

Confidential



MARKET PARTICIPATION AGREEMENT (MPA)

FOR AN

ELIGIBLE SELLER

BETWEEN

[•]

AND

NAMIBIA POWER CORPORATION (PTY) LTD

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PREAMBLE:

THIS MARKET PARTICIPATION AGREEMENT (MPA) is entered into between:

- (1) [●], a company incorporated in terms of the Laws of Namibia (registered under company registration number: [●]) and having its registered office at [●] (hereinafter referred to as the “**Eligible 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 “**Market Operator**” or “**NamPower**” interchangeably),
- (together, the “**Parties**” and “**Party**” shall mean either of them).

RECITALS:

- (A) Whereas, the Eligible Seller has met the regulatory requirements stipulated by the ECB in order to participate in the Modified Single Buyer (MSB) Market and wishes to be registered as an Eligible Seller with the Market Operator to participate in the electricity market, under the Market Rules.
- (B) Whereas, the Market Rules will have the effect of a contract between each Eligible Seller and the Market Operator by virtue of execution of this MPA.
- (C) Whereas, the Eligible Seller and the Market Operator wish to enter into this MPA to satisfy the conditions contained in the Market Rules that a MPA be executed in order for the Market Operator to fully register the Eligible Seller as a Market Participant.
- (D) Whereas, this MPA is subject to the applicable Market Rules and related Market Frameworks.
- (E) The Parties acknowledge that the Electricity Control Board’s regulatory oversight extends to amendments to this MPA and that any amendments to the MPA must be submitted to the Electricity Control Board for regulatory oversight prior to signature thereof.

WHEREBY THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

1.1. Unless otherwise indicated in this MPA capitalised expressions or word used in this MPA have the meanings ascribed thereto in the Market Rules or any of the relating agreements as is applicable. In this MPA the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings:

1.1.1.	"Active Trading Status"	has the meaning given to it in clause 6.2 and 7.2;
1.1.2.	"Affected Party"	means a Party affected by a Force Majeure event as contemplated in clause 14;
1.1.3.	"Affiliate(s)"	<p>means in respect of either Party, any person (excluding any government), hereinafter referred to as "company" which directly or indirectly:</p> <p>1.1.3.1. is controlled by such Party; or</p> <p>1.1.3.2. controls such Party; or</p> <p>1.1.3.3. is controlled by a company which directly or indirectly controls such Party.</p> <p>For the purposes of the foregoing definition:</p> <p>1.1.3.3.1. 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 shareholders' meetings of the former company, and</p> <p>1.1.3.3.2. 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</p>

		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;
1.1.4.	"AFSA Rules"	means the rules relating to the conducting of arbitration as set by the Arbitration Foundation of Southern Africa;
1.1.5.	"AFSA"	means the Arbitration Foundation of Southern Africa;
1.1.6.	"Agreed Interest Rate"	means the prime rate from time to time determined by Bank of Namibia correlated with NamPower's overdraft facilities;
1.1.7.	"Approved Provider"	means a registered banking institution registered in terms of the Banking Institutions Act (Act No. 13 of 2023) and for the time being: 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 approved in writing by NamPower
1.1.8.	"Availability Declaration"	means the forecast level of generation of the energy for each Year in such format as may be prescribed by NamPower from time to time;
1.1.9.	"Balancing "	means the regulation of any energy imbalances by the Market Operator pertaining to the transaction(s) contemplated in this MPA;
1.1.10.	"Balancing Agreement"	means a separate and dedicated schedule to this MPA for Balancing services related to exports;
1.1.11.	"Bilateral Trading Nomination"	has the meaning given to it in the Market Rules;

