name
-26.810795	15.196093	18
-26.811319	15.198590	19
-26.812277	15.200654	20
-26.812615	15.202818	21
-26.815617	15.216333	22
-26.817211	15.227776	23
-26.820337	15.227919	24
-26.827065	15.226114	25
-26.834158	15.222333	26
-26.838650	15.222415	27
-26.838722	15.209032	28
-26.836069	15.207423	29
-26.834165	15.203716	30
-26.835261	15.200797	31
-26.837321	15.198433	32
-26.838718	15.197809	33
-26.837173	15.193830	34
-26.836464	15.192681	35
-26.832732	15.190850	36
-26.825486	15.190315	37
-26.825097	15.193879	38
-26.825871	15.197871	39
-26.825234	15.200973	40
-26.822911	15.203028	41
-26.819011	15.203193	42
-26.815805	15.201894	43
-26.814637	15.195770	44
-26.813355	15.195464	45
-26.811860	15.195748	46

5.1.1.5. 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 I (Single Line Diagram of Project Plant).

**5.2. Risk and Liability**

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

5.2.1.1. obtaining all Consents including those obtained under clause 4.2 (On Effective Date), except for NamPower's Consents, and maintaining all Seller's Consents in full force and effect during the Term of this PPA;

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- 5.2.1.2. the commencement of supply of Net Energy to NamPower no later than the Target Commercial Operation Date excluding delays not attributable to the Seller;
  - 5.2.1.3. connecting the Power Plant with the Connection Facilities at the Delivery Point as contemplated in the Connection Offer Letter;
  - 5.2.1.4. operating and maintaining the Power Plant throughout the Term of this PPA free and clear of encumbrances, except those provided to the Lenders under the Finance Documents, and except as expressly permitted under clause 23 (Cession and Assignment); and
  - 5.2.1.5. fulfilling all obligations undertaken by the Seller under this PPA.
- 5.2.2. Subject to clause 17 and the other provisions in this PPA, and the provisions of the Transmission Connection Agreement, the Seller shall be fully responsible for the suitability of the Project Site and shall assume all risk and liabilities associated with the Project Site.
- 5.2.3. The Seller shall be entitled to an extension of time to the Target Commercial Operate Date on a day-for-day basis in the event the following events as listed hereto below occur and the Seller, notwithstanding it acting as a Reasonable and Prudent Operator, suffers a delay, namely:
- 5.2.3.1. Discovery of Artefacts at the Project Site; and
  - 5.2.3.2. pre-existing pollution and / or contamination associated with the Project Site;

### 5.3. Information regarding the Connection Works

- 5.3.1. 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

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- 5.4.1. NamPower shall have the right from time to time, on not less than forty-eight (48) hours' written notice, to designate not more than ten (10) 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 PPA, provided that 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. Such request from NamPower shall not be unreasonably refused by the Seller.

**5.5. General Development Obligations**

- 5.5.1. For the period from Signature Date to the Effective Date of this PPA, and no later than the last day of each month, the Seller shall deliver to NamPower a written report setting out the development activities undertaken in the preceding period as well as the overall progress in the development of the Power Project with reference to all Conditions Precedents and Milestones.
- 5.5.2. The Seller shall ensure that each such report contains or encloses the following details as a minimum:
- 5.5.2.1. Any key and critical activities which was planned and has been undertaken in the reporting period;
  - 5.5.2.2. details of any new Consents and/or changes to the status of any Consents and/or details of any non-compliance with any Consents (and any proposed remedial action in relation thereto (if applicable) and/or details of any outstanding Consents;
  - 5.5.2.3. details and the status of reaching the Conditions Precedent (and any proposed remedial action in relation thereto (if applicable) and/or details of any outstanding Conditions Precedent;

**5.6. General Construction Obligations**

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

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- 5.6.1.1. the Construction Programme;
  - 5.6.1.2. all applicable Laws, including the Seller's Consents;
  - 5.6.1.3. the Grid Code;
  - 5.6.1.4. the Transmission Connection Agreement; and
  - 5.6.1.5. the standard of a Reasonable and Prudent Operator.
- 5.6.2. 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 5.6.1 above.
- 5.6.3. No later than five (5) 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.
- 5.6.4. The Seller shall ensure that each such report contains or encloses the following details as a minimum:
- 5.6.4.1. Whether any relevant Milestones have been met as is set out in Annexure L (Construction Program) and the reasons for the state of progress;
  - 5.6.4.2. Updates on the expected dates of the remaining Milestones;
  - 5.6.4.3. Description of any delay to the EPC Contract or any extensions of time granted by the Seller to any party carrying out construction related activities under the relevant Project Documents;
  - 5.6.4.4. any other or additional information that NamPower may request the Seller to provide in relation to the construction of the Power Plant;
  - 5.6.4.5. details of and/or information relating to:
    - 5.6.4.5.1. the number of personnel on the Project Site;
    - and

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5.6.4.5.2. the hours worked without lost time injuries;

5.6.4.6. photographic evidence of the state of the Power Project.

5.6.5. 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.

5.6.6. 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.

## 5.7. Construction Programme

5.7.1. The Seller shall achieve the Commercial Operation Date on or before the Target Commercial Operation Date in accordance with clause 6.1 (Commercial Operation Date).

5.7.2. The Seller shall comply with the Construction Programme as set out in Annexure L (Construction Programme) 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:

5.7.2.1. the nature of and the reason for the failure;

5.7.2.2. 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

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- 5.7.2.3. 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

- 6.1.1. 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.
- 6.1.2. As soon as the requisite requirements for achieving the Commercial Operation Date has been satisfied, NamPower shall issue to the Seller the dated Commercial Operation Certificate confirming the same.

### 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, Change in Law or Government Action or an event as set out in clause 5.2.3 then the Seller shall pay NamPower Delay Liquidated Damages.
- 6.2.2. The Delay Liquidated Damages shall be paid at a rate of zero-point two five percent (0.25%) of the total EPC Cost for every week or part thereof from the Target Commercial Operation Date to the Commercial Operation Date, such weekly sum to be applied pro rata for any portion of a week between the Target Commercial Operation Date and the Commercial Operation Date.
- 6.2.3. In the event that the cap of the Delay Liquidated Damages is reached in accordance with clause 6.4.1, then the Term shall be reduced on a day-for-day basis for the remainder of the period during which the Commercial Operation Date is delayed.
- 6.2.4. In the case of a delay to the Commercial Operation Date as envisioned by this clause 6.2 (Delay in Commercial Operation Date), the Seller shall keep NamPower informed of the date upon which it anticipates that it will be able to achieve the Commercial Operation Date.

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6.2.5. If due to any delay, default or circumstance caused by an Event of Deemed Availability, Force Majeure, Change in Law, Government Action or an event as contemplated in clause 5.2.3, 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, Force Majeure, Change in Law, Government Action or event as contemplated in clause 5.2.3, 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.

6.2.6. 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:

- 6.2.6.1. the effect which the Power Project reasonably demonstrates is properly attributable to such delay, default or circumstance;
- 6.2.6.2. 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; and
- 6.2.6.3. any measures the Seller has taken in accordance with clause 6.2.5 above to minimise the overall delay in achieving the Commercial Operation Date.

### 6.3. Deemed Commercial Operation Date

6.3.1. Notwithstanding the extension to the Target Commercial Operation Date contemplated by clause 6.2 (Delay in Commercial Operation Date), 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

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Acceptance Test on the date on which such 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 (Deemed Commercial Operation Date) 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:

6.3.2.1. 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;

6.3.2.2. the Parties shall undertake all reasonable measures to ensure that the Acceptance Test 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

6.3.2.3. Provided that the Seller was ready and in a position to conduct any Acceptance Test, which Acceptance Test 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 Energy Payment to the Seller in respect of the aggregate amount of Net Energy based on maximum output as defined in the Monthly Generation Forecast supplied in accordance with Clause 12.1.1 (Monthly Generation Forecast) for the Deemed Commercial Operation Period (the "**Deemed Energy Payment**"), which output shall be forecasted in kWh. The Deemed Energy Payment shall be calculated as provided in clause C.3 of Annexure C (Energy Payment).

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 Acceptance Test, the Seller shall be liable to repay the Deemed Energy Payments paid to it under this clause 6.3 to NamPower.

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**6.4. Capping of Liquidated Damages**

- 6.4.1. The Delay Liquidated Damages shall be capped and not exceed five percent (5%) of the EPC Cost.
- 6.4.2. The payment of the liquidated damages shall not relieve the Seller from his obligation to complete the works, or from any other duties, obligations or responsibilities which he may have under this PPA.
- 6.4.3. The Parties acknowledge that the liquidated damages are a reasonable and genuine pre-estimate of the likely extent of the damages suffered by NamPower as a result of such non-conformance.
- 6.4.4. The Parties agree that the liquidated damages shall be the full and final compensation to be paid in respect of a failure of the Seller to meet the Commercial Operation Date by the Target Commercial Operation Date.

**6.5. Performance Bonds**

- 6.5.1. The Seller shall submit the following performance bonds guaranteeing its performance obligations under this PPA to NamPower as follows:
- 6.5.2. Performance Bond No. 1 to the value of two and a half percent (2.5%) of the total EPC costs (including all contractors, equipment suppliers and service providers), which shall be issued at the Signature Date in favour of NamPower, and which shall remain valid for a period of sixty (60) days after the Long Stop Effective Date, or until it has been substituted by Performance Bond No. 2. Promptly following expiry or substitution thereof the NamPower shall return Performance Bond No. 1 to the Seller.
- 6.5.3. Performance Bond No. 2 to the value of five percent (5%) of the total EPC Costs, which shall be issued as a Condition Precedent for reaching the Effective Date in favour of NamPower, and which shall remain valid until the successful completion of the Acceptance Tests or payment in full of the Delay Liquidated Damages, whichever comes first. Promptly following expiry thereof, NamPower shall return Performance Bond No 2 to the Seller following a written request.
- 6.5.4. NamPower may at any time invoke its rights under the Performance Bonds to recover any liquidated damages owed to it by the Seller.

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## 7. SALE AND PURCHASE OF ENERGY

### 7.1. Obligations to Sell and Purchase Electrical Energy

- 7.1.1. Subject to and in accordance with the terms and conditions of this PPA, the Seller commits to sell and supply at the Delivery Point and NamPower commits to take and purchase at the Delivery Point all Net Energy generated (or deemed to have been generated) by the Power Plant as from the Commercial Operation Date (or the Deemed Commercial Operation Date) and as measured by the Metering Equipment. Title to, and risk of loss, for the Net Energy shall pass from the Seller to NamPower at the Delivery Point. For the avoidance of doubt and notwithstanding the Maximum Export Capacity, or Installed Capacity of the Power Plant, the Seller will only be paid the Net Energy up to Contracted Capacity.
- 7.1.2. The Seller shall not be permitted to export energy to the Transmission System in excess of the Maximum Export Capacity. If the Measured Capacity is higher than the Maximum Export Capacity, the Seller will implement measures to avoid the exportation of energy in excess of the Maximum Export Capacity.
- 7.1.3. Commissioning of the Power Plant and the Connection Works shall be in accordance with the commissioning schedule contained in Annexure D (Testing Schedule). The Parties agree that Net Energy will be sold to and purchased by NamPower only from the Commercial Operation Date. The Term shall only commence upon the Commercial Operation Date in accordance with clause 3.1 (Term).
- 7.1.4. 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 Energy

- 7.2.1. Subject to the express and mandatory requirement of the Grid Code, the Seller shall not sell any 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 and the prior approval of the ECB.

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- 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 PPA, 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

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

### 8.2. Metering

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

### 8.3. Periodic Testing of the Power Plant

- 8.3.1. The Seller shall test the performance and output of the Power Plant on the fifth (5<sup>th</sup>) anniversary of the Commercial Operation Date, and every five (5) years thereafter on the anniversary of the Commercial Operation Date for the duration of this PPA, to determine whether the energy yield of the Power Plant is in line with the Power Project Acceptance Tests projections at the commencement of the Power Project and to assist NamPower for planning and forecasting purposes. The Seller shall give reasonable notice of such testing to NamPower and shall allow NamPower to be present when these tests are performed.

## 9. PAYMENT FOR ELECTRICITY

### 9.1. Payment for Energy prior to Commercial Operation Date

- 9.1.1. NamPower shall not pay for the commissioning energy prior to Commercial Operation Date.

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- 9.1.2. For each Billing Period after the Commercial Operation Date, the Energy Payment shall be in accordance with Annexure C (Energy Payment).

**9.2. Energy Payment**

- 9.2.1. NamPower shall pay to the Seller:
- 9.2.1.1. for each Billing Period during the Term (including the Billing Period in which the Commercial Operation Date occurs), the Energy Payment (as per Annexure C (Energy Payment)); and
- 9.2.1.2. for the duration of the Deemed Commercial Operation Period, if it occurs, the Deemed Energy Payment.

**9.3. Payment during Event of Deemed Availability**

- 9.3.1. Following the Commercial Operation Date, in the event of an Event of Deemed Availability which prevents or hinders the Power Plant from producing Net Energy or from delivering such electrical energy to NamPower or which prevents or hinders NamPower from accepting or receiving such electrical energy in accordance with this PPA, NamPower shall, subject to the provisions of clause 12.10 pay to the Seller the Deemed Energy Payment. The Deemed Energy Payment shall be calculated as provided in clause C.3of Annexure C (Energy Payment).

- 9.3.2. It is hereby clarified that in the event that NamPower shall be required to pay an Energy Payment for part of a certain Billing Period and a Deemed Energy Payment for the rest of such Billing Period, NamPower shall pay to the Seller both the Energy Payment and the Deemed Energy Payment for such Billing Period.

**9.4. Indexation of the Energy Charge**

- 9.4.1. The Energy Charge shall escalate in accordance with the indexation in clause C.5 to Annexure C (Energy Payment).

**9.5. Balancing Payments**

- 9.5.1. The Seller will be required to pay Balancing Payments incurred by the MSB operator in case of the Seller not meeting its Hourly Generation

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Forecast on any given day, except in the event of Force Majeure or a Transmission System Outage not attributable to the Seller. Energy deviations will be calculated as the difference between the actual output as generated by the Power Plant and the Final Dispatch Schedule in every Trading Period.

- 9.5.2. The Balancing Payments will be calculated in accordance with the Market Rules.

## 10. INVOICING AND PAYMENT

### 10.1. Frequency

- 10.1.1. The Energy Payment, as calculated and adjusted in accordance with clause 9.2 (Energy Payment) shall be invoiced in arrears at the end of each Billing Period and shall be invoiced in Namibia Dollars. The Seller shall charge NamPower Tax 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

- 10.2.1. All sums payable by either Party under this PPA shall be paid:

10.2.1.1. free of any restriction or condition; and

10.2.1.2. 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 PPA, 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

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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 PPA shall be submitted by the Seller to NamPower or NamPower to Seller 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 PPA 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 a Party dispute an invoice it shall notify the other Party within five (5) Business Days of receipt of such an invoice. A Party 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.

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- 10.4.5. In case of a manifest error on an invoice, the invoiced Party shall immediately notify the invoicing Party, and the invoicing Party 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. At the end of the final Billing Period in every Year, the Seller shall calculate the Socio-Economic Development Contribution payable by the Seller to NamPower. Once determined, the Seller shall clearly stipulate the amount payable by the Seller to NamPower, which amount shall be set-off from the final invoice payable by NamPower to the Seller in each Year, during the term of the PPA.
- 10.4.9. In the event that the Seller is required to pay to NamPower any liquidated damages, Environmental Credits in accordance with Annexure E (Environmental Credits) or any other payments, NamPower shall issue an invoice to the Seller in accordance with the procedure described above, *mutatis mutandis*.
- 10.4.10. NamPower shall notify the Seller of its bank account details for payment by the Seller to NamPower.
- 10.4.11. Except for setting-off of the Socio-Economic Development Contribution in accordance with the provisions of clause 10.4.8, no Party shall be entitled to offset any amounts payable to the other Party under or in relation to this, unless it is agreed in writing amongst the Parties.

**10.5. NamPower Letter of Credit**

- 10.5.1. As provided for in this clause 10.5, in the event that any account is not settled in accordance with the terms of this PPA for three (3) consecutive Billing Periods, NamPower shall procure issue and maintain to the Seller one or more revolving NamPower Letter(s) of Credit, of which in aggregate is no less than the NamPower Letter of Credit Amount, calculated with

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reference to the period immediately preceding the Billing Period in which NamPower failed to pay and for the duration of the Term.

- 10.5.2. NamPower shall procure the issuance of any NamPower Letter of Credit to the Seller from an Approved Provider and in the substantial form provided in Annexure H (NamPower Letter of Credit) within seven (7) Business Days from date which the respective payment was due and payable.
- 10.5.3. Each NamPower Letter of Credit issued hereunder shall be valid for drawing for a period of not less than twelve (12) months from the date on which it is issued.
- 10.5.4. If, any time during the Term, as a result of any of the reasons below, the aggregate amounts available for drawing under the NamPower Letter(s) of Credit is less than the NamPower Letter of Credit Amount, NamPower shall promptly, and in any case within twenty-one (21) Business Days, procure and issue to the Seller one or more NamPower Letter(s) of Credit so as to ensure that the aggregate amount available for drawing under the NamPower Letter(s) of Credit is not less than the NamPower Letter of Credit Amount:
- 10.5.4.1. one or more demands on a NamPower Letter of Credit in accordance with this PPA and its terms; or
- 10.5.4.2. an increase in the NamPower Letter of Credit Amount of more than one hundred-and-ten percent (110%) of the prevailing aggregate amount of all NamPower Letter(s) of Credit then available to the Seller for drawing.
- 10.5.5. Not less than twenty-one (21) Business Days prior to the date of expiry of a NamPower Letter of Credit, NamPower shall provide a replacement NamPower Letter of Credit, issued from an Approved Provider, which shall have a term of not less than twelve (12) months from the date of expiry of the immediately preceding NamPower Letter of Credit unless such expiry date falls after the duration of the Term. Failing to replace such expiring NamPower Letter of Credit, the Seller shall be entitled to draw the full available amount of any current NamPower Letter of Credit currently in place.

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- 10.5.6. The Seller may, at any time, draw under a NamPower Letter of Credit in respect of any amount which is demonstrably payable under the PPA (but which has not been paid) in terms of clause 10.4.2 to the Seller and shall be entitled to utilise the amount so drawn in or towards satisfaction of the amount payable to it under this PPA.
- 10.5.7. Any amount drawn pursuant to clause 10.5.6 shall be held by the Seller as security for any amounts payable or which may become payable under this PPA. For the avoidance of doubt, NamPower shall continue to be under an obligation to provide each replacement NamPower Letter of Credit pursuant to this clause 10.5.7 for the duration of the Term, notwithstanding any such drawing.
- 10.5.8. The Seller may draw under a NamPower Letter of Credit in accordance with clause 10.5.6 above irrespective of whether or not the amount drawn is, or the circumstances relating to such amount are:
- 10.5.8.1. in dispute;
  - 10.5.8.2. subject to the dispute resolution procedures; or
  - 10.5.8.3. subject to any court or other proceedings.
- 10.5.9. Subject to clause 10.5.1 and clause 10.5.10, the Parties shall, within thirty (30) Days of the fifth (5th) anniversary of the first issued NamPower Letter of Credit, and every five (5) years thereafter for the duration of the Term, meet in order to consider whether the requirements of a NamPower Letter of Credit as set out in this clause 10.5 can be reduced or removed, provided that any agreement to reduce or remove such requirements shall be subject to the following conditions:
- 10.5.9.1. the prior written approval of the Lenders having been obtained; and
  - 10.5.9.2. at all times up to the date of such meeting, NamPower shall have complied in full of its payment obligations under this PPA.
- 10.5.10. Notwithstanding the provisions of clause 10.5.9 above, the Parties acknowledge that the Seller shall be entitled to require NamPower to comply with increased requirements of the NamPower Letter of Credit as

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set out in this clause 10.5 if, at any time following any agreement to reduce such requirements, a NamPower Breach occurs, provided that such increased requirements shall not be more onerous than the NamPower Letter of Credit requirements that were applicable on the date immediately preceding the agreement reached by the Parties pursuant to clause 10.5.9.

- 10.5.11. In the event that the Seller shall draw against a NamPower Letter of Credit and it shall later be determined that the Seller was not entitled to do so, then the Seller shall, within seven (7) days after such determination was made, repay such amount to NamPower, together with all costs and expenses incurred by NamPower in connection with such drawing, together with interest at the Agreed Interest Rate on the amount drawn and related costs and expenses.

## 11. ENVIRONMENTAL CREDITS

### 11.1. Obtaining Credits

- 11.1.1. NamPower undertakes to ensure application and registration for Environmental Credits associated with electrical energy generated by the Power Project following the Commercial Operation Date. In the event NamPower fails to apply and register, and with written consent, the Seller will assume the rights to apply and register the Power Project for Environmental Credits.

### 11.2. Information Sharing

- 11.2.1. The Parties undertake to co-operate with each other and their respective contractors (as the case may be), and to provide such information and assistance as may be reasonably requested of each other in relation to the application for registration of the Power Project with the appropriate agency and obtaining of Environmental Credits.

### 11.3. Ownership of the credits

- 11.3.1. The Parties agree that the Seller shall be the sole and exclusive owner of all Environmental Credits derived or generated as a result of the Power Project, and further agree, for the avoidance of doubt, that NamPower will have no rights, obligations or liabilities in respect of any Environmental Credits earned or deficiency thereof for the duration of this PPA other than

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those set out in clause 11.1 and clause 11.4 and Annexure E (Environmental Credits).

**11.4. Payment of Benefits**

11.4.1. Notwithstanding clause 11.3, payment of the financial benefits derived from the Environmental Credits shall be in accordance with Annexure E (Environmental Credit).

**12. CONTROL AND OPERATION OF THE POWER PROJECT**

**12.1. Dispatch Procedures**

**12.1.1. Monthly Generation Forecast**

12.1.1.1. The Seller shall provide NamPower in writing for each month of the Term, (except during Scheduled Outages), by no later than 09:00 hours on the twenty-fifth (25<sup>th</sup>) of the preceding month, the Monthly Generation Forecast in the format attached hereto as Annexure M (Monthly, Weekly and Daily Generation Forecasts);

12.1.1.2. In addition, the Seller shall provide NamPower with a Monthly Generation Forecasts for the first four (4) months following the Commercial Operation Date, by no later than one (1) month prior to the Commercial Operation Date.

12.1.1.3. In the event that the Seller fails to provide the Monthly Generation Forecast for any month, then the last Monthly Generation Forecast provided by the Seller in accordance with clause 12.1.1.1 above shall be deemed to be the Monthly Generation Forecast for such month.

**12.1.2. Weekly Generation Forecast**

12.1.2.1. The Seller shall provide to NamPower in writing for each Week from the Commercial Operation Date, by no later than 09:00 hours on the preceding Wednesday, the Seller's estimate, made in good faith, of the forecast level of Net Energy expected to be generated by the Power Plant for each day in the Week in the format attached hereto as Annexure M (Monthly, Weekly and Daily Generation Forecasts).

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12.1.2.2. In the event that the Seller fails to provide the Weekly Generation Forecast for any Week, then the last Weekly Generation Forecast provided by the Seller in accordance with clause 12.1.2.1 above shall be deemed to be the Weekly Generation Forecast for such Week.

12.1.3. Daily Generation Forecast

12.1.3.1. The Seller shall provide to NamPower in writing for each day following the Commercial Operation Date, by no later than 10:00 hours on the preceding day, the Seller's Hourly Generation Forecast in the format attached hereto as Annexure M (Monthly, Weekly and Daily Generation Forecasts).

12.1.3.2. In the event that the Seller fails to provide the forecast for any Day, then the last daily forecast provided by the Seller in accordance with clause 12.1.3.1 above shall be deemed to be the daily forecast for the Day.

12.1.3.3. The Hourly Generation Forecast shall be used as the Final Dispatch Schedule as defined in the MSB Market Rules.

12.1.4. All generation forecasts are to be treated in accordance with the applicable MSB Market Rules. The Hourly Generation Forecast shall however be used as basis for the calculation of Deemed Energy Payments under clause 6.3 (Deemed Commercial Operation Date), other Deemed Energy Payments under clause 9.3 (Payment during Event of Deemed Availability), clause 12.10 (Scheduled Transmission System Outages and Unscheduled Transmission System Outages), or Balancing Payments under clause 9.5, and the quantification of losses in case of termination as a result of Seller Event of Default under clause 19 (Termination).

**12.2. Availability Declaration**

12.2.1. The Seller shall provide to NamPower in writing for each Contract Year (after taking into consideration Scheduled Plant Outages), by no later than 30 (thirty) days prior to the first (1<sup>st</sup>) January of the ensuing Contract Year to which the forecast relates, its Availability Declaration. For the first Contract Year (or remainder thereof), the Seller shall provide NamPower

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with an Availability Declaration thirty (30) days prior to the Commercial Operation Date.

- 12.2.2. In the event that the Seller fails to provide the Availability Declaration for a Contract Year, then the last Availability Declaration provided by the Seller in accordance with clause 12.2.1 above shall be deemed to be the Availability Declaration for such Contract Year.
- 12.2.3. Subject to the terms and conditions of this PPA, the Seller shall declare the Power Plant available for generation of Net Energy except:
- 12.2.3.1. for reasons of Scheduled Plant Outages or Unscheduled Plant Outages; or
  - 12.2.3.2. where to do so would not be in accordance with the standards of a Reasonable and Prudent Operator; or
  - 12.2.3.3. in circumstances relating to safety (of either personnel or the Power Project or apparatus); or
  - 12.2.3.4. to the extent of any illegality, in circumstances where to do so would be unlawful; or
  - 12.2.3.5. for reasons of Force Majeure; or
  - 12.2.3.6. in any other circumstances, with NamPower's approval.
- 12.2.4. The Availability Declaration and all generation forecasts, other than the Hourly Generation Forecast as set out in clause 12.1.4, are indicative only, and deviations shall not be regarded as a breach of contract.
- 12.2.5. For avoidance of doubt, the Seller shall sell, and NamPower shall purchase, all the Net Energy generated by the Power Plant.

### 12.3. Other relevant data

- 12.3.1. 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.

### 12.4. Further revisions

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- 12.4.1. 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.
- 12.4.2. 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:
- 12.4.2.1. make revisions to the data submitted to NamPower under clause 12.2 (Availability Declaration) and clause 12.3 (Other relevant data);
- 12.4.2.2. notify NamPower of any revisions to any previously submitted data; and
- 12.4.2.3. notify NamPower of any special factors of which it becomes aware.

## 12.5. Communication of Declarations

- 12.5.1. Each Party hereby authorises the other Party to record all telephone voice communications relating to Net Energy 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.

## 12.6. Coordination

- 12.6.1. The Seller and NamPower shall as far as practically possible coordinate the timing for both Scheduled Plant Outages and Scheduled Transmission System Outages.
- 12.6.2. The Parties shall establish an Operating Committee from the Signature Date of this PPA. The obligations and responsibilities of the Operating Committee shall be as set out in Annexure F (Operating Committee). However, it is hereby agreed that the Operating Committee and/or its members will not have any liability towards the Power Project and/or the Parties.

## 12.7. Operations and Maintenance

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- 12.7.1. The Seller shall, during the Term, carry out such operation and maintenance as shall be commensurate with the proper running of the Power Plant and in accordance with Prudent Industry Practice.
- 12.7.2. The Seller shall further endeavour to transfer a substantial portion of the operation and maintenance of the Power Plant to locally domiciled and majority owned Namibian companies (via direct contracting or sub-contracting) within fifteen (15) years from the Commercial Operation Date, subject to the consent of the Seller's Lenders, which consent shall not be unreasonable withheld.

## 12.8. Scheduled Plant Outages

- 12.8.1. The Seller shall, not less than one (1) month prior to the Commercial Operation Date and on an annual basis for the remainder of the Term, at least one (1) month prior to the anniversary of the Commercial Operation Date provide to NamPower and the Operating Committee its proposals for Scheduled Plant Outages, including any planned interruption or reduction of the Power Plant's Contracted Capacity for the remainder of the Contract Year and the forthcoming Contract Year, as appropriate. Such schedule shall include:
- 12.8.1.1. the number of expected Scheduled Plant Outages and the extent of expected reductions in the Contracted Capacity of the Power Plant as a result of such Scheduled Plant Outages; and
- 12.8.1.2. the estimated dates and duration of each Scheduled Plant Outage.
- 12.8.2. The Operating Committee shall, upon receipt of the proposals contemplated in clause 12.8.1, meet and coordinate the timing of Scheduled Plant Outages for the forthcoming Contract Year, at least as close to one (1) month prior to the commencement of that Contract Year as possible.
- 12.8.3. If there is a requirement to change the dates of any Scheduled Plant Outage, the Seller shall provide NamPower with written notice at least twenty-eight (28) days in advance of the relevant Scheduled Plant Outage. NamPower may approve such a request for a change of date within five

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(5) Business Days of such request. Such an approval shall not be unreasonably withheld or delayed.

12.8.4. Subject to having complied with the foregoing provisions of this clause 12.8 (Scheduled Plant Outages), the Seller shall be entitled to remove the Power Plant from service at the agreed date and time for the Scheduled Plant Outage.

12.8.5. The Seller shall be responsible for all costs incurred by it in connection with or arising from any scheduled maintenance carried out by it or on its behalf on the Power Plant. NamPower shall not be entitled to any payment and/or indemnification and/or reimbursement from the Seller in connection with any Scheduled Plant Outages.

## 12.9. Unscheduled Plant Outages

12.9.1. The Seller shall notify NamPower promptly:

12.9.1.1. upon the occurrence of any event resulting in the Power Plant being unable to operate; and/or

12.9.1.2. if the Seller determines that maintenance of the Power Plant is required prior to the next Scheduled Plant Outage scheduled pursuant to clause 12.8 (Scheduled Plant Outage), and that an Unscheduled Plant Outage is required.

12.9.2. In each case, the Seller shall:

12.9.2.1. give NamPower notice of such event as soon as reasonably practicable after the occurrence of such event or, in the case of an Unscheduled Plant Outage, the Seller becoming aware of the need for such outage;

12.9.2.2. notify NamPower of the expected dates and duration of the Unscheduled Plant Outage; and

12.9.2.3. use its best efforts to minimise the duration and effects on the Power Plant of the Unscheduled Plant Outage.

12.9.2.4. NamPower shall be entitled to Balancing Payments and/or indemnification and/or reimbursement from the Seller in

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connection with any Unscheduled Plant Outages in accordance with the MSB Market Rules.

**12.10. Scheduled Transmission System Outages and Unscheduled Transmission System Outages**

12.10.1. The Parties agree that the Transmission System may be unavailable not more than the Transmission Unavailability Threshold annually during which NamPower shall perform Transmission Maintenance. NamPower shall, not less than two (2) months prior to the Commercial Operation Date and on an annual basis for the remainder of the Term, at least two (2) months prior to the anniversary of the Commercial Operation Date provide to the Seller its proposals for Scheduled Transmission System Outages. NamPower shall endeavour to schedule the Scheduled Transmission System Outages, in as far as is practical, in coordination with the generation forecasts as to so limit the Scheduled Transmission System Outages during generation hours. Such schedule shall include:

12.10.1.1. the number of expected Scheduled Transmission System Outages; and

12.10.1.2. the estimated dates and duration of each Scheduled Transmission System Outage.

12.10.2. Subject to having complied with the foregoing provisions of this clause 12.10 (Scheduled Transmission System Outages and Unscheduled Transmission System Outages), NamPower shall be entitled to shut down the Transmission System from service at the agreed date and time. The total Scheduled Transmission System Outages and Unscheduled Transmission System Outages for the Transmission System (excluding Force Majeure events) for each Contract Year, shall not lead to 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 Deemed Energy Payment for the period or periods during which such Transmission Unavailability Threshold is exceeded during a Contract Year.

12.10.3. Without derogating from NamPower's obligation to pay the Deemed Energy Payment as aforesaid, NamPower shall notify the Seller promptly:

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12.10.3.1. upon the occurrence of any event resulting in the Transmission System being unable to operate or events affecting system stability; and/or

12.10.3.2. if NamPower determines that maintenance of the Transmission System is required prior to the next Scheduled Transmission System Outage and that an Unscheduled Transmission System Outage is required.

12.10.4. In each case, NamPower shall:

12.10.4.1. give the Seller 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;

12.10.4.2. notify the Seller of the expected duration of the Unscheduled Transmission System Outage; and

12.10.4.3. use its best efforts to minimise the duration and effects on the Transmission System of the Unscheduled Transmission System Outage.

### 13. ADDITIONAL OBLIGATIONS

#### 13.1. NamPower's obligations

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

13.1.1.1. 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 PPA; and

13.1.1.2. reasonably assist the Seller in obtaining any Consents which the Seller requires to construct, commission, operate and maintain the Power Plant under this PPA; and

13.1.1.3. at all times from the Connection Date until the occurrence of the Commercial Operation Date during which the Seller

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generates Net Energy from the Power Plant, except the Net Energy so generated at no cost to NamPower; and

- 13.1.1.4. upon the Seller's reasonable request, in good faith negotiate and enter into the Direct Agreement with the Seller and the Lenders, on such terms as the Lenders may reasonably require within a reasonable time.

## 13.2. General Obligations of the Seller

- 13.2.1. From the Commercial Operation Date and for the remainder of the Term, the Seller shall, in addition to its other obligations under this PPA, manage, operate and maintain the Power Plant in accordance with:
  - 13.2.1.1. all relevant Consents required from time to time for the Seller to fulfil its obligations under this PPA, including with the requirements imposed under approval and registration of any Environmental Credits;
  - 13.2.1.2. all applicable Laws (including, without limitation, all health, safety and environmental Laws);
  - 13.2.1.3. Prudent Industry Practice;
  - 13.2.1.4. the relevant manufacturer's guidelines and instructions; and
  - 13.2.1.5. with operation and maintenance routines complying with the performance of the Power Plant as per this PPA.
- 13.2.2. 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.
- 13.2.3. 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 PPA and/or operate the Power Plant and to carry out the transactions contemplated hereby.

- 13.2.4. From the Commercial Operation Date, and no later than thirty (30) days after the approval thereof, the Seller shall submit its audited annual financial statements to NamPower.

#### 14. REPRESENTATIONS AND WARRANTIES

##### 14.1. The Seller's warranties

- 14.1.1. The Seller hereby represents and warrants to NamPower that:
- 14.1.1.1. it is a validly existing legal entity under the Laws of Namibia;
  - 14.1.1.2. it is a limited company, incorporated under the Laws of Namibia which has been in continuous existence since incorporation;
  - 14.1.1.3. within ninety (90) days from the Signature Date, will open a local office in Namibia and keep it occupied and used as principal place of business for the duration of the Term;
  - 14.1.1.4. it has the full legal capacity and authority to enter into and carry out its obligations under this PPA and this PPA constitutes a valid, legally binding and enforceable obligation of the Seller;
  - 14.1.1.5. to the best of the Seller's knowledge and belief, all Consents necessary to allow the Seller to enter into this PPA 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 PPA;
  - 14.1.1.6. 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 PPA;

- 14.1.1.7. execution of this PPA does not conflict with any provision of any Law or any provision of the articles or memorandum of association of the Seller in effect as at the Signature Date;
- 14.1.1.8. 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 PPA or result in the dissolution of the Seller;
- 14.1.1.9. execution of this PPA 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;
- 14.1.1.10. that it will make use of new equipment supplied by a reputable manufacturer; and
- 14.1.1.11. it has fully investigated the Project Site and has satisfied itself as to the Site's adequacy and fitness for the purposes of the Power Project and this PPA.

**14.2. NamPower Warranties**

- 14.2.1. NamPower hereby represents and warrants to the Seller that:
  - 14.2.1.1. It is a validly existing legal entity under the Laws of Namibia which on the date of this PPA is wholly owned by the Government;
  - 14.2.1.2. it is a private limited company incorporated under the Laws of Namibia which has been in continuous existence since incorporation;
  - 14.2.1.3. it has the full legal capacity and authority to enter into and carry out its obligations under this PPA and this PPA

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constitutes a valid, legally binding and enforceable obligation of NamPower;

- 14.2.1.4. all Consents necessary to allow NamPower to enter into this PPA and to carry out the transactions contemplated herein have been given or received and remain in full force and effect;
- 14.2.1.5. it has given notice to the Seller of all Consents necessary in Namibia to allow NamPower to enter into this PPA and to carry out the transactions contemplated therein;
- 14.2.1.6. 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 PPA;
- 14.2.1.7. execution of this PPA 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;
- 14.2.1.8. 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 PPA or result in the dissolution of NamPower; and
- 14.2.1.9. execution of this PPA 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.

## 15. APPLICABLE LAW AND JURISDICTION

- 15.1. This PPA 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

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Namibia, subject to the provisions of clause 18 (Dispute Resolution). Subject to the provisions of clause 18 (Dispute Resolution), the Parties agree that a judgment in any proceedings in connection with this PPA by the Namibian courts shall be binding upon them and may be enforced against them in any other jurisdiction.

**16. CHANGE IN COSTS**

**16.1. Effects of a Change in Cost**

- 16.1.1. The tariff agreed in this PPA is approved by the ECB, and has an agreed price path, with annual escalations as set out Annexure C (Energy Payment).
- 16.1.2. 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 hundred million (100,000,000) Namibia Dollar in aggregate, projected over the life of the Power Plant in accordance with the Base Case Financial Model, NamPower and the Seller shall approach the ECB to adjust the tariff in terms of the then applicable tariff methodology to ensure that the Seller's Regulated Equity Return as approved and set out in the Base Case Financial Model is maintained.
- 16.1.3. The Change in Costs as contemplated in clause 16.1.2 must have the effect of impacting one or more of the inputs in the Base Case Financial Model.
- 16.1.4. In the event of a Change in Law which falls within the ambit of clause 16.1.3, the Seller may only claim relief for a Change in Costs in the event:
  - 16.1.4.1. the principle effect of such Change in Costs is directly borne by:
    - 16.1.4.1.1. the Power Project and not other similar renewable power projects;
    - 16.1.4.1.2. the Seller and not other persons; and
  - 16.1.4.2. in respect of which the Seller is not entitled to any other relief pursuant to any other provisions of this PPA; and

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- 16.1.4.3. 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
- 16.1.4.4. 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 reasonably have been foreseen, the impact on the Power Project could not reasonably have been foreseen.
- 16.1.5. 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.
- 16.1.6. A Change in Costs shall not include any Law that was enacted or made but not yet in force as at the Bid Submission Date, or any Bill that was promulgated for comment at any time before the Bid Signature Date if and to the extent that such Bill is materially unchanged when enacted and brought in effect.
- 16.1.7. If any one or more Changes in Costs as envisaged in clause 16.1.2 – 16.1.3 (inclusive) takes place, the Parties agree to meet in accordance with clause 16.2 (Process for adjustments to the tariff because of Change in Costs) to quantify the financial implications of the Changes in Costs by reference to the Base Case Financial Model so as to calculate the changes required to the Energy Payment in Annexure C (Energy Payment) such that the Seller's Regulated Equity Return, assuming the Change in Costs, is equal to the equity return in the Base Case Financial Model.
- 16.1.8. Once the then applicable Energy Payment and/or Deemed Energy Payment has been re-calculated in accordance with clause 16.1.7, the implementation of such revised Energy Payment and/or Deemed Energy Payment ("**Seller's Revised Tariff**") is subject to the official approval of the ECB.

## 16.2. Process for adjustments to the tariff because of Change in Costs

- 16.2.1. After a Change in Costs as contemplated in clause 16.1.2 and 16.1.3, the Seller shall submit to NamPower within a reasonable time the re-calculation of the Seller's Revised Tariff derived from the Base Case Financial Model, setting forth in reasonable detail the basis of, and the

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calculations in the claim for, any necessary adjustments to the Energy Payment, Deemed Energy Payment arising from such Change in Costs.

- 16.2.2. Within fourteen (14) days after the date of the re-calculation delivered pursuant to clause 16.2.1 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.
- 16.2.3. In the event that NamPower agrees with the re-calculation delivered pursuant to Clause 16.2.1 or as negotiated pursuant to clause 16.2.2 and subject to the approval of the ECB in accordance with clause 16.2.4, the calculation of the Energy Payment and/or the Deemed Energy Payment shall be amended accordingly.
- 16.2.4. The Seller's Revised Tariff shall apply as from the date on which 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).
- 16.2.5. The Parties shall ask the ECB to approve the Seller's Revised Tariff within fourteen (14) days pursuant to clause 16.1 (Effects of a Change in Costs) or clause 16.2 (Process for adjustments to the tariff because of Change in Costs).
- 16.2.6. The calculation of the revised Energy Payment and/or the Deemed Energy Payment and the Annual Indexation determined pursuant to this clause 16 (Change in Costs) shall take into consideration the period from the date of the relevant Change in Costs until the date on which the revised Energy Payment and/or the Deemed Energy Payment and the Annual Indexation take effect in accordance with clause 16.2. 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.
- 16.2.7. In the event, the Parties have met to discuss the re-calculation of the Seller's Revised Tariff pursuant to clause 16.2.2, 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

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Energy Payment or a Deemed 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 a nominated financial Independent Expert for a determination.