1.1.12.	"Bilateral Transaction"	has the meaning given to it in the Market Rules;
1.1.13.	"Billing Period"	means the start of the first day of a month to the end of the last day of the said month for any active month of trading;
1.1.14.	"Business Day"	means any day except a Saturday, a Sunday or a public holiday in Namibia as defined in the Public Holidays Act No. 26 of 1990;
1.1.15.	"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 Eligible Seller, any aspect of Generation Facilities or this MPA (or any transaction or agreement contemplated herein);
1.1.16.	"Conditions Precedent"	means the listed conditions set out in clause 6.2, which must each be met or waived in order to achieve the Effective Date;
1.1.17.	"Confidential Information"	means any and all information and data disclosed by either Party in connection with this MPA in any form whatsoever, and including this MPA itself;
1.1.18.	"Connection Agreement"	means the Transmission Connection Agreement and the Transmission Use of System Agreement, collectively.
1.1.19.	"Connection Facilities"	has the meaning given to it under the Connection Agreement;
1.1.20.	"Connection Works"	has the meaning given to it under the Connection Agreement;
1.1.21.	"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 participating in the Modified Single Buyer market;
1.1.22.	"Constrained Schedule"	has the meaning given to it in the Market Rules;
1.1.23.	"Contestable Customer"	[means the End Customer, which has been allocated a Contestable Quantity, which it will procure from the Contestable Supply Point;] [means the Contestable Distributor, which has been allocated a Contestable Quantity, which it will procure from the Contestable Supply Point;] [means the Exporter, which has been allocated a Contestable Quantity, which it will procure from the Contestable Supply Point;]
1.1.24.	"Contestable Quantity"	has the meaning given to it in the Market Rules;
1.1.25.	"Contestable Supply Point"	[means the supply point, approved by the ECB, where the Contestable Customer is allowed to buy energy from the Eligible Seller up to the Contestable Quantity and as defined in the Connection Agreement];
1.1.26.	"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 MPA, including any sub-contractors appointed by any person who falls within this definition;
1.1.27.	"Day"	means a calendar day;
1.1.28.	"Delivered Energy"	has the meaning given to it in the Market Rules;
1.1.29.	"Delivery Point(s)"	has the meaning given to it in the Market Rules and as indicated in the Transmission Connection Agreement and/or the Transmission Use of System Agreement as the MSB Main And Check Meters (Metering Installation), relative to each Schedule Unit;

1.1.30.	"Dispute"	means any dispute or disagreement of any kind whatsoever between the Parties arising under, in connection with, or relating to, this MPA or the transactions contemplated herein;
1.1.31.	"Distribution System"	means a system which consists wholly or mainly of medium and low voltage networks through which electricity is conveyed to a customer;
1.1.32.	"Electricity Act"	means the Namibian Electricity Act, Act No 4 of 2007, as amended or superseded from time to time;
1.1.33.	"Electricity Control Board" or "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;
1.1.34.	"Eligible Seller Event of Default"	has the meaning set forth in clause 15.3;
1.1.35.	"Eligible Seller"	has the meaning given to it in the Market Rules;
1.1.36.	"End Customer"	means a user of electricity that is connected to the National Electricity Grid;
1.1.37.	"Exporter"	has the meaning given to it in the Market Rules;
1.1.38.	"Final Dispatch Schedule"	has the meaning given to it in the Market Rules;
1.1.39.	"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;
1.1.40.	"Financial Security"	means a bank guarantee in favour of NamPower;
1.1.41.	"Force Majeure Event"	has the meaning given to it in clause 14.1.1;
1.1.42.	"General Data"	has the meaning given to it in the Market Rules;
1.1.43.	"Generation Facility" or	means the generation facility including, but not limited to, all Schedule Units, switchgears, transformers and any probable

	"Generation Facilities"	plant and/or equipment related to the generator(s) and differentiated between each Project Site(s) and as maintained in the Eligible Seller Standing Data;
1.1.44.	"Generation Licence"	means the generation licence issued by the Ministry of Mines and Energy on recommendation of the Electricity Control Board in relation to the project)
1.1.45.	"Generator"	has the meaning given to it in the Market Rules;
1.1.46.	"Government Action"	<p>means:</p> <p>1.1.46.1. the expropriation (including creeping expropriation), compulsory acquisition, requisition, confiscation or nationalisation by any Competent Authority of any shares in the Eligible Seller or assets relating to the Schedule Units; or any material assets or rights of the Eligible Seller, or any other similar act of such Competent Authority that materially adversely affects:</p> <p>1.1.46.1.1. the enjoyment by the Eligible Seller of any of the rights and benefits contemplated by this MPA, or</p> <p>1.1.46.1.2. the performance by the Eligible Seller of any of its obligations under or pursuant to this MPA, or</p> <p>in the case of the Market Operator, the reorganisation, restructuring or privatisation of NamPower or the sale of the Government's controlling interest in NamPower;</p>
1.1.47.	"Government"	means the Government of the Republic of Namibia and all its agencies as applicable;
1.1.48.	"Grid Code"	means, at any time, the most recent version of the transmission grid code published by the ECB in terms of the Electricity Act, 4 of 2007 and as updated from time to time;
1.1.49.	"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;
1.1.50.	"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);
1.1.51.	"Market Framework(s)"	means the approved frameworks, including the Namibia Balancing Framework and Namibia Wheeling Framework, 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;
1.1.52.	"Market Operator Event of Default "	has the meaning set forth in clause 15.2;
1.1.53.	"Market Participant"	has the meaning given to it in the Market Rules;
1.1.54.	"Market Rules"	means the rules, published in the Government Gazette in the General Notice 736 of 2022, 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;
1.1.55.	"Metering Equipment"	has the meaning given to it in the Connection Agreement(s);
1.1.56.	"Modified Single Buyer" or "MSB"	means the electricity market structure, adopted by the Government, in September 2019;
1.1.57.	"MSB Agreements"	means this MPA, the Connection Agreements (comprising of Transmission Connection Agreement, the Connection Offer Letter and Transmission Use of System Agreement), Power Supply Agreement (if applicable) and any other agreement