- 16.2.8. In the event the nominated financial Independent Expert rules in favour of the Seller, and the ECB does not implement the re-calculated tariff as determined by the Independent Expert, the Seller may terminate this PPA 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.

## 17. FORCE MAJEURE

### 17.1. Definition of Force Majeure Event

- 17.1.1. A "**Force Majeure Event**" means any event or circumstance which:

17.1.1.1. is beyond the reasonable control of the Party affected by the Force Majeure (the "**Affected Party**") or its Contractors;

17.1.1.2. 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 PPA), Consents or applicable Law;

17.1.1.3. 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

17.1.1.4. prevents, hinders or delays the Affected Party in its performance of any of its obligations under this PPA.

- 17.1.2. 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 17.1.1 above, that part of the event or circumstance that could have been mitigated shall not be a Force Majeure Event.

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- 17.1.3. 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 17.1.1 above:
- 17.1.3.1. 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
  - 17.1.3.2. 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
  - 17.1.3.3. pandemic ,epidemic, famine or plague; or
  - 17.1.3.4. any event or circumstance constituting a Force Majeure Event under any other Project Document; or
  - 17.1.3.5. 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
  - 17.1.3.6. radioactive contamination or ionising radiation; or
  - 17.1.3.7. labour unrest, strike, go-slow or other labour action but not those affecting only the personnel of a Party;
- 17.1.4. The following shall not constitute a Force Majeure Event unless caused by or resulting from a Force Majeure Event:
- 17.1.4.1. a failure or inability to make any payment, any inability to raise finance or any changes in price or market conditions;
  - 17.1.4.2. late delivery or interruption in the delivery of machinery, equipment, materials, spare parts or consumables;
  - 17.1.4.3. a delay or failure by a third party which prevents, hinders or delays the Affected Party in the performance of its obligations under this PPA, save where the cause of such delay or failure

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by the third party would constitute a Force Majeure Event pursuant to this PPA;

- 17.1.4.4. 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;
- 17.1.4.5. wear and tear, flaws, breakdown in or degradation of any equipment or machinery; or
- 17.1.4.6. intentional acts, errors or omissions of the Affected Party or its Contractors.

## 17.2. Procedure

- 17.2.1. 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 twenty-one (21) 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.
- 17.2.2. 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 PPA and shall consult to develop and implement a remedial plan to minimise each Party's losses.
- 17.2.3. The Affected Party shall promptly provide notice to the other Party of:
  - 17.2.3.1. the cessation of the Force Majeure Event; and
  - 17.2.3.2. its ability to immediately recommence performance of its obligations under this PPA by reason of the cessation of the Force Majeure Event.

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

**17.3. Consequences of a Force Majeure Event**

- 17.3.1. Notwithstanding any other provisions of this PPA, to the extent the Affected Party hereto is unable to perform any of its obligations under this PPA 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 17.3 (Consequences of a Force Majeure Event).

- 17.3.2. 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 17.2 (Procedure), not be liable for any failure to perform an obligation under this PPA as a consequence of such Force Majeure Event, to the extent only that:

17.3.2.1. such performance is prevented, hindered or delayed by the Force Majeure Event; and

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

- 17.3.3. Any time period specified in this PPA for the performance of any obligation, including but not limited to the Long Stop Effective Date, the Target Commercial Operation Date, Commercial Operation Date and the Long Stop 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 (Make-up Term).

**17.4. Termination on Account of Force Majeure**

- 17.4.1. 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 Affected Party to perform its obligations under this PPA, either Party may upon not less than thirty (30) days' notice, terminate this PPA.

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## 18. DISPUTE RESOLUTION

### 18.1. Procedure

- 18.1.1. If any Dispute arises relating to this PPA 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.
- 18.1.2. Should the Parties fail to resolve such Dispute in accordance with clause 18.1.1 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.
- 18.1.3. Should the chief executives (or equivalent) of the Parties fail to resolve such Dispute in accordance with clause 18.1.2 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 AFSA shall appoint the arbitrators from a list of approved arbitrators having the requisite experience and expertise in the field of the Dispute.

### 18.2. Reference of Technical Disputes

- 18.2.1. In the event of a technical dispute between the Parties, 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 nominated technical independent Expert appointed by the Parties.
- 18.2.2. 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 PPA 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.

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- 18.2.3. 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 falling within the ambit of this clause 18.1.
- 18.2.4. 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.
- 18.2.5. The Parties shall share equally the fees and expenses of the Independent Expert.
- 18.2.6. Should the Independent Expert fail to resolve such dispute in accordance with this clause 18.2 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 18.3 (Arbitration).

**18.3. Arbitration**

- 18.3.1. 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 PPA or in connection with it, or regarding its interpretation, validity, execution, implementation, termination or cancellation, the said dispute shall on written demand by any Party to the dispute be submitted to arbitration in accordance with AFSA Rules, this clause 18.3 being an arbitration agreement within the meaning of the aforementioned rules.
- 18.3.2. If any Dispute is submitted to arbitration in accordance with clause 18.3.1, then the Parties agree that any related disputes in or arising from any of the Project Documents shall be simultaneously submitted to arbitration by the same arbitrators.
- 18.3.3. The decision of the arbitrators shall be given in writing as soon as reasonably possible after the dispute has been referred to the arbitrators

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but not longer than six (6) weeks from the date on which the hearing, including argument, was concluded.

- 18.3.4. The decision in clause 18.3.3 shall be final and binding upon the Parties to the Project Documents taking part in the Arbitration 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.
- 18.3.5. Each Party shall bear its own costs and the costs of arbitration shall be borne equally by the Parties unless the arbitrators decide otherwise.
- 18.3.6. Arbitration shall be conducted under the AFSA Rules and shall be held in Windhoek before three (3) arbitrators. Each Party shall nominate an arbitrator and the two Party-appointed arbitrators shall jointly nominate the third arbitrator (who shall be the chairperson) within thirty (30) days after the confirmation of the second arbitrator, failing which the chairperson shall be appointed by the President of AFSA. In any event the arbitration shall be conducted in the English language.
- 18.3.7. The Parties may be legally represented and may present evidence by independent experts or as otherwise permitted by the arbitrators.
- 18.3.8. 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 18.3 (Arbitration).
- 18.3.9. The judgment upon the award rendered by the arbitrator may be entered in any court having competent jurisdiction.

18.3.10.

#### 18.4. Obligations during Disputes

- 18.4.1. 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 PPA until such dispute has been fully and finally resolved.

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18.4.2. Where a Dispute has been referred for resolution by arbitration in accordance with the AFSA Rules, 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.

**18.5. Proceedings in Confidence**

18.5.1. 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 PPA, shall not be open to third parties, it being agreed that for the purposes of this PPA 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 27 (Confidentiality).

**18.6. Related Disputes**

18.6.1. The Parties agree that where a dispute under this PPA raises issues which are substantially the same as or connected with issues between the Seller and any other contractor employed by the Seller in respect of the Project and/or any third party ("**Other Entity**"), including any counterparty under the Project Documents ("**Related Dispute**"), such Related Disputes shall, with the consent of the Other Entities as may be required in Law, be consolidated and resolved with the dispute under this PPA and, if such Other Entities agree for such disputes to be consolidated, the Parties agree that any order and/or awards made by the appropriate court and/or tribunal in respect of such consolidated disputes shall be binding upon the Parties.

18.6.2. Subject to the agreement of the Other Entities in respect to which a Related Dispute relates, either Party to this PPA may apply to the arbitrator for an order that any arbitral proceeding arising out of a Related Dispute be consolidated with the arbitral proceeding under this PPA, on the ground that:

18.6.2.1. a common question of law or fact arises in two or more of the arbitral proceedings,

18.6.2.2. the rights to relief claimed in those arbitral proceedings are in respect of, or arise out of the Project, or

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- 18.6.2.3. for some other reason specified in the application, it is desirable that the arbitral proceedings be consolidated.
- 18.6.3. Subject to the agreement of the Other Entities in respect to which a Related Dispute relates, the arbitrator shall have power to make the following orders in relation to an application made under clause 18.6.2:
- 18.6.3.1. The arbitral proceedings be consolidated on terms specified in the order; or
- 18.6.3.2. The arbitral proceedings be heard at the same time or in a sequence specified in the order; or
- 18.6.3.3. Any of the arbitral proceedings be stayed pending the determination of any other of the arbitral proceedings.
- 18.6.4. Where an application has been made under clause 18.6.3 in relation to two or more arbitral proceedings ("**Related Proceedings**") and the Other Entities in respect to which a Related Dispute relates agrees to consolidate proceedings, the following provisions shall have effect:
- 18.6.4.1. If the Related Proceedings are being heard by the same arbitrator, the arbitrator may make such order as it thinks fit in relation to those Related Proceedings and, if such an order is made, the Related Proceedings will be dealt with in accordance with the order.
- 18.6.4.2. If two or more arbitrators are hearing the Related Proceedings:
- 18.6.4.2.1. the arbitrator that received the application will communicate the substance of the application to the other arbitrators concerned; and
- 18.6.4.2.2. the arbitrators will, as soon as practicable, deliberate jointly on the application.
- 18.6.4.3. Where the arbitrators agree, after deliberation on the application, that a particular order should be made in relation to the Related Proceedings:

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- 18.6.4.3.1. the arbitrators must jointly make the order and such order as to costs or wasted costs as may be appropriate;
- 18.6.4.3.2. the Related Proceedings must be dealt with in accordance with the order; and
- 18.6.4.3.3. if the order is that the Related Proceedings be consolidated, the identity of the arbitrator or arbitrators, for the purposes of the consolidated proceedings, shall be agreed by the arbitrators and, if the arbitrators are unable to agree upon the identity of the arbitrator or arbitrators, the arbitrator or arbitrators shall be appointed by the President of the AFSA, the decision of whom as to the identity of the arbitrator(s) will be final and binding on the Parties.

## 19. TERMINATION

### 19.1. Events of Termination

- 19.1.1. This PPA shall, subject to the provisions of the Direct Agreement with the Lenders, terminate on the earliest to occur of:
  - 19.1.1.1. termination due to failure to satisfy the Conditions Precedent by the Long Stop Effective Date, in accordance with clause 4.5 (Nonfulfillment of Conditions Precedent); or
  - 19.1.1.2. on receipt of a Termination Notice from the Seller in accordance with clause 17.4 (Termination on Account of Force Majeure); or
  - 19.1.1.3. termination by NamPower following a Seller Event of Default, in accordance with clause 19.2 (Seller Event of Default); or
  - 19.1.1.4. termination by the Seller following a NamPower Event of Default, in accordance with clause 19.3 (NamPower Event of Default); or

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- 19.1.1.5. termination by the Seller due to a Change in Costs, in accordance with clause 19.4.1.2 (Termination for Change in Costs); or
- 19.1.1.6. termination by the Seller due to a Change in Law or Government Action, in accordance with clause 19.5.12; or
- 19.1.1.7. termination due to the expiry of the Term.

## 19.2. Seller Event of Default

- 19.2.1. Each of the following shall constitute a "**Seller Event of Default**", save to the extent excused by clause 17 (Force Majeure) of this PPA, 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:
  - 19.2.1.1. 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;
  - 19.2.1.2. 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;
  - 19.2.1.3. the Seller fails to cause the Commercial Operation Date to occur by the Long Stop Commercial Operation Date;
  - 19.2.1.4. 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;
  - 19.2.1.5. the transfer of the Seller's rights or obligations under this PPA, which are not permitted under clause 23 (Cession and Assignment) of this PPA, excluding a transfer to an Affiliate and/or a wholly owned subsidiary;

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- 19.2.1.6. 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;
- 19.2.1.7. the Seller is in material breach of its obligations under this PPA 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;
- 19.2.1.8. lawful and final revocation of the Generation Licence due to the Seller's material failure to comply with the terms of the Generation Licence;
- 19.2.1.9. failure of the Seller to pay any sum or sums due and owing to NamPower pertaining to this PPA for six (6) consecutive Billing Periods;
- 19.2.1.10. any environmental failure as follows:
  - 19.2.1.10.1. 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
  - 19.2.1.10.2. 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

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of the Seller's activities, in either case rendering it unlawful for the Seller to perform any material obligations under this PPA; or

19.2.1.10.3. 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.

19.2.2. 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.

### 19.3. NamPower Event of Default

19.3.1. 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:

19.3.1.1. failure of NamPower to pay any sum or sums due and owing to the Seller for six (6) consecutive Billing Periods, save to the extent that the Seller may enforce and draw under a NamPower Letter of Credit in accordance with clause 10.5.1 and clause 10.5.6;

19.3.1.2. NamPower is in material breach of its obligations under this PPA 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

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any sum or sums due and owing to the Seller under this PPA, which shall be remedied within thirty (30) days of receipt of the notice of breach;

19.3.1.3. 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

19.3.1.4. 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.

19.3.2. 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.

#### 19.4. Notice of Intention to Terminate and Termination Notice

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

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

19.4.1.2. in the event that a Change in Costs entitling it to issue such a Notice of Intention to Terminate as provided for in clause 16.2.8 occurs; or

19.4.1.3. in the event that a Change in Costs or Government Action entitling it to issue such a Notice of Intention to Terminate as provided for in clause 19.5.12 occurs; or

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

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- 19.4.2. Following the issue of a Notice of Intention to Terminate pursuant to clause 19.4.1, 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 PPA. Failing agreement within such time, the Party having given the Notice of Intention to Terminate may terminate this PPA forthwith by delivering a Termination Notice to the defaulting Party.
- 19.4.3. The termination of this PPA shall be subject to the Direct Agreement, and in the event of a conflict, the terms of the Direct Agreement shall prevail.

**19.5. Consequences of Termination**

- 19.5.1. Subject to clause 19.5.2, upon termination of this PPA, both Parties shall be excused and relieved of all obligations and liabilities under this PPA, 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.
- 19.5.2. On termination of this PPA 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 F (Calculation of the Termination Amount), to the account specified by the Seller, which amount shall be payable gross of any applicable withholding or other Taxes.
- 19.5.3. Once NamPower has paid the Termination Amount pursuant to clause 19.5.2, Seller shall transfer the Power Plant, its spares, warranties, intellectual property, licences, Consents, etc. to NamPower, or shall cause the benefits of the warranties, etc. to be ceded or assigned to NamPower.
- 19.5.4. 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 and determined as per Annexure F (Calculation of the Termination Amount).
- 19.5.5. In the event of a termination by NamPower as a result of a Seller Event of Default, NamPower at its sole discretion, shall have the option to acquire the Power Plant (inclusive of stock and inventory) in accordance with Annexure F (Calculation of the Termination Amount), at the date of termination, by the Seller to the Lender(s).

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- 19.5.6. In the event of a termination as a result of an event of Force Majeure as contemplated in clause 17.4 or 19.4.1.1, NamPower may, at its sole discretion, elect to acquire the Power Plant (inclusive of stock and inventory) at a compensation amount as set out in Annexure F (Calculation of the Termination Amount).
- 19.5.7. In the event of a termination as a result of a Change in Law or Government Action as contemplated in clause 19.5.12, NamPower may, at its sole discretion, elect to acquire the Power Plant (inclusive of stock and inventory) at a compensation amount as set out in Annexure F (Calculation of the Termination Amount).
- 19.5.8. The Seller shall, within fourteen (14) days of payment of the Termination Amount as contemplated in clause 19.5.2 and Annexure F (Calculation of the Termination Amount) or in the event where NamPower elects to acquire the Power Plant (inclusive of stock and inventory) under clause 19.5.5, 19.5.6 or 19.5.7 read with Annexure F (Calculation of the Termination Amount), sign the necessary agreements, including title documents especially also as regards immovable and movable property and land rights and the like in order to ensure the transfer of the title in the Power Plant and the Connection Facilities to NamPower. The Seller shall ensure that all warranties, guaranties, intellectual property, Consents and other rights necessary for the operation of the Power Plant and equipment shall be transferred free of charge to NamPower.
- 19.5.9. For avoidance of doubt, NamPower shall not assume any liability for termination of this PPA as a result of a Force Majeure Event, Change in Law, Government Action, or a Seller Event of Default.
- 19.5.10. If, as the result of Change in Law or Government Action, the Seller is unable to comply with its obligations under this PPA, then the Parties agree that the Seller shall be entitled to the following until such time as the Change in Law or Government Action has ceased to affect the Seller:
- 19.5.10.1. a corresponding extension to the Term, and
- 19.5.10.2. relief from performance of its obligations that cannot be complied with as result of the Change in Law or Government Action.

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- 19.5.11. The Seller shall immediately inform the NamPower when the Change in Law or Government Action that prevented it from fulfilling its obligations, as contemplated in clause 19.5.10, has been resolved.
- 19.5.12. If the Change in Law or Government Action 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 PPA then the Seller may upon not less than thirty (30) days' notice, terminate this PPA.

## 20. LIABILITY FOR DAMAGE OR LOSS

### 20.1. Indemnity

- 20.1.1. 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:
- 20.1.1.1. the death or personal injury of any individual or
  - 20.1.1.2. damage to property or
  - 20.1.1.3. any third-party liabilities and damages, arising out of the indemnifying Party's default under this PPA, save where that default is excused in terms of clause 17 (Force Majeure) of this PPA, except to the extent that the Party seeking to be indemnified is at fault or is negligent.

### 20.2. Liability

- 20.2.1. In the event that any 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.
- 20.2.2. 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 PPA.

- 20.2.3. Neither Party shall be liable to the other Party save as expressly provided for in this PPA.

### 20.3. Damages

- 20.3.1. Other than as provided in this 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 PPA, irrespective of the causes thereof, including fault or negligence.
- 20.3.2. 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.
- 20.3.3. For avoidance of doubt, the aforesaid limitation on liability does not affect or limit the Termination Amount payable to the Seller by NamPower pursuant to clause 19.5 or payment by the Seller to NamPower in case of termination as a result of Seller Event of Default pursuant to clause 19.5.

## 21. PROJECT INSURANCE

### 21.1. Insurances and information

- 21.1.1. The Seller shall, in accordance with this clause 21 (Project Insurance), obtain and maintain in effect, at its own cost and expense, such insurance coverage as is required by:
- 21.1.1.1. any Laws; and
  - 21.1.1.2. the standards of a Reasonable and Prudent Operator,
  - 21.1.1.3. together with insurances procured pursuant to clauses 21.1.2 and 21.1.3 below, the "Project Insurances".
- 21.1.2. 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.

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- 21.1.3. Nothing in this clause 21 (Project Insurance) 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 21.1 (Insurance and information).
- 21.1.4. 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 21 (Project Insurance).
- 21.1.5. 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.
- 21.1.6. 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.

**21.2. Endorsements and clauses**

- 21.2.1. 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.
- 21.2.2. The Seller shall ensure that the policy for each of its Project Insurances contains a provision:
- 21.2.2.1. naming NamPower as additional insured thereunder (other than in respect of loss of revenue related to Project Insurances);
- 21.2.2.2. 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

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have been liable for in the absence of such separate indemnity provision;

21.2.2.3. 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

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

### 21.3. Application of insurance proceeds

21.3.1. 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.

21.3.2. Notwithstanding the aforesaid, it is acknowledged and agreed that the Lenders will have security over and rights under the insurance policies, and further, the Lenders shall have the right to apply insurance proceeds in excess of the amount agreed under the Finance Documents to prepayment of the outstanding debt under the Finance Documents.

## 22. WAIVER OF SOVEREIGN IMMUNITY

22.1. The Parties hereby unconditionally and irrevocably agree that the entry into and performance of this PPA 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.

## 23. CESSION AND ASSIGNMENT

### 23.1. Prior Consent

23.1.1. The Parties shall not be entitled to cede or assign this PPA 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 and except as provided in clause 23.2 (Restructuring) hereto. Such consent shall not be unreasonably withheld.

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## 23.2. Restructuring

- 23.2.1. Notwithstanding the above, NamPower shall be entitled to cede, assign or transfer its rights and obligations under this PPA to a third party but only in the context of:
- 23.2.1.1. the dissolution of NamPower;
  - 23.2.1.2. the restructuring, amalgamation, reorganisation or analogous event of NamPower; or
  - 23.2.1.3. 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 or any Competent Authority.
- 23.2.2. In the event of a restructuring or reorganisation of NamPower resulting in the cession or assignment of this PPA 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 PPA.
- 23.2.3. In the event that the restructuring or reorganisation of NamPower resulting in the cession or assignment of this PPA 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.

## 24. DIRECT AGREEMENT

- 24.1. 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 Direct Agreement shall be a precondition to the provision of such finance. NamPower will co-operate in good faith with the Seller and its Lenders to agree and enter into such a Direct Agreement incorporating as a minimum those matters set out in Annexure O (Direct Agreement).

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- 24.2. The Seller may, subject to the prior written approval of NamPower, and subject to prior regularly oversight from the ECB, refinance or change its financiers in order to obtain financing at better terms.
- 24.3. The Parties agree that in such an event the tariff shall be adjusted, subject to the prior approval of the ECB, in order to ensure that the benefit is passed through to NamPower on a 50/50 basis:
- 24.3.1. The Seller shall submit to NamPower within a reasonable time the re-calculation of the proposed Seller's Revised Tariff derived from the Base Case Financial Model, setting forth in reasonable detail the basis of and the calculations for any necessary adjustments to the Energy Payment or the Deemed Energy Payment arising from such Change in Costs.
- 24.3.2. Within fourteen (14) days after the date of the re-calculation delivered pursuant to clause 24.3.1 NamPower shall notify the Seller whether it agrees or disagrees with the proposed Seller's Revised Tariff. If NamPower notifies the Seller of its disagreement, the Parties agree to meet within 7 (seven) days and discuss, in good faith, the proposed Seller's Revised Tariff.
- 24.3.3. In the event that NamPower agrees with the re-calculation delivered pursuant to clause 24.3.1 or as negotiated pursuant to clause 24.3.2 and subject to the approval of the ECB in accordance with clause 24.2, the Energy Payment or the calculation of the Deemed Energy Payment shall be amended accordingly.
- 24.3.4. The new Seller Revised Tariff shall apply as from the date which the financing at better terms takes effect.
- 24.3.5. In the event, the Parties have met to discuss the re-calculation of the proposed Seller's Revised Tariff pursuant to clause 24.3.2, and NamPower is in disagreement with the Sellers calculations, the Parties shall be entitled to refer the matter to the ECB for mediation. If the ECB does not approve the proposed Seller's Revised Tariff or in the event that the ECB determines a revised Energy Payment or a Deemed 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 a financial Independent Expert for a determination.

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24.3.6. In the event the Independent Expert rules in favour of the Seller, and the ECB or NamPower does not implement the re-calculated tariff as determined by the Independent Expert, the ECB shall finally adjust the tariff in terms of the then applicable tariff methodology to ensure that the Seller's Regulated Equity Return as set out in the Base Case Financial Model is maintained.

**25. SEVERABILITY**

25.1. Each Party agrees that it will perform its obligations under the terms of this PPA in accordance with all applicable Laws, rules and regulations now or hereafter in effect. If any clause or clauses of this PPA is found to be illegal or unenforceable, then the Parties shall take all possible steps to re-negotiate and to re-structure this PPA 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 PPA shall remain binding on the Parties.

**26. ANTI-CORRUPTION MEASURES**

26.1. Each Party to this PPA 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 PPA or any associated projects or any other negotiations between the Parties not directly related to this PPA. The Parties undertake to impose and enforce these anti-corruption measures on their employees, Affiliates and agents.

**27. CONFIDENTIALITY**

**27.1. Confidential Information**

27.1.1. Each Party shall treat any and all 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.

**27.2. Duty to Maintain Confidentiality**

27.2.1. 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 27.1 will

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be disclosed by the recipient Party, other than to its agents, representatives or employees, the Lenders and their advisors and to Contractors, without the prior written consent of the other Party.

### 27.3. Exclusions

27.3.1. These provisions shall not apply to information which is:

27.3.1.1. publicly known or has become publicly known through no unauthorised act of the recipient Party;

27.3.1.2. rightfully received by the recipient Party from a third party;

27.3.1.3. independently developed by the recipient Party without use of the other Party's information;

27.3.1.4. disclosed by the other Party to a third party without similar restrictions;

27.3.1.5. 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

27.3.1.6. publicly disclosed with the other Party's written consent.

### 27.4. Disclosure

27.4.1. All media releases, public announcements and public disclosures by any Party or their respective employees or agents relating to this PPA 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, provided that the recipient Party shall use its reasonable endeavours to minimise the extent of the disclosure permitted hereunder to the extent required to meet the relevant requirement.

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28. **SURVIVAL**

28.1. Termination of this PPA shall not affect the accrued rights and liabilities of the Parties hereto and the provisions of clause 15 (Applicable Law and Jurisdiction), clause 18 (Dispute Resolution) clause 19 (Termination), and clause 27 (Confidentiality) and under any other provision of this PPA which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination shall continue to have effect notwithstanding the termination of this PPA.

29. **NOTICES AND DOMICILIUM**

29.1. **Domicilia Citandi et Executandi**

29.1.1. The Parties choose as their *domicilia citandi et executandi* their respective addresses specified in clause 29.2 (Addresses) hereof, for all purposes arising out of or in connection with this PPA, at which addresses all process and notices arising out of or in connection with this PPA, its breach or termination may be served upon or delivered to the Parties.

29.2. **Addresses**

29.2.1. For the purposes of Clause 29.1 (*Domicilia Citandi et Executandi*), the Parties' respective addresses shall be:

29.2.1.1. In the case of the Seller:

CERIM Ludertiz Energy (Pty) Ltd

24 Orban Street

PO Box 30

Windhoek, Namibia

cmsec@sga-na.com

29.2.1.2. In the case of NamPower:

Namibia Power Corporation (Pty) Ltd

NamPower Centre

15 Luther Street

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PO Box 2864

Windhoek, Namibia

legal@nampower.com.na

- 29.2.1.3. Or at such other postal and physical address in Namibia and read with clause 14.1.1.3, not being a post office box or *poste restante*, or which the Party concerned may notify the other in writing.

### 29.3. Delivery of Notices

- 29.3.1. All notices, notifications, requests, demands or other communications given in terms of this PPA shall be in writing and shall:
- 29.3.1.1. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
- 29.3.1.2. 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; or
- 29.3.1.3. 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. (For avoidance of doubt, if the sender receives an automated message that the e-mail has not been delivered, it shall not be deemed successfully transmitted.)

### 29.4. Written Notice

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

## 30. SHAREHOLDING IN SELLER

- 30.1. 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

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any period up to three (3) years after Commercial Operation Date, unless such transfer of control has been approved by NamPower in writing prior thereto, such approval not be unreasonably withheld. NamPower's consent shall not be required in connection with a transfer of shares in the Seller resulting from the enforcement of security provided to the Lenders. However, NamPower shall be notified with respect to such transfer of shares.

- 30.2. In the event of the Seller wishing to restructure or dispose any of its interest or part of its interest in the Power Project, NamPower shall have the Right of First Refusal after the Commercial Operation Date. The Parties undertake to negotiate in good faith the commercial terms of the prospective sale of the Power Project pursuant to NamPower's Right of First Refusal.
- 30.3. The Seller shall adhere to the requirements regarding Previously Disadvantaged Namibians as stipulated in Annexure P (Employer's Requirements), the bid documents and the Generation Licence.
- 30.4. Notwithstanding the aforesaid, NamPower shall be duly notified of any intent of change in the Seller's shareholding structure.

**31. GENERAL AND MISCELLANEOUS**

**31.1. Sole Record of Agreement**

- 31.1.1. This PPA 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.

**31.2. No amendments except in writing**

- 31.2.1. No addition to, variation of, or agreed cancellation of, this PPA shall be of any force or effect unless in writing and signed by or on behalf of the Parties.
- 31.2.2. Any material additional to or variation of the PPA shall be submitted by the Parties to the ECB for regulatory oversight prior to the signature thereof.

**31.3. Waivers**

- 31.3.1. 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

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that Party from exercising any rights which may have arisen in the past or which might arise in future.

**31.4. Approvals and Consents**

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

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IN WITNESS WHEREOF this PPA 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 NamPower:

**NAMIBIA POWER CORPORATION (PTY) LIMITED**

acting by

**KAHENGE S. HAULOFU  
(MANAGING DIRECTOR)**

.....  
[name of authorised signatory]

  
.....  
Authorised signatory

and

**KANDALI P. IYAMBO  
(EXECUTIVE: MODIFIED SINGLE BUYER)**

.....  
[name of witness]

  
.....  
Witness signatory

and

**ZOE NAMBAHU  
(CHIEF LEGAL ADVISOR)**

.....  
[name of witness]

  
.....  
Witness signatory

Thus done and signed in **WINDHOEK** on the **14** day of **APRIL 2023**

Executed as a deed by the Seller:

**CERIM LUDERITZ ENERGY (PTY) LTD**

acting by

**FANG XIANG  
(DIRECTOR)**

.....

  
.....  
Authorised signatory

and

**HENRY FERDINAND MUDGE  
(DIRECTOR)**

.....  
[name of authorised signatories]

  
.....  
Authorised signatory


and

**YAO GANG  
(VICE PRESIDENT: S&E HQS CEIG)**

.....  
[name of witness]

  
.....  
Witness signatory

Thus done and signed in **WINDHOEK** on the **14** day of **APRIL 2023**

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**Annexure A CONSENTS**

**A.1 NamPower's Consents**

- A.1.1 Board consent;
- A.1.2 ECB regulatory oversight of the PPA and TCA;
- A.1.3 The transfer by NamPower to the Seller of the Environmental Clearance Certificate that has been issued by the Competent Authority to the NamPower on 13 September 2021 being granted, to the extent of all authorisations in respect of any activities that the Seller is obliged to conduct in terms of the PPA and the Transmission Connection Agreement relating to the Customer's Facility, and which require such a certificate to be issued to the Seller;

**A.2 The Seller's Consents**

- A.2.1 Those stipulated in the conditions of the Generation Licence (to the extent of any such conditions being required to be fulfilled prior to the Effective Date).
- A.2.2 Those stipulated in the conditions of the EIA and the Environmental Clearance Certificate.
- A.2.3 Any other consent contemplated under Annexure P Employers Requirements.

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**Annexure B OPERATING COMMITTEE**

**B.1 Appointment of Committee**

B.1.1 From the Signature Date, the Parties shall form an Operating Committee for the day-to-day management of this PPA. Each Party shall appoint a minimum of four (4) representatives, together with an alternate member for each, for the Operating Committee and shall provide to the other Party notice of the appointment of its Operating Committee representatives and their particulars. The first meeting of the Operating Committee shall be convened no later than thirty (30) days from the Signature Date. The Operating Committee shall maintain and adopt an appropriate record of its deliberations, which record shall in the event of a dispute constitute conclusive evidence of the decisions taken in respect of the subject matter therein.

B.1.2 Following the Commercial Operation Date, the Operating Committee may be reduced to a minimum of two (2) representatives, together with an alternate member for each, as the scope for coordination reduces.

**B.2 Responsibilities**

B.2.1 From the Signature Date the Operating Committee shall coordinate and report all progress of all activities related to achieving the PPA Effective Date by the Long Stop Effective Date.

B.2.2 The Operating Committee shall be responsible for coordinating and reporting on the Construction schedules of each Party's portion of the Power Plant, the Connection Facilities and any required modifications to the Transmission System.

B.2.3 After the Commercial Operation Date, and relevant to the ongoing coordination of areas of mutual interest and concern involving the Power Plant and the Connection Facilities the Operating Committee shall continue its coordination and meeting activities.

B.2.4 Without limiting the generality of the foregoing duties, the Operating Committee shall:

B.2.4.1 At the first meeting, agree on the format, agenda and formalities of all the Operating Committee meetings by developing a terms of reference and all relevant reporting templates (which as a minimum shall include a monthly report template, quarterly report template, format of minutes and agenda.)

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- B.2.4.2 Coordinate the respective programs of the Parties for the arrangement of finances, transfer of EIAs, and all activities required to ensure that the Effective Date is reached.
- B.2.4.3 Coordinate construction, commissioning and testing of facilities and equipment, and the respective commissioning procedures provided that the Operating Committee is not authorized to make any changes to any of such programs, but only to provide its recommendations;
- B.2.4.4 Without derogating from the Seller's rights to compensation and/or any other remedy under this PPA, to develop steps to be taken on the occurrence of any event of Force Majeure, or the shutdown or reduction in capacity for any other reason of the Power Plant or the Connection Facilities;
- B.2.4.5 Coordinate the scheduling of maintenance affecting the operations of the Power Plant;
- B.2.4.6 Coordination of recommendations for changes in either the Power Plant or the Connection Facilities to effect the operational requirements of NamPower's control of the Transmission System;
- B.2.4.7 Develop operating procedures, including plans for operating the Power Plant during anticipated types of emergencies;
- B.2.4.8 Address safety matters affecting the Parties, their Contractors and their respective employees as related to the Power Project and the interconnection between the Power Plant and Transmission System;
- B.2.4.9 Recommend to the Parties changes regarding the responsibilities of the Operating Committee.

B.2.5 However, it is hereby agreed that the Operating Committee and/or its members will not have any liability towards the Power Project and/or the Parties.

**B.3 Meetings**

B.3.1 The Operating Committee shall only act by unanimous agreement. The Operating Committee shall develop and implement written policies

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regarding the frequency of meetings and minutes of meetings. The Operating Committee shall not have authority to modify or alter the rights and obligations of the Parties under this PPA.

**B.4 Reporting Relationships**

B.4.1 The Operating Committee shall report their activities and recommendations to the Parties or others designated by the Parties.

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**Annexure C ENERGY PAYMENT**

**C.1 General**

- C.1.1 This Annexure C sets out the Energy Payment payable under clause 9 of this PPA, for each Billing Period.
- C.1.2 The Year referred to in this Annexure is the NamPower financial year which is from 1 July to 30 June.

**C.2 Energy Payment (after the Commercial Operation Date)**

- C.2.1 The Energy Payment shall be composed of the following two (2) components:

- C.2.1.1 Energy Charge – Payment for electricity produced for the Billed Period shall be based on a Base Tariff. The Base Tariff shall be indexed on an annual basis, according to the formula in clause C.5 below. The then applicable Indexed Tariff shall be multiplied by the Net Energy delivered during the Billing Period.

- C.2.1.2 ECB, NEF and any other applicable Levies, if any.

- C.2.2 Therefore, the Energy Payment for the Billing Period, from NamPower to the Seller, shall be:

- C.2.2.1 Energy Payment = Base Tariff x monthly Net Energy plus ECB Levy plus NEF Levy plus any other applicable Levies (if any).

**C.3 Deemed Energy Payment**

- C.3.1 After Commercial Operation Date, for the events that the NamPower is at fault, NamPower shall pay the Deemed Energy Payment to the Seller in respect of the aggregate amount of Net Energy calculated for each 10-minute interval based on the wind speed as recorded in the Sellers meteorological station in that relevant 10-minute block, and which shall be multiplied by the Power Curve of the Power Plant in Annexure I.1. The Power Plant Power Curve in Annexure I.1 shall be confirmed during the Commissioning Test as provided for in Annexure D and as may be updated in accordance with clause 8.3. Deemed Energy Payments will be calculated only for such Units which was operational and available at the time. The Seller shall make the relevant data available to NamPower.

- C.3.2 Prior to the Commercial Operation Date, for the delays attributable to NamPower, NamPower shall pay the Energy Payment to the Seller in

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respect of the aggregate amount of the Forecast Energy, where the delay exceeds a Week, the Deemed Energy Payment shall be based on the Monthly Forecast else the Weekly Energy Forecast shall be used.

#### C.4 Calculation of the Deemed Energy Payment

C.4.1 The Deemed Energy Payment shall be calculated as follows:

C.4.1.1 Payment for electricity produced for the Billed Period shall be based on the Base Tariff. The Base Tariff shall be indexed on an annual basis, according to the formula in clause C.5 below. The tariff shall be multiplied by the Net Energy deemed to be delivered during the Billing Period.

C.4.2 The Deemed Energy Payment for the Billing period, from NamPower to the Seller, shall be:

C.4.2.1 Deemed Energy Payment = Indexed Tariff x Deemed Net Energy for Billing Period.

#### C.5 Annual Indexation

C.5.1 The Base Tariff will escalate on an annual basis, from the Commercial Operation Date, in accordance with the Seller's Fixed Annual Escalation Rate (FAER) according to the following formula:

C.5.1.1 First year of commissioning up to 1 July:

(i) The Indexation will be prorated based on the number of full months from Commercial Operation Date during which the plant has been in operation to 1 July, year  $n$ .

$$(ii) IT_{year n} = BT * \left( 1 + \frac{FAER * (\text{full months to July}(year n))}{12} \right)$$

Whereas:

- BT means: Base Tariff at Commercial Operation Date;
- IT means: Indexed Tariff;
- FAER: Fixed Annual Escalation Rate;
- Full months: From day 1 of a month after Commercial Operation Date;
- Year  $n$ : The first 1<sup>st</sup> of July after Commercial Operation Date;

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C.5.1.2 From second Year of commissioning:

- (i) 12 months after the last indexation, the Fixed Annual Escalation Rate will be applied to the Indexed Tariff.
- (ii)  $IT_{year\ n+1} = IT_{(year\ n)} * (1 + FEAR)$

Whereas:

- IT means: Indexed Tariff
- FAER: Fixed Annual Escalation Rate

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**Annexure D TESTING SCHEDULE**

**D.1 General Testing Requirements**

- D.1.1 The Seller shall be required to conduct any and all of the testing for the purposes of, *inter alia*, achieving the Commercial Operation Date for the Power Plant, so as to cause the Commercial Operation Date to fall on or before the Target Commercial Operation Date as well as the Final Acceptance Test under this PPA.
- D.1.2 The Seller, as a minimum, shall plan, integrate and schedule the tests described in this Annexure D on the program contained in Annexure L (Construction Program), which should include the various dates of the Factory Acceptance Tests (FATs) indicated. Any updates or amendments to these dates, should be clearly indicated in the respective reports to be submitted by the Seller.
- D.1.3 The Seller shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to commission, test and inspect the Power Plant.
- D.1.4 The Seller shall ensure that any and all testing equipment or instruments are adequately calibrated tested and that such valid certificates are readily available for verification purposes.
- D.1.5 Notwithstanding the generality of clause D.1.4, the Seller shall explicitly ensure that the Power Project shall include a meteorological station rated, calibrated and certified according to Prudent Industry Practice for the duration of the Term. The meteorological station, as a minimum, shall measure at hub height and include:
  - D.1.5.1 wind speed;
  - D.1.5.2 wind direction;
  - D.1.5.3 air temperature;
  - D.1.5.4 air pressure; and
  - D.1.5.5 precipitation.
  - D.1.5.6 Other information required is turbine power; turbine brake signal; turbine voltage; rotor speed etc.
- D.1.6 All tests shall be carried out in accordance with the standards and codes

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stipulated in Annexure P (Employers Requirements), Annexure I (Performance Guarantees), Technical Guidelines for Point of Common Coupling (see Annexure F of the Connection Offer Letter in Annexure 1 of the Transmission Connection Agreement), manufacturers' instructions and regulations of the appropriate authorities. Any deviations from approved standards and procedures described in this Annexure D shall require and have prior agreement with the NamPower, or any authority appointed by NamPower, in writing before the test is carried out and the results subsequently accepted.

D.1.7 If as a result of testing or an inspection of the Power Plant, the design or workmanship is found to be defective or otherwise not in accordance with the Annexure P (Employers Requirements), Annexure I (Performance Guarantees), Technical Guidelines for Point of Common Coupling (see Annexure F of the Connection Offer Letter in Annexure 1 of the Transmission Connection Agreement); NamPower or any authority appointed by NamPower may reject that section, part or component of the Power Plant by giving notice to the Seller, with reasons. The Seller shall then promptly make good the defect and ensure that the replaced section, part or component complies with the Annexure P (Employers Requirements), Annexure I (Performance Guarantees), Technical Guidelines for Point of Common Coupling (see Annexure F of the Connection Offer Letter in Annexure 1 of the Transmission Connection Agreement), before the commencement of the new test or inspection as the case may be. The rectification period shall be agreed between NamPower and the Seller but shall not be longer than four (4) weeks.

D.1.8 The Seller shall give NamPower not less than ten (10) Business Days' prior written notice of each of the tests, and NamPower or its nominated representatives shall be entitled to attend and witness such test. Each such notification shall be accompanied by the relevant testing plan, methodology and procedure, which will be tested on the relevant testing date. The notice period for the Acceptance Tests shall be minimum twenty-one (21) business Days.

D.1.8.1 For the avoidance of doubt, each testing plan shall as a minimum include:

- (i) test procedure, standards and methodology (including proposed formulae / curves and standards);
- (ii) complete test schedule;

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- (iii) full description of the type of test;
- (iv) full description of instrumentation to be used, including accuracy, and calibration test results and valid certificates;
- (v) full description and method of data recording;
- (vi) method, curves and equations used for adjustment or correction of recorded data to the design conditions; and
- (vii) any other requirements as set out in this Annexure D (Testing Schedule).