		that the Parties agree in relation to the contracting the Market Participant to participate in the Modified Single Buyer market;
1.1.58.	"MW"	means megawatt;
1.1.59.	"MWh"	means megawatt hours;
1.1.60.	"NAD" or "Namibia Dollar"	means the official currency of the Republic of Namibia;
1.1.61.	"NamPower Transmission Event of Default"	means a breach by NamPower under the Connection Agreement(s);
1.1.62.	"National Control Centre"	means the centre for control and coordination of power flows within Namibia;
1.1.63.	"National Electricity Grid"	Means any of: 1.1.63.1. Transmission System, or 1.1.63.2. Distribution System,
1.1.64.	"Network Operator"	has the meaning given to it in the Market Rules;
1.1.65.	"Nominated Account"	[•];
1.1.66.	"Not-Active Trading Status"	has the meaning given to it in clause 7.3;
1.1.67.	"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 MPA pursuant to clause 15.3.1 or 16.2 and the intention to do so;
1.1.68.	"Parties"	means the Eligible Seller and the Market Operator, or their successors-in-title, and 'Party' shall be construed accordingly,
1.1.69.	"Power Purchase Agreement"	has the meaning given to it in the Market Rules;

1.1.70.	"Power Supply Agreement"	has the meaning given to it in the Market Rules;
1.1.71.	"Project Site(s)"	means the location of each of the Generation Facility as described in the Standing Data;
1.1.72.	"Prudent Industry Practice"	<p>[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 utility 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, any references herein to the "standards of Prudent Industry Practice" shall be construed accordingly, and includes:</p> <p>1.1.72.1. complying with:</p> <ul style="list-style-type: none"> 1.1.72.1.1. recognised standards pertaining to that activity; 1.1.72.1.2. manufacturers' instructions and operating manuals; and 1.1.72.1.3. the terms of this MPA; and <p>1.1.72.2. taking reasonable steps to ensure that:</p> <ul style="list-style-type: none"> 1.1.72.2.1. adequate materials, resources and supplies are available at the necessary places under normal conditions associated with existing operations; 1.1.72.2.2. sufficient experienced and trained operating personnel are available to operate the Schedule Units and the Connection Facilities, as the case requires, properly, efficiently and within manufacturer's guidelines and

		<p>specifications and are able to respond to emergency conditions;</p> <p>1.1.72.2.3. 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;</p> <p>1.1.72.2.4. appropriate monitoring and testing is carried out to ensure that equipment will function properly under normal and emergency conditions;</p> <p>1.1.72.2.5. equipment is operated and maintained in a manner safe for workers, the general public, and the environment; and</p> <p>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 Schedule Units and the Connection Facilities, as the case requires;]</p>
1.1.73.	"Reasonable and Prudent Operator"	<p>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, any references herein to the "standards of a Reasonable and Prudent Operator" shall be construed accordingly;</p>

1.1.74.	“SAPP”	means the Southern African Power Pool;
1.1.75.	“SAPP Governing Documents”	means the last approved revisions of the following agreements, the Inter-Utility Memorandum of Understanding (“IUMOU”), the Agreement Between Operating Members (“ABOM”), the SAPP Market Book of Rules, the SAPP Operating Guidelines and any other document that governs trading within SAPP as approved from time to time;
1.1.76.	"Schedule unit"	has the meaning given to it in the Market Rules;
1.1.77.	"Scheduled Outage"	means a Scheduled National Electricity Grid Outage and/or a Scheduled Plant Outage;
1.1.78.	"Signature Date"	means the date this MPA is duly signed and dated by the last Party signing it;
1.1.79.	"Standing Data"	means the data that an Eligible Seller must provide pursuant to Rule 13 of the Market Rules;
1.1.80.	"Supply Point"	has the meaning given to it in the Market Rules;
1.1.81.	"Suspended Trading Status"	has the meaning given to it in clause 7.4;
1.1.82.	"System Operator"	has the meaning given to it in the Market Rules;
1.1.83.	"Terminated Trading Status"	has the meaning given to it in clause 7.5;
1.1.84.	"Termination Date"	means the date of termination of this MPA;
1.1.85.	"Termination Notice"	means a written notice of termination served by the Eligible Seller or the Market Operator to the other Party;
1.1.86.	"Trading Day"	has the meaning given to it in the Market Rules;
1.1.87.	“Transmission Connection Agreement”	means the Agreement that specifies the terms and conditions under which the Network Operator connects the Eligible Seller to the National Electricity Grid and the terms and conditions that will regulate such connection and establish