D.1.8.2 If NamPower's representatives are not present at the date and time indicated in the notice, then the Seller may continue with the respective test. If however, the NamPower's representatives are present on Site and on the date and time indicated in the notice and the respective test is delayed twenty-four (24) hours beyond the time indicated in the notice, the test shall be deemed cancelled and the Seller shall be required to reissue the respective notice. Where a test required a public transmission outage notice, as per the Transmission Connection Agreement, such additional notice time shall accounted for.

D.1.9 Failure by the Seller to provide any of the following within the required timeframes will constitute a material breach of its obligations (under Seller Event of Default) under this PPA:

- D.1.9.1 mechanical completion checklist and test plan within ten (10) Business Days' prior written notice of each of the tests;
- D.1.9.2 mechanical completion report within fourteen (14) Business Days' following the date of the respective test(s);
- D.1.9.3 pre-commissioning test plan within ten (10) Business Days' prior written notice of each of the tests;
- D.1.9.4 pre-commissioning test report within fourteen (14) Business Days' following the date of the respective test(s);

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- D.1.9.5 commissioning test plan within ten (10) Business Days' prior written notice of each of the tests;
  - D.1.9.6 commissioning test reports within fourteen (14) Business Days' following the date of the respective test(s);
  - D.1.9.7 Tests on Completion plan within ten (10) Business Days' prior written notice of each of the tests;
  - D.1.9.8 Tests on Completion reports within fourteen (14) Business Days' following the date of the respective test(s);
  - D.1.9.9 Acceptance Test plan within ten (10) Business Days' prior written notice of each of the tests;
  - D.1.9.10 Acceptance Test report within fourteen (14) Business Days' following the date of the respective test(s);
  - D.1.9.11 Final Acceptance Test plan within ten (10) Business Days' prior written notice of each of the tests;
  - D.1.9.12 Final Acceptance Test report within fourteen (14) Business Days' following the date of the respective test(s); and
  - D.1.9.13 any required supplementary information requested by NamPower.
- D.1.10 During the testing phase the Power Plant, the Seller shall be required to provide progress reports and updated testing plans on a weekly basis.
- D.1.11 At all times during the construction period (including during the conduct of the tests), NamPower shall co-operate with the Seller, provide load and off take for such testing in accordance with the Transmission Connection Agreement and, subject to the terms of this PPA, at the request of the Seller, allow dispatch of the Power Plant up to its full available and Rated Capacity as notified by the Seller to NamPower immediately prior to the respective tests.
- D.1.12 Immediately following each test, the Seller shall provide NamPower with a copy of all relevant data and reports from the relevant test for information, scrutiny and its records.
- D.1.13 At all times and during any test, the Seller shall ensure that:

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- D.1.13.1 the Power Plant is prepared and adjusted to ensure the correct functioning of the individual components, Units and of the complete Power Plant;
  - D.1.13.2 the equipment is capable of operating in a reliable manner;
  - D.1.13.3 the Power Plant systems comply with the different operating modes as contractually agreed; and
  - D.1.13.4 the equipment and the Power Plant systems are safe, and that the personal safety is ensured.
- D.1.14 The various performance related tests shall be performed according to the relevant IEC 61-400 methodology (i.e. IEC 61-400-12-1) and related Measnet procedures.
- D.1.15 Failure by the Seller to supply the supporting documents, supporting information, testing plans and schedules with any notice called for in this Annexure D (Testing Schedule) shall not constitute adequate notice and shall need to be resubmitted in the correct format and honouring the timelines.

## D.2 Mechanical Completion

- D.2.1 A prerequisite to commence with the mechanical completion inspections and test is the submission of all FAT reports, which shall be performed during the manufacturing of the various key components for the Power Plant. As a minimum the following should be submitted:

- D.2.1.1 Relevant to the towers:
- (i) Mill certificate for steel plates;
  - (ii) Dimensional inspection report;
  - (iii) NDT (Non-Destructive Test) report;
  - (iv) Coating and paint inspection report (inside and outside);
  - (v) Non-conformance reports; and
  - (vi) Inspection certificate from a certifying body.

- D.2.1.2 Relevant to the electrical systems:

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- (i) Generator and Generator type test;
- (ii) Unit transformer;
- (iii) Unit converter system;
- (iv) Unit controller
- (v) Main transformer;
- (vi) Auxiliary transformer;
- (vii) Diesel generator;
- (viii) All medium voltage (MV) cables;
- (ix) Optic fibre cables;
- (x) MV Switchgear.

D.2.1.3 Relevant to the nacelles:

- (i) Gear box including the lubrication system (if applicable);
- (ii) Main shaft installation;
- (iii) Yaw drives and system;
- (iv) Blade pitch system;
- (v) Cooling system; and
- (vi) Major castings (i.e. hub, low speed shaft).

D.2.2 The overall goal of mechanical completion and commissioning is to verify that the Units and/or Power Plant is designed and built to fulfil its purpose and the specified requirements.

D.2.3 The Seller shall submit its detailed mechanical completion checklist, as is indented for the test to verify that the Units and/or Power Plant is mechanically complete in accordance with the terms and conditions of the EPC Contract, to NamPower at least ten (10) days before the commencement of such test.

D.2.4 The mechanical completion of a Unit and/or the Power Plant, as the case may be, shall be confirmed by an independent expert, or technical advisor

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as is provided for under the Finance Documents and/or EPC Contract.

- D.2.5 NamPower shall be copied the mechanical completion report and related certificate which shall be issued to the EPC Contractor, verifying that the Unit, or Power Plant is mechanically complete in accordance with the terms and conditions of the EPC Contract, in order to verify that the Power Plant/ or Unit has been accepted as mechanically complete before commencing with any other tests.

### D.3 Pre-Commissioning Tests

- D.3.1 The Seller shall notify NamPower of commencement of the pre-commissioning activities ten (10) Business Days prior to commencement of the first pre-commissioning activity. Together with the notification, the Seller shall provide to NamPower an overall pre-commissioning plan; upon which NamPower will indicate which activities will be witnessed by the NamPower.
- D.3.2 NamPower or any authority appointed by NamPower reserves the right to witness any pre-commissioning activity of any section, part or component of the Power Plant. The absence or presence of NamPower during any pre-commissioning activity shall in no way relieve the Seller of its responsibility for pre-commissioning the equipment or systems in accordance with the milestone dates and does not represent a NamPower Event of Default.
- D.3.3 The Seller shall pre-commission (or cold commission) each section, part or component of the Power Plant which shall include, but not be limited to:

D.3.3.1 Inspection of equipment to ensure that the equipment:

- (i) is delivered according to the accepted design;
- (ii) conforms to the Annexure P (Employers Requirements), Annexure I (Performance Guarantees), Technical Guidelines for Point of Common Coupling (see Annexure F of the Connection Offer Letter in Annexure 1 of the Transmission Connection Agreement); and
- (iii) is not damaged in any way.

D.3.3.2 Functional testing ("cold testing") of equipment;

D.3.3.3 Verification of the marking of all equipment;

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- D.3.3.4 Verification of the location and citing of the Units;
  - D.3.3.5 Insulation testing of equipment; and
  - D.3.3.6 Verification of calibration certificates and records.
- D.3.4 NamPower shall be copied the relevant testing reports and related certificate(s), if applicable, which shall be issued to the EPC Contractor, verifying that the Unit, or Power Plant has completed the pre-commissioning in accordance with the terms and conditions of the EPC Contract.
- D.3.5 On request of NamPower, the Seller shall make available to NamPower any documentation pertaining to the pre-commissioning activities.

#### D.4 Grid Synchronisation Test

- D.4.1 The grid synchronisation test may only be conducted after the issuance of the mechanical completion certificate in accordance with D.2 (Mechanical Completion), successfully completed the pre-commissioning tests of at least fifty percent (50%) of the total number of Units and in any event by no earlier than hundred-and-eighty (180) days before the Commercial Operation Date and in accordance with the Transmission Connection.
- D.4.2 In the event of partial grid synchronisation and only if approved by NamPower, the tests shall be repeated for each added Unit(s) and the complete Power Plant, as agreed with NamPower. In any event, the grid synchronisation tests will only be arranged in intervals of successfully completing and pre-commissioning at least an additional twenty-five percent (25%) of the total number of Units.
- D.4.3 The Seller shall give NamPower at least sixty (60) days' advanced preliminary written notice and at least thirty (30) days advanced final written notice by means of application for Power Plant synchronisation, of the date on which it intends to synchronise the Power Plant to the Transmission System.
- D.4.4 NamPower shall notify the Seller and confirm the date for grid synchronisation in line with the process and timelines set out in the Transmission Connection Agreement. At the same time, NamPower shall provide the Seller with the respective tests and testing procedures which will need to be witnessed and approved in order to confirm the requirements of grid synchronisation.

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- D.4.5 Subject to the clause D.4.3 and D.4.4 above, the grid synchronisation test will only be approved and subsequently synchronised and/or connected to the Transmission System when it meets all the connection conditions prescribed in any Grid Code and otherwise meets all other legal requirements for synchronisation to the Transmission System and provided that:
- D.4.5.1 the Metering Equipment as specified in the Transmission Connection Agreement, Annexure P (Employers Requirements) and Technical Guidelines for Point of Common Coupling (see Annexure F of the Connection Offer Letter in Annexure 1 of the Transmission Connection Agreement) 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;
  - D.4.5.2 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;
  - D.4.5.3 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; and
  - D.4.5.4 The Power Project has been mechanically completed and pre-commissioned in accordance with the terms of the Annexure P (Employers Requirements) and Technical Guidelines for Point of Common Coupling (see Annexure F of the Connection Offer Letter in Annexure 1 of the Transmission Connection Agreement).
- D.4.6 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 means of written acceptance by NamPower.
- D.4.7 In any event and not only limited to the testing of the Power Plant, the Seller shall immediately after each synchronisation/tripping of the Power

Plant, inform the National Control Centre in accordance with the applicable Grid Code.

- D.4.8 The Seller shall also appoint a designated switching official(s) with the required high voltage switching training and authority to perform all switching operations on the Power Plant. Proof of this individual's experience and competence (including a detailed curriculum vitae (CV)) must be submitted to NamPower for review and approval at least thirty (30) days before synchronisation to the Transmission System.
- D.4.9 NamPower shall be copied the relevant testing reports and data, if applicable, in order to verifying that the Unit, or Power Plant has completed the grid synchronisation test(s).
- D.4.10 On request of NamPower, the Seller shall make available to NamPower any documentation pertaining to the pre-commissioning activities.

## D.5 COMMISSIONING

- D.5.1 Ten (10) Business Days prior to the commencement of the first commissioning activity, the Seller shall provide to NamPower in writing a notice of commencement of commissioning. Together with the notification, the Seller shall submit an overall commissioning plan; upon which the NamPower will indicate which activities will be witnessed by NamPower.
- D.5.2 NamPower or any authority appointed by NamPower reserves the right to witness any commissioning activity of any section, part or component of the Power Plant. The absence or presence of NamPower during any commissioning activity shall in no way relieve the Seller of its responsibility for commissioning the equipment or systems in accordance with the milestone dates and does not represent a NamPower Event of Default.
- D.5.3 The Seller shall commission (or hot test) the Power Plant in accordance with the Grid Code, the Transmission Connection Agreement, Annexure P (Employers Requirements), Annexure I (Performance Guarantees), Technical Guidelines for Point of Common Coupling (see Annexure F of the Connection Offer Letter in Annexure 1 of the Transmission Connection Agreement), standards of a Reasonable and Prudent Operator and Annexure L (Construction Programme).
- D.5.4 The Seller shall perform the following tests on each and all of the Units of the Power Plant as a minimum:

D.5.4.1 Foundations and civil works:

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- (i) Testing of each Unit's foundation during and after construction to ensure compliance with the specification including concrete tests, positioning and inclination of each foundation and earthing function;
- (ii) Normal concrete manufacturing testing shall be conducted during construction which shall include:
  - certification of cement quality;
  - aggregate quality;
  - calibration of mixing;
  - curing monitoring using temperature sensors.
- (iii) Testing the positions, alignment, heights and plane of the tower bolts; and
- (iv) Conductivity testing of the foundation reinforcement and all cast in mechanical connections to the grounding mesh.

D.5.4.2 Electrical systems:

- (i) Verification of the installation and functioning of transformers, circuit breakers, disconnectors, relays, wiring and cabling, battery systems, protection systems, meters, insulation and earthing;
- (ii) Commissioning of the electrical system as a whole to ensure correct function in accordance with the specifications and manufacturer's standard commissioning procedures; and
- (iii) As a minimum such tests shall include:
  - demonstration of satisfactory operation of power measurement equipment;
  - function tests of the relay protection and verification of settings;

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- demonstration of satisfactory operation of control equipment;
- demonstration of satisfactory operation of 33 kV switchgear;
- demonstration of satisfactory operation of the diesel generator;
- demonstration of satisfactory operation of the transformer cooling equipment and
- twenty-four (24) hours voltage tests on the MV cables.

D.5.4.3 Supervisory, Control and Data Acquisition (SCADA) system:

- (i) Verification of the installation and functioning of the SCADA system including communication, control and data collection functions, including online communication functions tests on:
  - turbines;
  - meteorological station; and
  - offline data storage and replication.
- (ii) Verification of SCADA and signals to the NamPower National Control Centre;
- (iii) Tests that demonstrate that the system is able to record the data needed for the Acceptance Test procedures, namely:
  - Ten (10) minute average values for wind speed, power, and operational status from all Units;
  - Occurrence and correction of Unit events;

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- Ten (10) minute average values for wind speed, direction, temperature and pressure from the meteorological station;
- Ten (10) minute average values of power, reactive power, frequency, and power factor from the Delivery Point.

D.5.4.4 Wind turbine generator(s):

- (i) Verification of the correct installation of each Unit and its components in accordance with the specification;
- (ii) Testing of electrical and pressure systems and lubrication;
- (iii) Commissioning tests of each Unit including:
  - initial six (6) hour test run with the generator connected to the Transmission System;
  - demonstration of the vibration below acceptable levels;
  - load change tests;
  - loss of Transmission System test;
  - partial and full-load rejection;
  - test of over speed trip of each Unit;
  - test of energy measurement system;
  - test of the yaw drives;
  - verification of settings for electrical protection relays;
  - continuous forty-eight (48) hour test, of which at least twenty-four (24) hours shall be producing energy to the Transmission System.

D.5.5 During commissioning, and all other tests, the Seller shall ensure that:

D.5.5.1 the Power Plant is prepared and adjusted to ensure the correct functioning of the individual components, Units and of the complete Power Plant;

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- D.5.5.2 all equipment is capable of operating in a reliable manner;
  - D.5.5.3 the Power Plant systems comply with the different operating modes as contractually agreed; and
  - D.5.5.4 all equipment, processes, procedures and the Power Plant systems are safe and that the safety of personal is ensured at all times.
- D.5.6 NamPower shall be copied the relevant testing reports and related certificate(s), if applicable, which shall be issued to the EPC Contractor, verifying that the Unit, or Power Plant has completed the commissioning in accordance with the terms and conditions of the EPC Contract.
- D.5.7 On request of NamPower, the Seller shall make available to NamPower any documentation pertaining to the commissioning activities.

#### D.6 TESTS ON COMPLETION

- D.6.1 Ten (10) Business Days prior to the commencement of the first Tests on Completion activity, the Seller shall provide to NamPower in writing a notice of commencement of the Tests on Completion. Together with the notification, the Seller shall submit an overall Tests on Completion plan; upon which the NamPower will indicate which activities will be witnessed by NamPower.
- D.6.2 NamPower or any authority appointed by NamPower reserves the right to witness any testing activity of any section, part or component of the Power Plant. The absence or presence of NamPower during any commissioning activity shall in no way relieve the Seller of its responsibility for testing the equipment or systems in accordance with the milestone dates and does not represent a NamPower Event of Default.
- D.6.3 The Seller shall test the Power Plant in accordance with the Grid Code, the Transmission Connection Agreement, Annexure P (Employers Requirements), Annexure I (Performance Guarantees), Technical Guidelines for Point of Common Coupling (see Annexure F of the Connection Offer Letter in Annexure 1 of the Transmission Connection Agreement), standards of a Reasonable and Prudent Operator and Annexure L (Construction Programme).
- D.6.4 Tests on Completion will be conducted as per the provisions of the EPC Contract, however, will need to meet the minimum requirements of:

D.6.4.1 Successfully completed the mechanical completion, pre-commissioning tests, grid synchronization and commissioning tests;

D.6.4.2 Meet the Test on Completion requirements for each Unit:

(i) each Unit shall be in continuous operation of at least hundred-and-sixty-eight (168) hours, of which at least ninety-six (96) hours should be producing energy to the grid;

(ii) during the individual Unit trial run of at least hundred-and-sixty-eight (168) hours, no more than two (2) faults originated from the Unit will be allowed and no faults will be allowed during the first seventy-two (72) hours of the individual continuous operation run;

(iii) The following shall be verified and tested according to the EPC Contract performance guarantees:

- Power curve;
- Availability;
- System losses;
- Capacity; and
- Acoustic noise.

D.6.4.3 Meet the Tests on Completion requirements for the Power Plant:

(i) the complete Power Plant shall be in continuous operation of at least hundred-and-sixty-eight (168) hours, of which at least ninety-six (96) hours should be producing energy to the grid;

(ii) during the trial run of at least hundred-and-sixty-eight (168) hours, the availability should not be less than eighty-five percent (85%) at any given point in time.

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(iii) The following shall be verified and tested according to the EPC Contract performance guarantees:

- System losses;
- Availability
- Capacity; and
- Acoustic noise.
- Power Plant Power Curve (Please refer to appendix I.1)

D.6.4.4 During the trial run, the temperatures of the main transformer shall be recorded at all times including all measurements to calculate the Eigen frequency of the system related to the stiffness of the underground foundations and turbines.

D.6.5 The Seller shall ensure that the Tests on Completion are witnessed and certified by an independent engineer (as may be provided for under the Finance Documents) which shall prepare a certified report of the results of the Tests on Completion (which report shall include corresponding SCADA system data) which shall be copied to NamPower.

D.6.6 In the case that the Power Plant successfully completes to Tests on Completion, NamPower shall be copied the related Tests on Completion certificate issued to the EPC Contractor, or in the case of failing the Tests on Completion, NamPower shall be copied the related defects and incomplete work lists.

D.6.7 As soon as the Test on Completion has been successfully completed, the Seller and the Buyer shall endeavour to completed the relevant activities to achieve the issuance of the Taking-Over Certificate as a prerequisite for achieving the Commercial Operation Date.

## D.7 Commencement of Commercial Operation

D.7.1 The Power Project shall be deemed ready for Commercial Operation and the appropriate Commercial Operation Certificate shall be issued when the Power Plant has satisfied the following conditions:

D.7.1.1 has achieved its Connection Date;

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- D.7.1.2 the Seller and NamPower have confirmed the Metering Equipment readings; and
- D.7.1.3 the Seller has issued to its EPC Contractor the respective Taking-Over Certificate after completion of the Tests on Completion;

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**Annexure E ENVIRONMENTAL CREDITS**

**E.1 Registration of Environmental Credits**

E.1.1 The Power Project shall be registered for Environmental Credits with a recognised institution following the Commercial Operation Date. Following registration, the Seller shall pay to NamPower a monthly payment equal to fifty percent (50%) of the net benefit received by the Seller from the sale of Environmental Credits ("NamPower's EC Payment") in accordance with the Net Energy produced during the Billing Period. The net benefit shall equal the total income from the sale of Environmental Credits minus all the costs and expenses related to such Credits, including the cost of registration thereof. NamPower's EC Payment shall be made to NamPower only once payment has been received by the Seller for the sale of Environmental Credits.

**E.2 Sharing of Environmental Credits**

E.2.1 The parties will share the information in respect of Environmental Credits and the calculation of Environmental Credit Payment to verify calculation of Environmental Credit benefits, revenues and sharing between the Parties.

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**Annexure F CALCULATION OF THE TERMINATION AMOUNT**

**F.1 Definitions**

F.1.1 Any terms used in this Annexure F, but not defined shall have the meaning given to them in the PPA.

F.1.2 **"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 PPA, including (without limitation):

F.1.2.1 the cost of any materials or goods ordered for the purpose of the Power Project;

F.1.2.2 any expenditure incurred in anticipation of the provision of services or the completion of works in the future;

F.1.2.3 any amounts payable under any contracts (including in respect of termination or cancellation of those contracts) placed that cannot be cancelled or terminated without such Losses being incurred;

F.1.2.4 the cost of demobilization including the cost of any relocation of equipment, materials and employees used or employed in connection with the Power Project;

F.1.2.5 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 PPA; and

F.1.2.6 any other Losses incurred by the Seller or its Contractors in connection with the above.

F.1.3 **"Distributions"** means any:

F.1.3.1 dividend or other distribution (in cash or in kind), repayment of share premium reserve, or any other payment by a way of return on capital of, or other investment in, the Seller; and

F.1.3.2 repayment, redemption, repurchase or return of the capital (of any tier) of the Seller or any other such payment in respect of any debt (in cash or in kind) advanced by a Shareholder to the Seller.

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- F.1.4 **"Equity Contributions"** means at the relevant time, an amount equal to the aggregate value of each of:
- F.1.4.1 the paid-in share capital of the Seller;
  - F.1.4.2 the principal of Shareholder Debt advanced to the Seller; and
  - F.1.4.3 all other cash or capital contributions made by the Shareholders to the Seller.
- F.1.5 **"Future Distributions"** means the net present value (calculated using a discounted rate equal to the Seller's weighted average cost of capital as defined in the Base Case Financial Model), of all Distributions scheduled to be paid to the Shareholders under the Base Case Financial Model during the period beginning on the Termination Date and ending on the date falling twenty-five (25) years after the Commercial Operation Date.
- F.1.6 **"Losses"** means all damages, 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.
- F.1.7 **"Outstanding Debt"** means the aggregate of:
- F.1.7.1 all principal, accrued interest (including without limitation default interest), fees, costs, expenses and other liabilities payable under the Finance Documents and the ECB approved Base Case Financial Model at Financial Close; and
  - F.1.7.2 any amount equal to the amount evidenced by the Lenders as being the cost to the Lenders of breaking any funding arrangements or hedging arrangements entered into under the Finance Documents (including, for avoidance of doubt, any costs associated with breaking any fixed rate loan) after deducting all amounts payable by the Lenders (or the counter-parties to the interest rate or exchange rate hedging arrangements provided for in the Finance Documents) to the Seller in connection with the early termination of such hedging arrangements as a result of prepayment of amounts outstanding under the Finance Documents.
- F.1.8 **"Seller's Regulated Equity Return"** means an amount which, on the date of payment by NamPower, gives an internal rate of return on the Equity Contributions as per the ECB approved Base Case Financial Model.



- F.1.9 "Shareholder" means a holder of any share, or any other security giving the right to subscribe for or convert into a share, in the Seller.
- F.1.10 "Shareholder Debt" means at any time any loan or other debt provided by the Shareholders to the Seller and which is subordinated to the Outstanding Debt under the Finance Documents.

**F.2 Compensation On Termination for a NamPower Event of Default**

F.2.1 If this PPA is terminated for a NamPower Event of Default in accordance with clause 19.4 (Notice of Intention to Terminate and Notice of Termination) then the amount payable to the Seller by NamPower pursuant to clause 19.5.2 shall equal the aggregate of the following, calculated at the Termination Date:

- F.2.1.1 the Outstanding Debt as at that date;
- F.2.1.2 the aggregate Equity Contributions made as at such date;
- F.2.1.3 the Future Distributions, provided that if the aggregate of Future Distributions and all Distributions received by the Shareholders up to the Termination Date is less than the Seller's Regulated Equity Return, the amount payable under this clause F.2.1.3 shall be increased to equal the Seller's Regulated Equity Return;
- F.2.1.4 any Breakage Costs incurred by the Seller and its Contractors; and
- F.2.1.5 any documented costs and expenses of enforcement or protection or preservation of security property and reasonably incurred by the Lenders from the Termination Date to the date of payment by NamPower,

F.2.2 less, to the extent it is a positive amount, the aggregate of all credit balances on any bank accounts held by or on behalf of the Seller on the date of payment.

**F.3 Compensation On Termination as a result of a Seller Event of Default**

F.3.1 The losses that NamPower is entitled to claim in the event of termination as a result of Seller Event of Default under clause 19.5.4 shall be capped at ten percent (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).

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F.3.2 If NamPower elects to purchase the Power Plant (inclusive of stock and inventory) as per clause 19.5.5 in the event of termination as a result of Seller Event of Default, it will be at a price equivalent to the Outstanding Debt for the Power Project owing, at the date of termination, by the Seller to the Lender(s).

**F.4 Compensation on Termination for Force Majeure Event**

F.4.1 If this PPA is terminated for a Force Majeure Event, in accordance with clause 19.4 (Notice of Intention to Terminate and Notice of Termination) and NamPower elects to purchase the Power Plant as per clause 19.5.6 at a price to be agreed between the Parties failing such agreement within thirty (30) days of a Notice of Intention to Terminate being given, the price shall be the fair value of the Power Plant. For the purposes of this clause, the fair value of the Power Plant will be the fair value that is determined by a reputable auditor, the identity of whom is agreed between the Parties and appointed by NamPower, or a merchant banker in the employment of any international merchant bank, the identity of whom is agreed between the Parties and appointed by NamPower, which auditor or merchant banker shall act as an expert and not as an arbitrator, and who shall be instructed to make his determination within thirty (30) days of his or her appointment, with all liability for his or her charges to be for the account of and be paid by NamPower.

**F.5 Compensation on Termination for Change in Law or Government Action**

F.5.1 If this PPA is terminated as a result of a Change in Law or Government Action as contemplated in clause 19.5.12 and NamPower elects to purchase the Power Plant as per clause 19.5.7 at a price to be agreed between the Parties failing such agreement within thirty (30) days of a Notice of Intention to Terminate being given, the price shall be the fair value of the Power Plant. For the purposes of this clause, the fair value of the Power Plant will be the fair value that is determined by a reputable auditor, the identity of whom is agreed between the Parties and appointed by NamPower, or a merchant banker in the employment of any international merchant bank, the identity of whom is agreed between the Parties and appointed by NamPower, which auditor or merchant banker shall act as an expert and not as an arbitrator, and who shall be instructed to make his determination within thirty (30) days of his or her appointment, with all liability for his or her charges to be for the account of and be paid by NamPower.

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**Annexure G LIST OF PREAPPROVED AND INDEPENDENT EXPERTS**

**G.1 Technical**

**MPAMOT (Pty) Ltd**  
147 Bram Fischer Dr, Ferndale  
Randburg  
2194  
South Africa  
info@mpamot.com  
Tel: +27 11 052 1000

**Fichtner GmbH & Co. KG**  
Sarweystrasse 3  
70191 Stuttgart  
Germany  
Tel: +49 711 89950

**G.2 Environmental**

**SLR Environmental Consultants Namibia (Pty) Ltd**  
P.O Box 807  
Swakopmund  
Namibia  
Tel: 061 231 287

**MPAMOT (Pty) Ltd**  
147 Bram Fischer Dr, Ferndale  
Randburg  
2194  
South Africa  
info@mpamot.com  
Tel: +27 11 052 1000

**G.3 Insurance**

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**Minet Namibia Insurance Brokers (Pty) Ltd**

5th Floor, Namlex Chambers  
333 Independence Avenue  
P O Box 283  
Windhoek  
Namibia  
Tel: +264 61 384 007

**G.4 Accounting, Tax and Auditor**

**Ernest And Young**

Cnr Otto Nitzche and Maritz Street  
Klein Windhoek  
Windhoek 9190  
Namibia

**Deloitte**

Deloitte Building  
Maerua Mall Complex  
Jan Jonker Road  
Windhoek  
Namibia  
Tel: +264 61 285 5000  
gbrand@deloitte.co.za

**PwC**

344 Independence Avenue  
Windhoek  
Namibia  
Tel: +264 61 284 1000

**G.5 Legal**

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**ENS Africa**

The MARC | Tower 1  
129 Rivonia Road  
Sandton, Johannesburg  
2196  
South Africa  
Tel: +27 11 269 7600  
email: infoJNB@ENSafrica.com

**Bowmans**

PO Box 248  
Cape Town  
8000  
South Africa  
Tel: +27 21 480 7800  
info-cpt@bowmanslaw.com

**Norton Rose Fulbright South Africa**

15 Alice Lane  
Sandton, Johannesburg  
2196  
South Africa  
Tel: +271 1685 8500

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**Annexure H NAMPOWER LETTER OF CREDIT**

*[TO BE PRINTED ON THE LETTERHEAD OF THE APPROVED PROVIDER]*

To: [•]

(Hereinafter referred to the "Beneficiary")

Address: [•]

Attention: [•]

Date: [•]

**IRREVOCABLE LETTER OF CREDIT NO. [•]**

We refer to the power purchase agreement, dated [•], entered into between NamPower and [•] in relation to a wind-powered electricity generating plant located at a project site in the vicinity of Lüderitz, Namibia (the "PPA").

Except as otherwise defined in this letter of credit (this "NamPower Letter of Credit"), words and expressions defined in the PPA shall have the same meanings when used in this NamPower Letter of Credit.

At the request of NamPower and pursuant to the transactions contemplated in the PPA, [•] (the "Approved Provider") issues this irrevocable NamPower Letter of Credit to the Beneficiary as payment security for the obligations incurred by NamPower from time to time under the PPA in your favour on the following terms and conditions:

**1. Definitions**

1.1. In this NamPower Letter of Credit:

- 1.1.1. "Business Day" means a day (other than a Saturday or a Sunday) on which banks are open for general business in the Republic of Namibia;
- 1.1.2. "Delivery Period" means the period from and including the date of this NamPower Letter of Credit to and including the Expiry Date;
- 1.1.3. "Demand" means a demand for a payment under this NamPower Letter of Credit in the form of the schedule to this NamPower Letter of Credit;
- 1.1.4. "Expiry Date" means 5pm Namibian time on [•];
- 1.1.5. "NamPower" means NAMIBIA POWER CORPORATION (PROPRIETARY) LIMITED a company incorporated in terms of the Laws of Namibia (registered under company

Handwritten notes and signatures: "0", "126", "V6", "1-9-11", "PCI", "SPT".

registration number: 2051) and having its registered office at NamPower Centre, 15 Luther Street, Windhoek, Namibia; and

1.1.6. "NamPower Letter of Credit Amount" means [•]

## 2. Approved Provider's Agreement

- 2.1. At the request of NamPower, we hereby issue this NamPower Letter of Credit in your favour in accordance with clause 10.5 (NamPower Letter of Credit) of the PPA.
- 2.2. The Beneficiary may request a drawing or drawings under this NamPower Letter of Credit by giving the Approved Provider a duly completed written Demand of its intention to do so, which Demand shall be signed by the Beneficiary in the form scheduled hereto.
- 2.3. A Demand must be received by the Approved Provider from the Beneficiary by no later than the Expiry Date and during the Delivery Period.
- 2.4. Subject to clause 2.6 below, the Beneficiary may make multiple Demands under this NamPower Letter of Credit and the Approved Provider will be obliged to make such payment on receipt of the relevant Demand
- 2.5. Subject to the terms of this NamPower Letter of Credit, we unconditionally and irrevocably undertake to the Seller that, within two (2) Business Days of receipt by us of the Demand, we shall pay to the Seller the amount demanded as set out in that Demand.
- 2.6. The Approved Provider will not be obliged to make a payment under this Letter of Credit if, as a result, the aggregate of all payments made by us under this Letter of Credit would exceed the Letter of Credit Amount.

## 3. Expiry

- 3.1. The Approved Provider will be released from its obligations under this NamPower Letter of Credit at the end of the Delivery Period.
- 3.2. The obligations of the Approved Provider under this NamPower Letter of Credit will cease at the end of the Delivery Period with no further liability on the part of the Approved Provider except for any Demand validly presented by the Beneficiary under the NamPower Letter of Credit that remains unpaid as of the Expiry Date.
- 3.3. When we are no longer under any further obligations under this NamPower Letter of Credit, the Seller shall return the original of this NamPower Letter of Credit to the Approved Provider.

## 4. Payments

- 4.1. All payments under this NamPower Letter of Credit shall be made in Namibia Dollar and for value on the due date to the account of the Beneficiary specified in the Demand.
- 4.2. This NamPower Letter of Credit is an irrevocable and autonomous payment instrument and represents the Approved Provider's primary payment obligations to the Beneficiary.

Handwritten notes and signatures in the bottom right corner, including the number 127 and various initials and signatures.

4.3. All amounts payable under this NamPower Letter of Credit will be paid in clear, irrevocable, and unconditional funds without set-off, counterclaim, deduction or withholding and into the bank account specified in the relevant written Demand.

**5. Delivery of Demand**

5.1. Each Demand shall be in writing and in the form appended in the schedule hereto, and, unless otherwise stated, may be made by courier, fax, or electronic mail, and must be received by the Approved Provider in legible form at its address and by the particular department or office (if any) as follows:

Physical Address:    [•]  
Fax:                    [•]  
Attention:            [•]

**6. Assignment**

6.1. The Beneficiary's rights under this NamPower Letter of Credit may be assigned or charged by the Beneficiary in whole or in part.

**7. ISP 98**

7.1. Except to the extent, it is inconsistent with the express terms of this NamPower Letter of Credit, this NamPower Letter of Credit is subject to the International Standby Practices (ISP 98), International Chamber of Commerce Publication No. 590, and the terms and conditions contained therein are incorporated by reference into this NamPower Letter of Credit.

**8. Governing Law**

8.1. This NamPower Letter of Credit and any non-contractual obligations connected with it shall be governed by and construed in all respects in accordance with the laws of the Republic of Namibia.

**9. Jurisdiction**

9.1. The Namibian courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this NamPower Letter of Credit (including a dispute relating to any non-contractual obligation arising out of or in connection with this NamPower Letter of Credit).

**10. Variation**

10.1. No variations to the terms and/or conditions of this NamPower Letter of Credit including this paragraph are permitted without prior written agreement of all of NamPower, the Beneficiary and the Approved Provider who are legally bound thereby.

Handwritten notes and signatures in the bottom right corner, including a date "1/6", initials "PKI", and other illegible markings.



Yours faithfully

By: \_\_\_\_\_

Authorised Signature

for and on behalf of [•] as Approved Provider.

Handwritten notes and initials in the bottom right corner, including a large 'V' with a 'G' next to it, and the number '129'.

**Schedule: Form of Demand**

*[To appear on the letterhead of the Beneficiary]*

To: **[Approved Provider]**

Address: [•]

Attention: [•]

*[Insert date]*

Dear Sirs,

**NamPower Letter of Credit no. [•] dated [•] (the "NamPower Letter of Credit")**

1. We refer to the NamPower Letter of Credit. Terms defined in the NamPower Letter of Credit have the same meaning when used in this Demand.
2. We certify that NamPower has failed to repay an amount of [•] under the PPA on its specified due date for payment (the amount of such non-payment hereafter referred to as the "Defaulted Sum").
3. Attached please find *[proof of invoices and notices etc.]*
4. We certify that the sum in the amount of the Defaulted Sum is due. We therefore demand payment of the sum of [•] being equal to the Defaulted Sum.
5. We hereby demand that you immediately pay us in clear, irrevocable and unconditional funds and without set off, counterclaim, deduction or any withholding, the amount set out in clause 4 above into the following bank account:

*[Beneficiary to insert relevant account details]*

6. The date of this Demand is not later than the Expiry Date.

Yours faithfully

\_\_\_\_\_  
[Beneficiary]

*Handwritten signature and initials:*  
Yo  
KSH  
PKI  
130  
7/20

**Annexure I PERFORMANCE GUARANTEES**

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## Power Plant Performance Guarantees

To: Procurement Management Unit  
Namibia Power Corporation (Pty) Ltd (NamPower)  
NamPower Centre (Head Office)  
15 Luther Street  
P.O. Box 2864  
Windhoek  
Namibia

Date: 27 March 2023

**RE: G/OIB/NPWR - 06/2022      PROCUREMENT OF INDEPENDENT POWER PRODUCER FOR THE DEVELOPMENT OF A 50 MW WIND POWER PLANT NEAR LUDERITZ ON A BUILD-OWN-OPERATE (BOO) BASIS - POWER PLANT PERFORMANCE GUARANTEES**

### 1. **Licensability**

The Bidder warrants that the Power Plant will comply with the conditions and requirements of all permits and approvals as required according to Namibian Law, prior to the Commercial Operation Date.

### 2. **Compliance With Namibian Grid Code and Technical Guidelines for Point of Common Coupling**

The Bidder warrants that the Power Plant shall comply with the Namibian Grid Code, and the Technical Guidelines for Point of Common Coupling, provided in Part 3, Section VII-2 Transmission Connection Offer Letter, Annexure F.

### 3. **Plant Capacity**

The Bidder warrants that the Project will comply with the capacity in Table 1:

*Table 1: Net Plant Output*

Item	Unit	Bidder's Guarantee
Installed Capacity*	MW	52
Contracted Capacity	MW	50
Minimum Capacity	MW	50
Frequency	Hz	50
Power factor capability	-	0.9 leading 0.9 lagging

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\* Installed Capacity shall not exceed 110% of contracted capacity (i.e., 55 MW)

Notes:

- 1) The Bidder shall guarantee that Contracted Capacity will be confirmed through the execution of the Final Acceptances Test as specified in the Power Purchase Agreement.
- 2) The attainment of minimum contracted capacity will be measured over a period of 1 hour.

The Contracted Capacity shall be measured in megawatts at the Delivery Point where all electrical consumers (with the exception of the stand-by consumers) shall be in operation during the performance tests, including but not limited to:

- HVAC and lighting (if required)
- All office and administrative consumers in the Project.

Correction curves and formulas shall be required to correlate actual measurements to standard test conditions when executing the Final Acceptance Tests with specification conditions.

The Bidder will furthermore provide a correction procedure on how to apply the correction curves and formulas.

#### 4. Plant Lifetime

The Bidder ensures that the lifetime of the Power Project will comply with the following.

Table 2: Plant Lifetime

Item	Unit	Bidder's Guarantee
Plant lifetime	years	25

#### 5. Plant Capacity Degradation

The Bidder warrants that the degradation of the Power Plant will comply with the following.

Table 3: Plant degradation

Item	Unit	Bidders Guarantee%
Maximum Degradation of Contracted Capacity	%	2%
Contracted duration	years	25

#### 6. Produced Energy

The Bidder ensures that the produced energy of the Power Plant complies with the following:

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Table 4: Produced Energy

Item	Unit	Bidder's Data
Net Energy - P50	MWh/annum	254213
Net Energy - P90	MWh/annum	233032
P50/P90 Ratio		1.0909

The produced energy shall assume the bidder's guaranteed Power Plant Availability.

### 7. Power Plant Availability

The Bidder guarantees the following availability of the Power Plant.

Table 5: Availability Requirement

Item	Unit	Bidder's Guarantee
Plant Availability (considering both planned and unplanned events)	%	[≥95]

Availability is calculated using calendar hours.

The Bidder shall ensure the desired availability by considering the following aspects of the Power Plant:

- sufficient robustness and redundancy in the Power Plant and grid connection design
- emergency preparedness plans
- sufficient spare parts
- adequately trained operating /maintenance staff
- recommended preventative maintenance intervals and procedures

### 8. Capacity Factor

The Capacity Factor is defined as the ratio of the actual yearly electricity production output to the amount of theoretical production (rated power for 24 hours per day) of the Wind Power plant.

The Measured Capacity Factor will be determined as follows:

$$MCF = \frac{E_{AC\_meas}}{8760 \times Max\ Export\ Capacity} \quad (2)$$

Where:

$MCF$  = Measured Capacity Factor (%)

$E_{AC\_meas}$  = measured AC electrical generation (kWh)

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Max Export Capacity = contracted capacity (AC) at 50 MW

\* For the actual measurement of the Capacity Factor the available hours ( $365 \times 24 = 8760$ ) will be adjusted for any transmission outages above the Transmission Availability Threshold as per the PPA.

The Power Plant is designed to achieve the following Capacity Factors:

Table 6: Capacity Factor

Item	P90 Net Energy (kWh)	Capacity Factor (%)
year 1	233032	53.2
year 2	233032	53.2
year 3	233032	53.2
year 4	233032	53.2
year 5	233032	53.2
year 6	233032	53.2
year 7	233032	53.2
year 8	233032	53.2
year 9	233032	53.2
year 10	233032	53.2
year 11	233032	53.2
year 12	233032	53.2
year 13	233032	53.2
year 14	233032	53.2
year 15	233032	53.2
year 16	233032	53.2
year 17	233032	53.2
year 18	233032	53.2
year 19	233032	53.2
year 20	233032	53.2
year 21	233032	53.2
year 22	233032	53.2
year 23	233032	53.2

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year 24	233032	53.2
year 25	233032	53.2

The Project Sponsor shall provide a detailed calculation and detailed methodology of how the listed Capacity Factors was derived. Please include all assumptions and supporting simulation information.

All additional Capacity Factor calculations should be submitted in MS Excel format clearly defining all inputs.