		the technical specifications for the connection also referred to as the "TCA";
1.1.88.	"Transmission System Outage"	means a disruption or failure of the Transmission System;
1.1.89.	"Transmission System"	has the meaning given to it in the Connection Agreement(s);
1.1.90.	"Transmission Use of System Agreement"	means the agreement which regulates the wheeling of electricity from the Eligible Seller's Generation Facility through the Transmission System, in accordance with the Market Rules and Market Frameworks;
1.1.91.	"Unscheduled Plant Outage"	means any period when a Schedule Unit(s) out of service as a result of an unforeseen equipment failure or for any other reason;
1.1.92.	"Unscheduled Transmission System Outage"	has the meaning given to it in the Connection Agreement(s);
1.1.93.	"Unsold Energy"	has the meaning given to it in the Market Rules;
1.1.94.	"Week"	means the period between 00:00 hours on a Monday and 24:00 hours on the following Sunday;
1.1.95.	"Year"	means the period starting 01 July and ending 30 June annually.

2. INTERPRETATION

- 2.1. In this MPA, 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 MPA;
 - 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 MPA;
 - 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, including this MPA and the Market Rules or a provision of this MPA or the Market Rules, 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 MPA 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 MPA;
 - 2.1.9. This MPA 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 MPA 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 MPA described both in numerals and in words, the words shall prevail in the event of any conflict between the two;

- 2.1.11. wherever provision is made for the giving or issuing of any notice, decision, consent, acceptance, agreement, expression of satisfaction, endorsement, approval, certificate, instruction or determination by any Person, unless otherwise specified, such notice, decision, consent, acceptance, agreement, expression of satisfaction, endorsement, approval, certificate, instruction or determination shall be in writing (and writing shall be inclusive of mail transmitted electronically) and the words “notify”, “decide”, “consent”, “accept”, “agree”, “endorse”, “approve”, “certify”, “instruct” or “determine” and other cognate expressions shall be construed accordingly;
- 2.1.12. the words “include” and “including” are to be construed without limitation;
- 2.1.13. references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- 2.1.14. Should this MPA 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
- 2.1.15. 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 MPA which relates to invoicing and payments, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last falls on a Saturday, Sunday or public holiday in Namibia, in which case the last day shall be the next successive Business Day.

2.3. Construction

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

2.4. Annexures

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

3. RELEVANT LEGISLATION AND MARKET RULES

3.1. Conflicts

- 3.1.1. The Parties acknowledge that this MPA is not intended to require either Party to act in any way that would put it in breach of any of its obligations under the Grid Code, compliance with any condition of the Transmission Licence and the Generation Licence (in the case of Eligible Seller).
- 3.1.2. In the event of any inconsistency between the provisions of this MPA and any of the following:
 - 3.1.2.1. The Electricity Act;
 - 3.1.2.2. The Market Rules;
 - 3.1.2.3. The Grid Code;
 - 3.1.2.4. The conditions contained in the Eligible Seller's Licence;
 - 3.1.2.5. The Market Participation Agreement;
 - 3.1.2.6. The Connection Agreement.
- 3.1.3. then the documents as set out in the order hereto above, shall prevail to the extent of such inconsistency.
- 3.1.4. To the extent that this MPA (including any obligation herein for either Party to comply with the standards of a Reasonable and Prudent Operator) conflicts with:
 - 3.1.4.1. The Grid Code, the provisions of the Grid Code shall prevail to the extent of such conflict. To the extent that the Grid Code is silent or does not deal in sufficient detail, then this MPA shall prevail provided that neither Party shall be required to act in breach of any of its obligations under the Grid Code, the Transmission Licence (in the case of NamPower) or the Generation Licence (in the case of the Eligible Seller);
 - 3.1.4.2. To the extent that the Transmission Licence or the Generation Licence conflicts with the Grid Code, the Grid Code, shall prevail to the extent of such conflict.

4. COMPLIANCE WITH THE MARKET RULES

4.1. Eligible Seller

4.1.1. The Eligible Seller hereby agrees to be bound by and to comply with all of the provisions of the Market Rules so far as they are applicable to the Eligible Seller once it has been registered by the Market Operator for the transactions contemplated in the MPA.