A detailed calculation and detailed methodology:

$$MCF = \frac{E\_AC\_meas}{8760 \times Max\ Export\ Capacity} = \frac{Net\ Energy\_P90}{8760 \times 50MW} = \frac{233032}{8760 \times 50} = 53.20\%$$

*Notes: The net energy of P90 is average value of over the next 25 years based on the raw wind data and taking 3% Plant Capacity Degradation into account. The detailed calculation process and assumption inputs of loss & uncertainty is shown in Namibia CEEC Luderitz 50MW Project Energy Yield Assessment Project Report.*

The software of Greenwich is used to calculate wind parameters and energy production of this project based on wind raw data provided by NamPower in Appendix 5 - Satellite Wind Data (TMY) (1-12 months) and Appendix 6 - Measured Wind Data, Part 2 - Employer's requirements of Bidding Document.

The data with the period of 20 December 2020 to 19 December 2021 is selected to be as completed year and representative year based long-term data (MERRA2 and ERA5). And the mean wind speed is 10.03 m/s at 100 m height of met mast in this period. Greenwich is used to simulate wind flow model and calculate wind parameters.

Greenwich is adopted to calculate energy production. The proposed WTG configuration is 8 WTGs of EN171/6.5MW with hub height 100m in this project. The gross AEP is 281313

MWh/y. N.O. Jensen wake model is used to calculate wake loss. Based the turbulence intensity at 100 m height of mast to set up wake decay constant of 0.075. The AEP is 276981 MWh/y including wake loss. The other loss value is 8.3%. The final AEP of P50 is 254213 MWh/y after wake loss and other loss.

The detail loss items could be check in attached *Namibia CEEC Luderitz 50MW Project Energy Yield Assessment Project Report*. On this report, the loss items include but not limited to plant performance, wake effect, environmental inputs, electrical efficiency, and power purchase agreement curtailment. The measuring period of temperature, humidity and air pressure data is less than one completed year, so long-term data was used to calculate air density. The mean air density is 1.187 kg/m<sup>3</sup> at the hub height of 100m in this project. The energy yield at P50, P75 and P90 is calculated based on the uncertainty factors. The detail of uncertainty factors are shown in *Namibia CEEC Luderitz 50MW Project Energy Yield Assessment Project Report*.

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Annexure J SINGLE LINE DIAGRAM OF THE POWER PLANT

1/6  
KSH  
PKI  
137  
G

Annexure K LAYOUT OF THE POWER PLANT

13  
140  
KSH  
PRI  
ZOU

Annexure L CONSTRUCTION PROGRAMME

143  
PKI  
KST  
1/6

Annexure M MONTHLY, WEEKLY AND DAILY GENERATION FORECASTS

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**50 MW Lüderitz Wind IPP Power Plant : Daily Energy Forecasts - Net Energy Output(kWh)**

Hour	Average Wind Speeds	Gust Speeds	Net Energy Output (kWh)	Temperature
00-01				
01-02				
02-03				
03-04				
04-05				
05-06				
06-07				
07-08				
08-09				
09-10				
10-11				
11-12				
12-13				
13-14				
14-15				
15-16				
16-17				
17-18				
18-19				
19-20				
20-21				
21-22				
22-23				
23-00				

1/5  
  
 KSA PR  
 2/2

50 MW Lüderitz Wind IPP Power Plant : Weekly Generation Forecasts - Net Energy Output(kWh)							
Hour	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
00-01							
01-02							
02-03							
03-04							
04-05							
05-06							
06-07							
07-08							
08-09							
09-10							
10-11							
11-12							
12-13							
13-14							
14-15							
15-16							
16-17							
17-18							
18-19							
19-20							
20-21							
21-22							
22-23							
23-00							

5/6  
 PKI  
 KSH  
 4

Annexure N BASE CASE FINANCIAL MODEL

150  
✓  
PLOT  
ICSTH.  
✓

ENERGY CHINA-RIMINI JOINT VENTURE  
CHINA ENERGY INTERNATIONAL GROUP CO., LTD.

## Namibia Wind Power

### Namibia Wind Power

Model version:

Final:

Model date:

25/07/2022

Project ID:

25/07/2022

This financial model was designed to meet the requirements of bidding for Namibia 50MW wind power plant project only and may not be suitable for any other purpose.

This financial model was prepared at the direction of, and for the exclusive use and benefit of China Energy International Group Co., Ltd. Any other party who obtains access to and chooses to rely on this financial model (or any part of it) will do so at its own risk. We accept no responsibility or liability to any other party in respect of this financial model.

Accept

Do not accept

Handwritten notes: KSA, PRE, 1/15, 1/16

Handwritten mark: 2/3



Annexure O DIERCT AGREEMENT

152  
KSA  
PC  
20

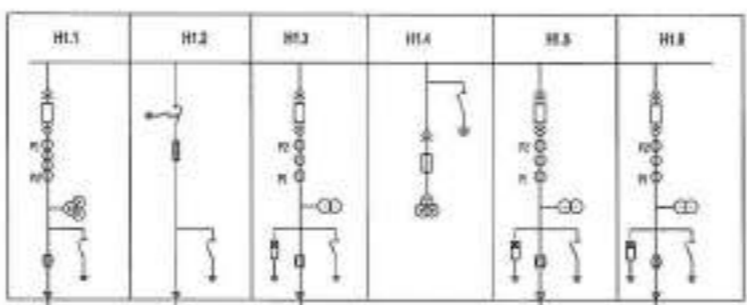
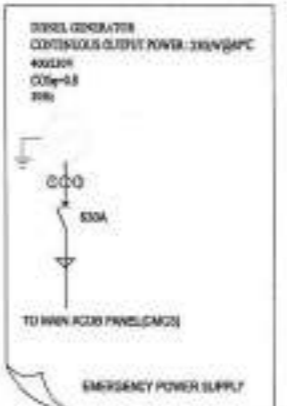
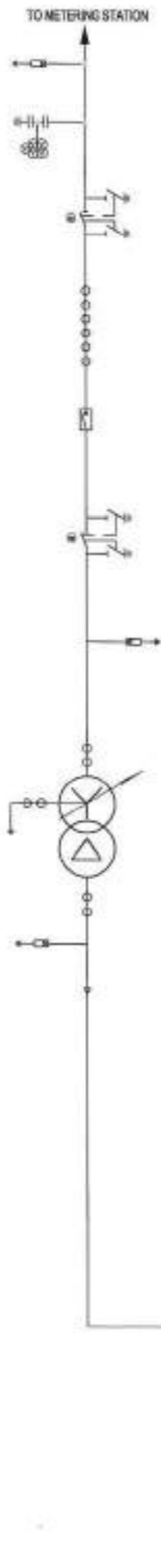
**Annexure P      EMPLOYER'S REQUIREMENTS**

Handwritten notes and signatures in the bottom right corner, including the number 153 and the word PRI.

**Annexure Q      PERFORMANCE BONDS**

154  
KSH  
PKI  
Y/S

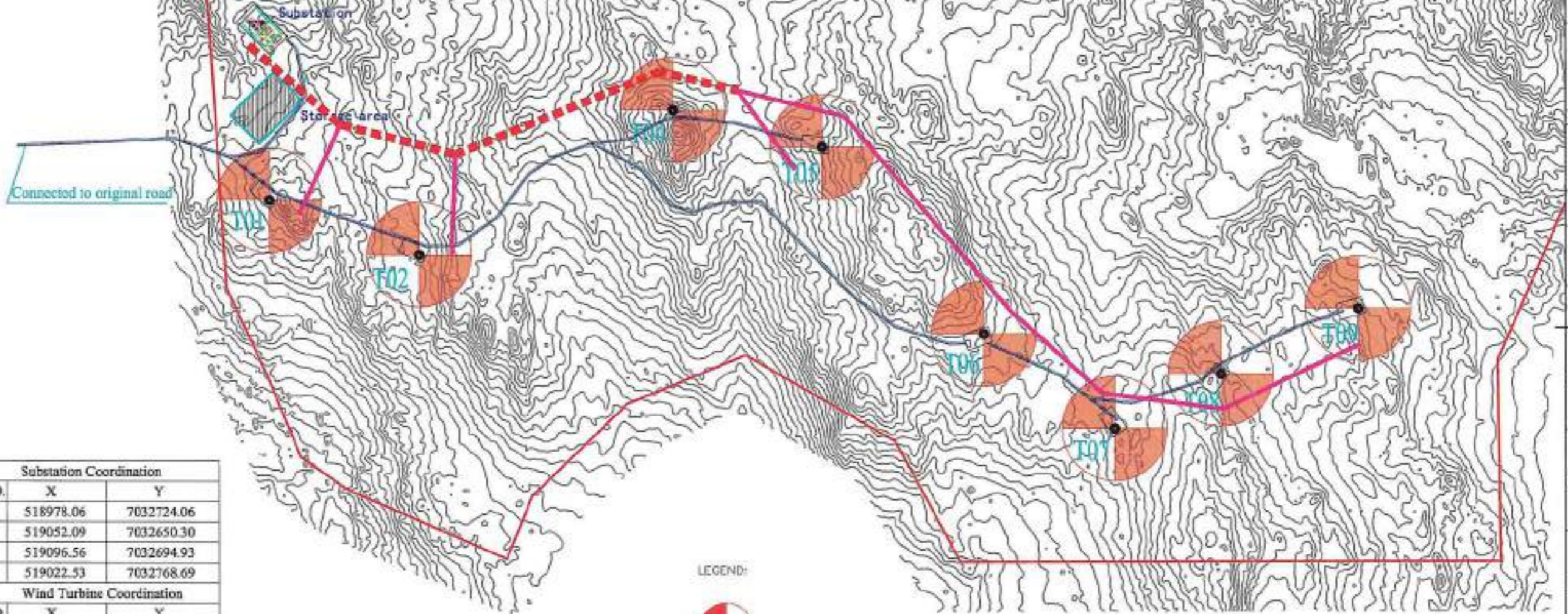
SA-12KV-12A
DVT-12KV-IP 23 / 11 / 5.11 / 2.78 / 2.78 M 2.28 / 1.27 / 1.27 / 1.27 / 2.28 M
DS2ES-12KV-125A-48A/3
CT-12KV-40A/3 40-100/11/11A SF40SP40/20.50P40SP40 3878 10/100/20A
CB-12KV, 125A, 60A/3 Single-phase opening circuit breaker
DS2ES-12KV-125A-48A/3
SA-12KV, 12A
ECT2E-40-60-100/11A 2.50P40, 30.20A
T1-Transformer 60MVA-132kV/1.23kV/0.24kV YM11 LbN-12.5
NBC7-20-400/11A SP20SP20, 30.20A ECT3E-120/11A 2.50P20, 10.10A
SA-20KV, 12A
CABLE-43.5KV, 3x2 (1C63mm <sup>2</sup> )
BBN-40.5KV, 200A, 25MVA
CB-40.5KV, 200A/3 LBS-40.5KV, 25MVA/3 R-180A, OUT-450A, I=200A S/VG 638A
CT-40.5KV, 25MVA/3 R-100/11/11A 0.50P40SP40SP40, 10/10/10/10A OUT: 600/11/11A 0.50P40SP40, 10/10/10A S/VG 480-600/11/11A 0.50P40SP40, 10/10/10/10A
CVT-40.5KV 23 / 11 / 5.11 / 2.78 / 2.78 M BB 0.50P 25.00A IN: 0.50P 25.00A
CVT-40.5KV 23 / 11 / 5.11 / 2.78 / 2.78 M OUT: 3P, 25A S/VG 3P, 25A
ZCT-40.5KV 301A, 10P10.2, 50A
DKC-60/30-20V/4 30x30, 30V-4V 20V/11



PROJECT TITLE			
<b>50MW LÜDERITZ WIND IPP POWER PLANT</b>			
APPROVED	DESIGNED	PROJECT DOCUMENT CODE	DATE
		EE-01	2003/09/07
COPYRIGHT © 2003, DOCUMENT TITLE, SIZE/FILE <b>CGEC</b> CHINA ENERGY ENGINEERING GROUP SHANGHAI ELECTRIC POWER ENGINEERING CO., LTD.		ANNOTATION ANNOTATION 1-1 SINGLE LINE DIAGRAM OF THE POWER PLANT <b>Single Line Diagram for Substation</b>	LAYOUT/SCALE EN N/A DOCUMENT STYLE N/A DW DOCUMENT TYPE DW PROJECTION FIRST ANGLE
CHECKED	PROJECT DOCUMENT CODE	REVISION	ORIGINATOR DOCUMENT CODE
	EE-01	1/1	EE-01


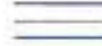




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PRELIMINARY



Substation Coordination		
NO.	X	Y
1	518978.06	7032724.06
2	519052.09	7032650.30
3	519096.56	7032694.93
4	519022.53	7032768.69
Wind Turbine Coordination		
NO.	X	Y
T01	519050.44	7032292.15
T02	519420.47	7032158.68
T04	520045.93	7032516.56
T05	520412.14	7032426.59
T06	520809.24	7031967.40
T07	521130.36	7031735.66
T08	521390.85	7031871.20
T09	521728.41	7032033.38

LEGEND:

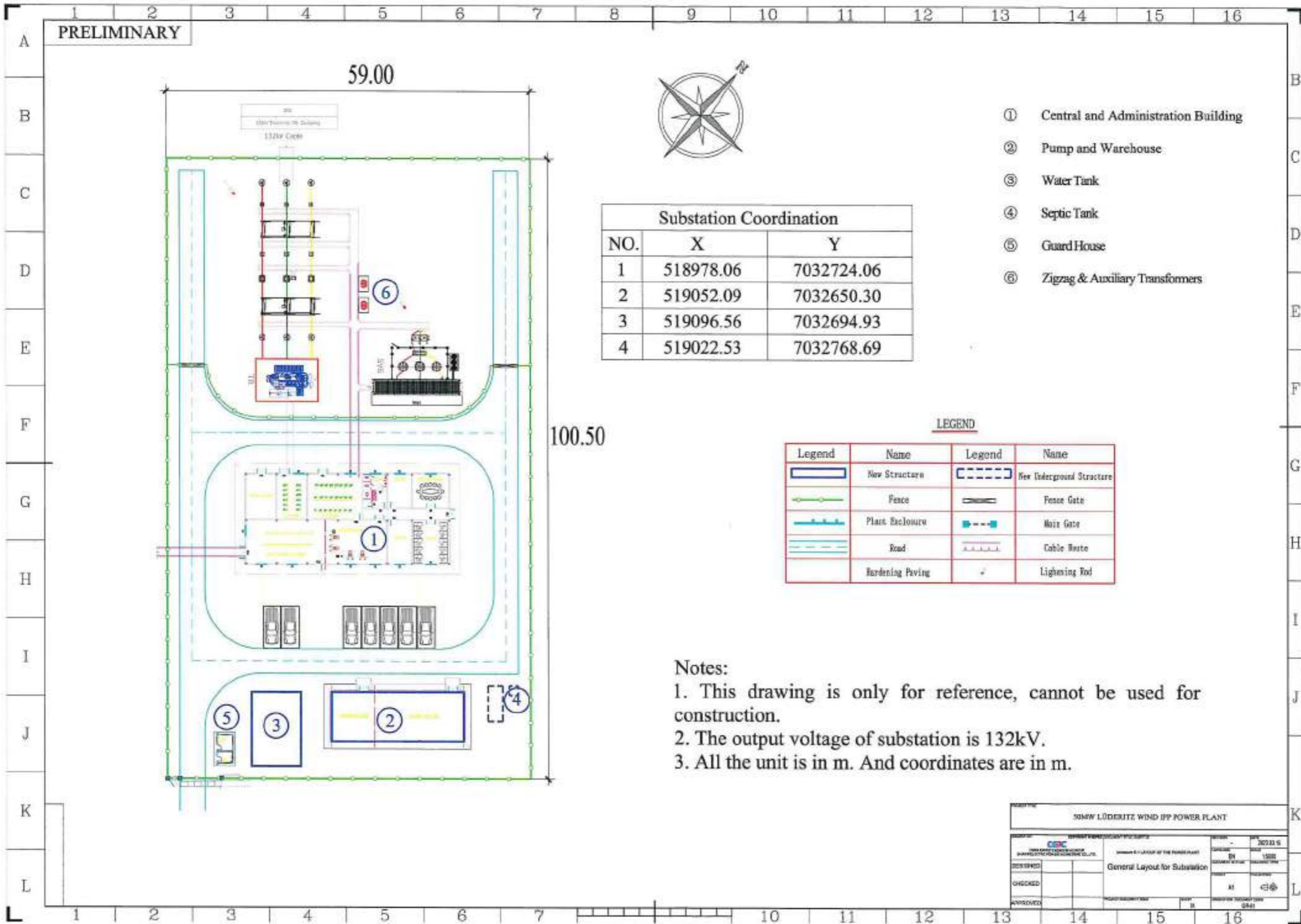
-  Wind Turbine generator with number
-  Road
-  Storage Area
-  Foundation for Wind Turbine
-  Transmission Line (Two-circuit)
-  Transmission Line (Single-circuit)

Notes:

1. This drawing is only for reference, cannot be used for construction.
2. The coordinates UTM 33J system.
3. There are 8 wind turbines (totally 52MW) in the wind farm, all of them are 6.5MW.
4. The Road layout will determined by construction drawing.

SOMW LÖDERITZ WIND IPP POWER PLANT			
DESIGNED	BY	DATE	2023.05.15
CHECKED	BY	SCALE	1:500
APPROVED	BY	NO.	A1
PROJECT NO.		DATE	2023

Handwritten notes and signatures: PKI, KSH, and other illegible marks.



PRELIMINARY

59.00



Substation Coordination		
NO.	X	Y
1	518978.06	7032724.06
2	519052.09	7032650.30
3	519096.56	7032694.93
4	519022.53	7032768.69

- ① Central and Administration Building
- ② Pump and Warehouse
- ③ Water Tank
- ④ Septic Tank
- ⑤ Guard House
- ⑥ Zigzag & Auxiliary Transformers

100.50

LEGEND

Legend	Name	Legend	Name
	New Structure		For Underground Structure
	Fence		Fence Gate
	Plant Enclosure		Moist Gate
	Road		Cable Route
	Hardening Paving		Lightning Rod

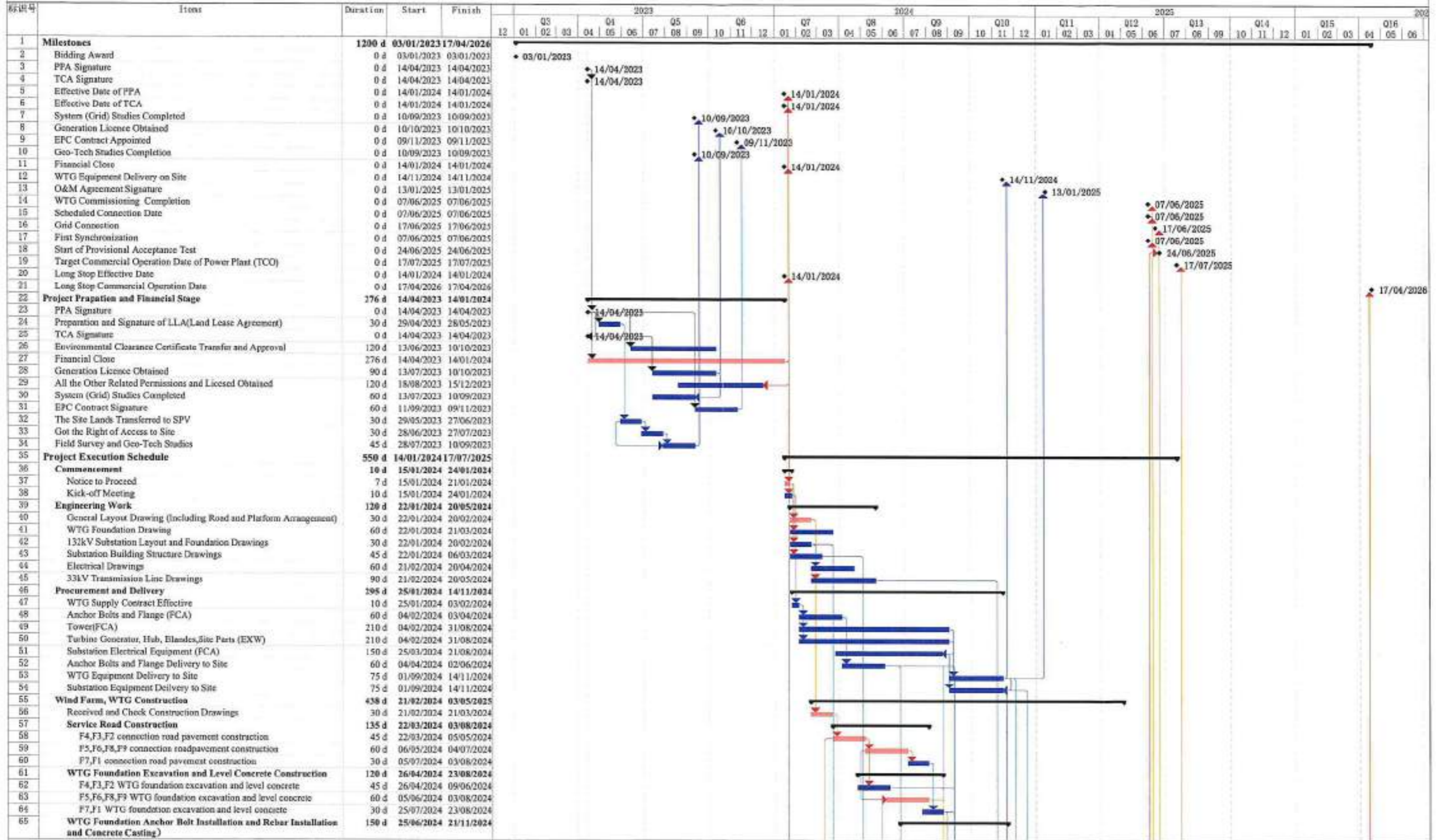
Notes:

1. This drawing is only for reference, cannot be used for construction.
2. The output voltage of substation is 132kV.
3. All the unit is in m. And coordinates are in m.

SONMW LÖDERITZ WIND IPP POWER PLANT			
DESIGNED	BY	DATE	2023.05
CHECKED	BY	DATE	1508
APPROVED	BY	DATE	0841

Handwritten signature and initials: KSH, 2/21/23, and other marks.

## Annexure L CONSTRUCTION PROGRAMME



50MW Lüderitz Wind Independent Power Producer Project

Task



Milestone



Summary



Project Summary



Critical



Equity Partners(including PDN partner):

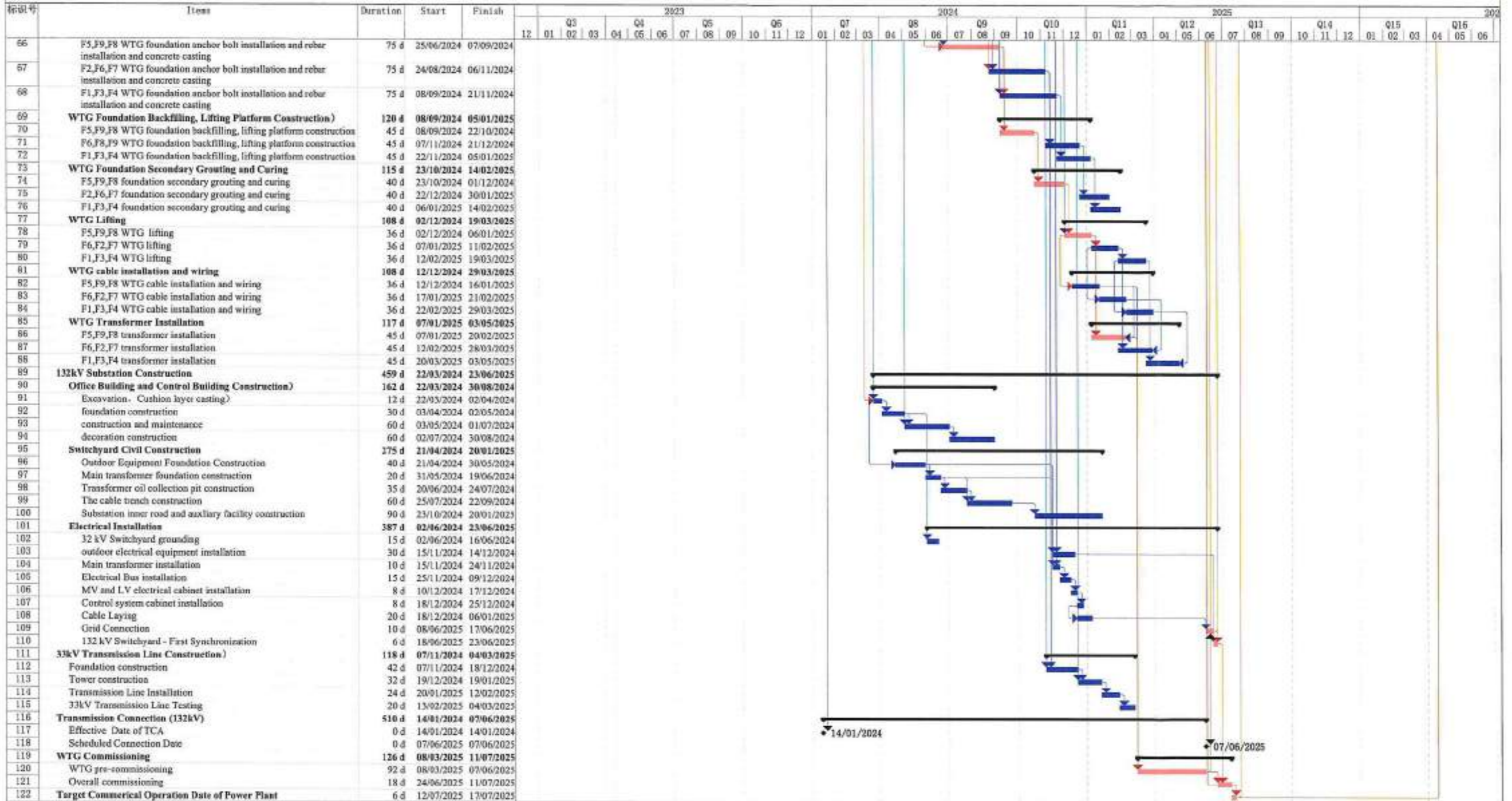
Debt Partners:

EPC Contractors or Main Contractors:

The PROGRAMME is prepared based on the tentative signing date of the PPA on April 15. If the signing date of PPA changes later, the PROGRAMME shall be adjusted accordingly according to the actual signing date of PPA.

J  
 KSH  
 4/11/24

Annexure L CONSTRUCTION PROGRAMME



50MW Lüderitz Wind Independent Power Producer Project

Task Milestone Summary Project Summary Critical

Equity Partners(including PDN partner):

Debt Partners:

EPC Contractors or Main Contractors:

The PROGRAMME is prepared based on the tentative signing date of the PPA on April 15. If the signing date of PPA changes later, the PROGRAMME shall be adjusted accordingly according to the actual signing date of PPA

Handwritten signatures and initials, including 'KSH' and 'P.T.I.' with a date '11'.



50 MW Lüderitz Wind IPP Power Plant : Monthly Generation Forecasts - Net Energy Output (kWh)

	Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Day 7	Day 8	Day 9	Day 10	Day 11	Day 12	Day 13	Day 14	Day 15	Day 16	Day 17	Day 18	Day 19	Day 20	Day 21	Day 22	Day 23	Day 24	Day 25	Day 26	Day 27	Day 28	Day 29	Day 30	Day 31	
00-01																																
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**REPUBLIC OF NAMIBIA  
MINISTRY OF ENVIRONMENT, FORESTRY AND TOURISM**

OFFICE OF THE ENVIRONMENTAL COMMISSIONER

**ENVIRONMENTAL CLEARANCE CERTIFICATE**

**ISSUED**

In accordance with Section 37(2) of the Environmental  
Management Act (Act No. 7 of 2007)

**TO**

**Namibia Power Corporation (Pty) Ltd  
P O Box 2864, Windhoek**

**TO UNDERTAKE THE FOLLOWING LISTED ACTIVITY**

**Proposed construction and operation of the 50 MW IPPr Wind Park near  
Lüderitz, //Karas Region**

Issued on the date: **2021-09-09**

Expires on this date: **2024-09-09**

**(See conditions printed over leaf)**



Reduce  
Reuse  
Recycle



**CONDITIONS OF APPROVAL**

1. This environmental clearance is valid for a period of 3 (three) years, from the date of issue unless withdrawn by this office
2. This certificate does not in any way hold the Ministry of Environment and Tourism accountable for misleading information, nor any adverse effects that may arise from these activities. Instead, full accountability rests with the proponent and its consultants
3. This Ministry reserves the right to attach further legislative and regulatory conditions during the operational phase of the project
4. Clustering wind turbines to be avoided but rather constructed in a random, linear, or radius approach to minimize the disturbance footprint
5. Where service roads are to be created or turbines to be erected within important plant populations by a maximum of 5% taken into consideration the cumulative impact of disturbance
6. Consideration for placement of turbines may be done in collaboration with qualified botanists
7. Relocation of affected plants to suitable habitats within the //Tsau Khaeb National Park should be done in collaboration with qualified botanists
8. The proponent must comply with all conditions of the lease agreement once finalized
9. All applicable and required permits are obtained and mitigation measures stipulated in the EMP are applied particularly with respect to management of ecological impacts.
10. Strict compliance with national heritage guidelines and regulations is expected throughout the life-span of the proposed activity, therefore any new archaeological finds must be reported to the National Heritage Council for appropriate handling of such.



REPUBLIC OF NAMIBIA

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**MINISTRY OF ENVIRONMENT, FORESTRY AND TOURISM**

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Tel: (00 26461) 284 2111  
Fax: (00 26461) 232 057

Cnr Robert Mugabe &  
Dr Kenneth Kaunda Street  
Private Bag 13306  
Windhoek  
Namibia

**OFFICE OF THE ENVIRONMENTAL COMMISSIONER**

**NOTIFICATION OF DECISION**

**REF NUMBER: ECC 01622**

**DATE OF ISSUE: 09 September 2021**

**DETAILS OF PROPONENT:**

**Namibia Power Corporation**  
Po Box 2864, Windhoek

Dear Sir/ Madam

**SUBJECT: NOTIFICATION ON APPLICATION FOR ENVIRONMENTAL CLEARANCE TO UNDERTAKE THE PROPOSED LISTED ACTIVITY: PROPOSED CONSTRUCTION AND OPERATION OF 50MW IPPR WIND PARK NEAR LUDERITZ, //KARAS REGION**

**Notice is herewith given** in accordance with section 37(2) of the Environmental Management Act, Act 7 of 2007 and Environmental Impact Assessment Regulations of 2012 (GG 4878): that a decision in respect to your application No. **APP 2426** for Environmental Clearance Certificate to undertake a listed activity has been reached.

**DECISION**

An Environmental Clearance Certificate (ECC) to undertake the listed activities specified in the environmental assessment report and draft management plan dated February 2021, is granted (**ECC 01622**). The applicant / proponent is therefore advised to comply with conditions of approval set out in **Section C** of this notification.

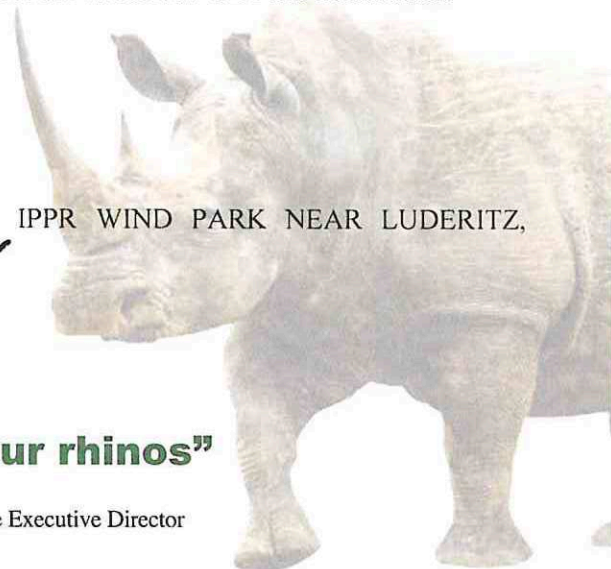
**A. DETAILS OF THE PROPOSED ACTIVITY**

**A1: TITLE OF THE PROPOSED ACTIVITY**

PROPOSED CONSTRUCTION AND OPERATION OF 50MW IPPR WIND PARK NEAR LUDERITZ, //KARAS REGION

**“Stop the poaching of our rhinos”**

All official correspondence must be addressed to the Executive Director



**A2: DETAILS OF ASSESSMENT PRACTITIONER**

Enviro Dynamics, Stephanie van Zyl, Tell: 061 223 336 Email: [Stephanie@envirod.com](mailto:Stephanie@envirod.com)

**A3: LOCATION OF PROPOSED ACTIVITY**

(Annexure A – proposed site map)

**B. RELEVANT LISTED ACTIVITIES**

<b>Legislation</b>	<b>Description of Listed Activity</b>	<b>Relevance to Proposed Activity</b>
Regulation 29 of Government Notice No. 29 of 2012	<p>ENERGY GENERATION, TRANSMISSION AND STORAGE ACTIVITIES; The construction of facilities for - (a) the generation of electricity; (b) the transmission and supply of electricity; (c) refining of gas, oil and petroleum products; and (d) nuclear reaction, including production, enrichments, processing, reprocessing, storage or disposal of nuclear fuels, radioactive products and waste.</p> <p>INFRASTRUCTURE 10.1 The construction of- (a) oil, water, gas and petrochemical and other bulk supply pipelines; (b) public roads; (c) railways and harbours; (d) airports and airfields; (e) any structure below the high water mark of the sea; (f) cableways; (g) communication networks including towers, telecommunication and marine telecommunication lines and cables; (h) motor vehicle and motorcycle racing and test tracks; (i) the outdoor racing sites of motor powered vehicles including - (i) motorcars; (ii) trucks; (iii) motorcycles; (iv) quad bikes; (v) boats; and (vi) jet skis; (j) masts of any material or type and of any height, including those used for telecommunication broadcasting and radio transmission, but excluding - (i) flag poles; and (ii) lightning conductor poles. 10.2 The route determination of roads and design of associated physical infrastructure where - (a) it is a public road; (b) the road reserve is wider than 30 meters; or (c) the road caters for more than one lane of traffic in both directions. law relating to water resources.</p>	PROPOSED CONSTRUCTION AND OPERATION OF 50MW IPPR WIND PARK NEAR LUDERITZ, //KARAS REGION



## C. CONDITIONS

### C1: Conditions of Approval

1. This certificate does not in any way hold the Ministry of Environment and Tourism accountable for misleading information, nor any adverse effects that may arise from these activities. Instead, full accountability rests with the proponent and its consultants.
2. This Ministry reserves the right to attach further legislative and regulatory conditions during the operational phase of the project.
3. Regular environmental monitoring and evaluations on environmental performance should be conducted. Targets for improvements should be established and monitored throughout this process.

### C2: Clearance Certificate Validity

4. This environmental clearance is valid for a period of 3 (three) years, from the date of issue unless withdrawn by this office.
1. On expiry of the ECC, the proponent is required to submit within a period not exceeding one month, and in the prescribed form and manner an application to the Office of the Environmental Commissioner for the renewal of the ECC.
2. Failure to renew an expired environmental clearance certificate shall result in permanent termination of the environmental clearance certificate.
3. In terms of Section 3 (2)C of the Environmental Impact Assessment, you are instructed to, within 14 days of this notice issuance date, ensure that all registered interested and affected parties (“I&APs”) are notified that an environmental clearance certificate has been issued in respect to your application and of their right to appeal

### C3: Compliance with authorization under other laws

4. All other applicable and required permits or authorization from relevant competent authorities must be obtained prior to commencing the proposed activities and accordingly adhered to.

### C4: Implementation and Monitoring

5. The granting of the Environmental Clearance Certificate (ECC) constitute, an approval for the implementation of mitigation measures proposed in your approved Environmental Management Plan (EMP), hence making the approved EMP legally binding document.
6. The proponent shall appoint a suitably experienced environmental control officer, or site agent where appropriate, before the commencement of any listed activities to ensure compliance with the conditions of approval and mitigation stipulated in the approved EMP
7. A copy of the Environmental Clearance Certificate (ECC), EMP, Environmental Audit and monitoring reports must be kept at the site of the authorized activity and readily available for inspection by officials of the Ministry and registered Interested and affected Parties (I&APs) on request.
8. The proponent agrees to fully indemnify the Government of the Republic of Namibia in the event that the Government is held liable in respect of any loss, damage or injury sustained to an employee, contractor and/or visitor whilst such employee, contractor and/or visitor is in the auspices, direction or invitation of the holder.



9. Entry and exit points to the Park as well as the driving routes to be followed in the Park shall be determined by this Ministry in its sole discretion and shall be communicated to the Holder in writing. The proponent shall strictly adhere to the designated entry points, exit points and driving routes. Only existing tracks or roads may be used unless prior approval is obtained from the Ministry.
10. All tracks or roads must be established, constructed and rehabilitated under the supervision of officials designated by the Ministry for this purpose.
11. Should any heritage remains be exposed during excavations or any other actions on the site, these must immediately be reported to the National Heritage Council of Namibia. Heritage remains uncovered or disturbed during earthworks must not be further disturbed until the necessary approval has been obtained from National Heritage Council.
12. Using the best and affordable methodology, the Proponent must ensure that all listed activity's operations footprints are thoroughly rehabilitated prior to closure of the operation. Wherever possible, the Proponent must proceed with the rehabilitation process concurrently with the progression of the project rather than wait until the damage is far beyond the available means of management.
13. The general standard for all rehabilitation processes must at all costs aim at restoring the natural character of the environment to the satisfaction of the Ministry of Environment and Tourism. Such rehabilitation processes shall be inspected and certified satisfactory or unsatisfactory by the Ministry of Environment and Tourism. Where a certificate of unsatisfactory is issued, the Proponent shall be advised to carry-out certain tasks to meet the requirements. Failure to meet the basic rehabilitation requirements shall be regarded by this Ministry as a breach of this contract and of which serious consequences shall follow.
14. Officials of the environmental commissioner's office may from time-to-time conduct spot-inspection (non-auditing) without prior notice and or Auditing Inspection (dates to be agreed prior to arrival to the site), hence access to the site and the aforementioned documentation must be granted to any authorized official representing the Office of the Environmental Commissioner and Registered Interested and Affected Parties (I&APs)
15. Any changes to, or deviations from the scope of the alternative described in section B above must be accepted or approved, in writing, by the Office of the Environmental Commissioner before such changes or deviations may be implemented. In assessing whether to grant such acceptance/ approval or not, the Competent Authority may request information in order to evaluate the significance and impacts of such changes or deviations, and it may be necessary for the holder to apply for further authorisation in terms of the applicable legislation.
16. Officials representing the Office of the Environmental Commissioner must be, in possession and or by request and for the purpose of inspection referred to in C4(15) present their staff identification card in order to gain entry to the premises
17. The proponent is required, from the date of commencing implementation of project activities, to compile and submit environmental monitoring reports (on project progress and the environmental management profile) on a bi-annual basis to Office of Environmental Commissioner
18. Any changes to, or deviations from the scope of project activities approved in respect to the assessment received and reviewed for the purpose or granting this ECC Number (**ECC 01622**) are subject to an amendment application and approval by the Environmental Commissioner prior to adopting / implementing any such changes / deviations.

19. For the purpose of amending and or transferring the ECC, the proponent submit in the prescribed form and manner an application to the Office of the Environmental Commissioner, clearly indicating the need for amendment and or transfer of the ECC
20. Non-compliance with a condition of this Environmental Clearance Certificate or EMP may render the Proponent liable to criminal prosecution.

**D. DISCLAIMER**

1. The decision taken by the Office of Environmental Commission is based mainly on information provided to it by the proponent or their representative, therefore, it must be noted here that the proponent is accountable for any wrong and misleading information that may have been presented in the environmental assessment documents.
2. Furthermore, the environmental clearance certificate does not in any way hold the Ministry of Environment, Forestry and Tourism accountable for misleading information, nor any adverse effects that may arise from these activities. Instead, full accountability rests with Proponent
3. Consequently, the Office of Environmental Commissioner reserve the rights to annex (as necessary) further regulatory conditions during the operational phase of the activity / project

Your interest in the future of our environment is appreciated

Yours sincerely,



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Timoteus Mufeti  
**ENVIRONMENTAL COMMISSIONER**



**ANNEXURE A: SITEMAP / SITE LAYOUT**



Boundary Coordinates		
Lat	Long	Name
-26.810795	15.196093	18
-26.811319	15.198590	19
-26.812277	15.200654	20
-26.812615	15.202818	21
-26.815617	15.216333	22
-26.817211	15.227776	23
-26.820337	15.227919	24
-26.827065	15.226114	25
-26.834158	15.222333	26
-26.838650	15.222415	27
-26.838722	15.209032	28
-26.836069	15.207423	29
-26.834165	15.203716	30
-26.835261	15.200797	31
-26.837321	15.198433	32
-26.838718	15.197809	33
-26.837173	15.193830	34
-26.836464	15.192681	35
-26.837332	15.190850	36
-26.825486	15.190315	37
-26.825097	15.193879	38
-26.825871	15.197871	39
-26.825234	15.200973	40
-26.822911	15.203028	41
-26.819011	15.203193	42
-26.815805	15.201894	43
-26.814637	15.195770	44
-26.813355	15.195464	45
-26.811860	15.195748	46

*Handwritten signature*