4.2. Market Operator

4.2.1. The Market Operator hereby agrees to be bound by and to comply with all of the provisions of the Market Rules so far as they are applicable to the Market Operator.

4.3. Modifications, amendments or updates

4.3.1. Each of the Eligible Seller and the Market Operator herewith acknowledges and confirms that:

4.3.1.1. the Market Rules may be modified, amended or updated by the ECB with the approval of the Competent Authority from time to time in accordance with the Market Rules and the Electricity Act;

5. COMMENCEMENT AND TERM

5.1. Term

5.1.1. This MPA shall come into force on the Signature Date and, subject to the other provisions of this MPA, and shall continue in full force and effect until terminated in accordance with clause 15 (Termination).

6. CONDITIONS PRECEDENT

6.1. On Signature Date

6.1.1. The rights and obligations of the Parties under this MPA set out in clause 2 (Interpretation), clause 3 (Related Legislation and Market Rules), clause 6 (Conditions Precedent), clause 13 (Representations and Warranties), clause 14 (Force Majeure), clause 16 (Termination), clause 17 (Dispute

Resolution), clause 18 (Liability for Damages or Loss and Indemnifications), clause 19 (Cession and Assignment), clause 20 (Confidentiality), clause 21 (Survival), clause 22 (Notices and Domicilium), clause 23 (Applicable Law and Jurisdiction) and clause 24 (General and Miscellaneous) shall come into force and effect on and from the Signature Date.

6.2. Achieving “Active Trading Status”

Upon signature of this MPA, the Eligible Seller’s trading status shall be “Not-Active Trading Status” by default and the remainder of the MPA shall only become fully effective following the satisfaction by the Eligible Seller, or the waiver by the Market Operator in writing, of the following conditions precedent to achieve an “Active Trading Status”:

- 6.2.1. The Eligible Seller obtaining and submitting to the Market Operator a confirmation issued by the ECB, that all the conditions as set out in the [Generation Licence] [and/or Trading Licence] [and/or Import Licence] [and/or Export Licence], have been met and are unconditionally valid for the intended transactions contemplated in this MPA;
- 6.2.2. [The Contestable Customer hosting the Eligible Seller, and the respective Network Operator having entered into a Connection Agreement and such Connection Agreement being in full force and effect, with all conditions contained therein having been fulfilled, for each Schedule Unit related to the intended transactions contemplated in this MPA];
- 6.2.3. [The Eligible Seller, and the respective Network Operator having entered into a Connection Agreement and such Connection Agreement being in full force and effect, with all conditions contained therein having been fulfilled, for each Schedule Unit related to the intended transactions contemplated in this MPA];
- 6.2.4. [The Contestable Distributor and the respective Network Operator having entered into a Connection Agreement and such Connection Agreement being in full force and effect, with all conditions contained therein having been fulfilled, for each Schedule Unit related to the intended transactions contemplated in this MPA];
- 6.2.5. The Eligible Seller obtaining, and submitting a confirmation(s) issued by the Network Operator that it has duly applied for and passed all minimum requirements to be connected to the Transmission System, in order to

formally commence with Grid Code compliance and other related testing, as may be required from time to time, for each Schedule Unit related to the intended transactions contemplated in this MPA, in line with the provisions of the Connection Agreement;]

6.2.6. [The Contestable Customer and the respective Network Operator having entered into a Connection Agreement and such Connection Agreement being in full force and effect, with all conditions contained therein having been fulfilled, for each Schedule Unit related to the intended transactions contemplated in this MPA];

6.2.7. The Eligible Seller and the Network Operator having entered into a Transmission Use of System Agreement, as applicable, and such Transmission Use of System Agreement being in full force and effect, with all conditions contained therein having been fulfilled;

6.2.8. [For purposes of export, the Eligible Seller satisfying all the conditions in the SAPP IUMOU to become a Market Participant as defined therein and submitting the written confirmation from SAPP to the Market Operator;]

6.2.9. The Eligible Seller having issued or lodged the minimum Financial Security; and

6.2.10. The Eligible Seller providing to the Market Operator, its applicable General Data and Standing Data for each transaction contemplated in this MPA;

7. ELIGIBLE SELLER TRADING STATUS

7.1. General

7.1.1. Subject to the conditions as set out in Clause 6, the Eligible Seller shall become eligible to trade in line with this MPA and the Market Rules and thus be considered fully registered.

7.1.2. During the term of this MPA, the trading status of the Eligible Seller will be updated periodically to reflect its current status and will be published and updated with its Standing Data in accordance with the Market Rules.

7.1.3. The Market Operator has the duty to notify the Eligible Seller in writing, as soon as reasonably possible, of any change in its trading status. Such notification shall include the reasons for causing the respective change

and may be incorporated as part of any other notification provision as provided for in this MPA.

7.2. Active Trading Status

7.2.1. The trading status of the Eligible Seller shall be considered in an "**Active Trading Status**" effectively confirming that the Conditions Precedent have been met and authorising the trade of electricity in the MSB Market.

7.2.2. All the Conditions Precedent shall be maintained to be keep the "**Active Trading Status**".

7.3. Not-Active Trading Status

7.3.1. The status of the Eligible Seller shall be considered in a "**Not-Active Trading Status**", effectively confirming that one or more of the requirements listed within clause 7.2 and 6.2 have not been met or maintained and the Eligible Seller is thus not authorised to trade electricity bilaterally.

7.4. Suspended Trading Status

7.4.1. The status of the Eligible Seller shall be considered in a "**Suspended Trading Status**" on the occurrence of any Eligible Seller Event of Default, effectively confirming that the Eligible Seller is not authorised to trade in the MSB Market, and that all transactions contemplated in this MPA has been suspended until such time that the Eligible Seller Event of Default has been remedied or the MPA is duly terminated.

7.5. Terminated Trading Status

7.5.1. The trading status of the Eligible Seller shall be considered in a "**Terminated Trading Status**" on the date of the Market Operator receiving or sending a Notice of Termination, effectively confirming that the Eligible Seller is not eligible to trade in the MSB.

8. FINANCIAL SECURITY

8.1. Financial Security Requirements

- 8.1.1. The Eligible Seller shall submit the following as Financial Security guaranteeing its payment obligations as an Eligible Seller in accordance with the Market Rules to the Market Operator as follows:
 - 8.1.1.1. Proof of payment of the minimum Financial Security amount as specified in Clause 8.1.2, or any top-up as may be required, in the respective Nominated Account; or
 - 8.1.1.2. a valid bank guarantee from an Approved Provider in its substantial form as set out and attached as Annexure A;
- 8.1.2. The minimum Financial Security amount which should be maintained at all times shall be the greater of the value of:
 - 8.1.2.1. The minimum amount of the Namibia Dollar equivalent of five thousand (5,000) United States Dollars (USD), or as may be updated from time to time. The prevailing USD/NAD exchange rate as published by the Bank of Namibia on the day of deposit shall be used ; or
 - 8.1.2.2. The average monthly settle amounts for the three most recently published settlement reports. .

8.2. Management of the Financial Security

- 8.2.1. The Market Operator shall periodically monitor the related Financial Security requirements and promptly notify the Eligible Seller of any adjustment requirements related to the minimum value of the Financial Security. Such updated Financial Security should be provided within thirty (30) days from the respective date of notice to increase the Financial Security.
- 8.2.2. All costs associated with operating and maintaining the Nominated Account, including transaction fees and administrative charges, save for clause 8.2.3, shall be borne by the interest accrued on the Nominated Account balance. Any remaining interest shall be proportionally credited to the Eligible Seller on an annual basis, but in any event in accordance with NamPower's financial year.
- 8.2.3. With at least seven (7) days' written notice and on the condition that no settlement amounts are owed to the Market Operator for any period, the

Eligible Seller is entitled to lodge a request with the Market Operator to withdraw its Financial Security for periods where it does not intend to trade, as follows:

8.2.3.1. A request to return its bank guarantee to a nominated person, which nominated person shall collect the bank guarantee from the Market Operator; or

8.2.3.2. Provide the Market Operator with a nominated bank account in which the requested full Financial Security amount shall be deposited.

8.2.4. All and any associated administrative costs which shall be borne by such a request as described in clause 8.2.3 shall be for the account of the Eligible Seller and its trading status shall be adjusted accordingly as provided for in clause 7 above.

9. METERING AND SETTLEMENTS

9.1. Supply and Delivery

9.1.1. Subject to and in accordance with the terms and conditions of this MPA and the Market Rules, the Eligible Seller commits to sell, supply and deliver, in accordance with its Bilateral Trading Nominations, and at the Delivery Point(s) all Delivered Energy generated in accordance with the Final Dispatch Schedule and as measured by the Metering Equipment for all Schedule Units.

9.1.2. Title to, and risk of loss, for the Delivered Energy shall pass from the Eligible Seller at the Delivery Point, in accordance with the Market Frameworks.

9.2. Metering

9.2.1. The Delivered Energy generated by the Scheduled Units shall be monitored, measured and recorded by the Metering Equipment at the Delivery Point in accordance with the provisions of the Grid Code and respective Transmission Use of System Agreement.

9.2.2. Metering data shall be made available to the Market Operator at all times.

9.3. Other Equipment and/or information

9.3.1. The Parties undertake to co-operate with each other and their respective contractors (as the case may be), to make available and to provide such information, data, signals (which may include supervisory control and data acquisition (SCADA) systems or weather monitoring inputs or outputs) and assistance as may be reasonably requested of each other in relation to operating and ensuring compliance of the Schedule Units in the MSB Market.

9.4. Settlements

9.4.1. The Market Operator is responsible for determining the settlements in accordance with the Market Rules based on the Final Dispatch Schedule and the respective meter data from both the Delivery Points and Point(s) of Delivery, as applicable. [In respect to exports and trading on the SAPP Physical Markets, settlements shall be done in accordance with the SAPP Market Book of Rules].

10. PAYMENT FOR ELECTRICITY

10.1. Delivered Energy

10.1.1. It is herewith recorded that any payment for Delivered Energy shall be governed by the respective Power Purchase Agreement or Power Supply Agreement between the Eligible Seller and Contestable Customer(s), as the case may be.

10.2. Eligible Seller Deemed Energy or Curtailment

10.2.1. The Market Operator shall not be liable for any payment of Delivered Energy or for any deemed energy payments for any energy not delivered.

10.2.2. For avoidance of doubt, the Market Operator shall assume no liability for the occurrence of any event outside the Market Operator's control which prevents or hinders any Schedule Unit from producing electrical energy or which prevents or hinders electrical energy being delivered to Contestable Customers.

10.2.3. This includes no payments as a result of any curtailment for emergency conditions, interconnection limits or any curtailment issued by the System Operator in the Final Dispatch Schedule .

10.3. Balancing Payments

- 10.3.1. Balancing payments will be calculated by the Market Operator.
- 10.3.2. Balancing payments will be in accordance with the Market Rules and the Namibia Balancing Framework.
- 10.3.3. [In respect of export, in the event the Eligible Seller is out of balance the Eligible Seller shall be required to correct the imbalance, in accordance which include financial settlement in accordance with the procedure as set out in the SAPP Market Book of Rules.]

11. INVOICING AND PAYMENT

11.1. Frequency

- 11.1.1. The balancing payment, as calculated and adjusted in accordance with clause 10.3 (Balancing Payments) shall be invoiced in arrears at the end of each Billing Period and shall be invoiced in Namibia Dollars.

11.2. Payments Free from Tax

- 11.2.1. All sums payable by either Party under this MPA shall be paid:
 - 11.2.1.1. free of any restriction or condition; and
 - 11.2.1.2. 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.

11.3. Deductions Made Whole

- 11.3.1. Each Party shall make any payments payable by it under this MPA, without withholding or deduction of, or in respect of, any Tax, unless required by Law.
- 11.3.2. If any such withholding or deduction of any Tax is required the Party making the payment shall, when making the payment to which the withholding or deduction relates, pay the receiving Party such additional amounts as will ensure that the receiving Party receives the same total

amount that it would have received if no such withholding or deduction had been required.

- 11.3.3. Clause 11.3.2 does not apply in the event where a Party is compensated or allowed to recoup such Tax via alternative mechanisms.

11.4. Invoicing and Payment Procedure

- 11.4.1. Invoices for all payments due under this MPA shall be consolidated and submitted by the Market Operator to the Eligible Seller by the second (2nd) 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.
- 11.4.2. Each invoice shall be due and payable on or before the tenth (10th) 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.
- 11.4.3. Any amount properly due from one Party to the other Party pursuant to this MPA 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.
- 11.4.4. Should a Party dispute an invoice it shall notify the other Party within three (3) 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 seven (7) 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 seven (7) days from the resolution of such dispute.

- 11.4.5. 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.
- 11.4.6. Should an invoice be in error as a result of a metering or reconciliation error in settlement, 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.
- 11.4.7. The Market Operator shall notify the Eligible Seller of its bank account details for payment of any balancing payments due.
- 11.4.8. 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.
- 11.4.9. The Market Operator may at any time invoke its rights under the Market Rules and Financial Security to recover any payments owed to it by the Eligible Seller.

12. CONTROL AND OPERATION OF THE POWER PROJECT

12.1. Operation and Control

- 12.1.1. The Eligible Seller shall appoint a reputable operations and maintenance representative(s) for the efficient and reliable operation of the power generation facilities under this agreement. Such representative(s) shall have the necessary qualifications, experience, and expertise to oversee the day-to-day operations, maintenance, and troubleshooting of the power generation facilities and to adhere to any and all instructions by the System Operator.
- 12.1.2. The Eligible Seller shall promptly notify the Market Operator of the appointed representative(s)' full name, qualifications, contact details (including phone number and email address), and official designation. The contact details of the representative shall be kept up to date, and any changes shall be communicated in writing within seven (7) days of such changes taking effect.
- 12.1.3. The representative(s) shall serve as the primary point of contact between Eligible Seller and Market Operator for all matters related to the operation,

maintenance, and performance of the respective power generation facilities. The representative(s) shall be available for communication during regular business hours and, in the case of emergencies or critical situations, shall be reachable on a 24/7 basis.

12.2. Bilateral Trading Nominations

- 12.2.1. The Eligible Seller will be responsible for declaring its intention to trade by formally submitting a Bilateral Trading Nomination in the substantial form and template supplied by the Market Operator.
- 12.2.2. Bilateral Trading Nominations shall not be accepted after market closure on the respective Trading Day. This also applies to any forward nominations as specified by the Market Operator.
- 12.2.3. Should a Contestable Quantity be reached for any Contestable Customer at any point in time during the applicable Year, the energy in excess of the Contestable Quantity shall not be deemed delivered for the remainder of the Year and will be deemed Unsold Energy.
- 12.2.4. It remains the responsibility of the Eligible Seller to ensure that the energy nominated will be matched by the respective Contestable Customer's load for each hour. Any energy produced by the Eligible Seller but not consumed by the Contestable Customer will be deemed Unsold Energy.
- 12.2.5. All Bilateral Trading Nominations shall be sent to the following address MSBScheduling@nampower.com.na. Any change to the address shall be duly notified to the Eligible Seller in writing.

12.3. Dispatch

- 12.3.1. The Eligible Seller will be dispatched or shall self-dispatch, as the case may be, in accordance with the Market Rules and applicable Connection Agreement.
- 12.3.2. The Eligible Seller will be subject to any formal change to the Constrained Schedule and/or any curtailment instruction as issued from the Market Operator or System Operator as the case may be.

12.4. Availability Declaration

- 12.4.1. The Eligible Seller shall provide to the Market Operator in writing for each year (after taking into consideration Scheduled Plant Outages), by no later than 30 (thirty) days prior to the first (1st) January of the ensuing year to which the forecast relates, its Availability Declaration. For the first year (or remainder thereof), the Eligible Seller shall provide the Market Operator with an Availability Declaration as part of its General Data and Standing Data submission contemplated in clause 6.2.10.
- 12.4.2. The Availability Declaration must include proposals for Scheduled Plant Outages and specify the proposed:
 - 12.4.2.1. number of expected Scheduled Plant Outages and the extent of expected reductions in the output of any Schedule Units as a result of such Scheduled Plant Outages; and
 - 12.4.2.2. the estimated dates and duration of each Scheduled Plant Outage.
- 12.4.3. Subject to the terms and conditions of this MPA, the Eligible Seller shall declare the Schedule Units available for generation of Delivered Energy except:
 - 12.4.3.1. for reasons of Scheduled Plant Outages or Unscheduled Plant Outages; or
 - 12.4.3.2. where to do so would not be in accordance with the standards of a Reasonable and Prudent Operator; or
 - 12.4.3.3. in circumstances relating to safety (of either personnel or the Power Project or apparatus); or
 - 12.4.3.4. to the extent of any illegality, in circumstances where to do so would be unlawful; or
 - 12.4.3.5. for reasons of Force Majeure; or
 - 12.4.3.6. in any other circumstances, with the Market Operator's approval.
- 12.4.4. The Availability Declaration are indicative only, and deviations shall not be regarded as a breach of contract.

12.5. Further revisions

12.5.1. The Eligible Seller shall, as soon as is reasonably practicable, make revisions to the Availability Declaration submitted to the Market Operator should circumstances affecting the operation of the Schedule Units or Generation Facilities or its operating characteristics change at any time.

12.6. Communication of Declarations

12.6.1. Each Party hereby authorises the other Party to record all telephone voice communications relating to the dispatch of the Schedule Units 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.

12.7. Coordination

12.7.1. The Eligible Seller and the Market Operator shall as far as practically possible, coordinate the timing for both Scheduled Plant Outages and Scheduled National Electricity Grid Outages as may be received from the System Operator and Network Operator(s) from time to time.

12.8. Unscheduled Plant Outages

12.8.1. The Eligible Seller shall notify the Market Operator promptly upon the occurrence of any event resulting in the Schedule Units being unable to operate as per the Revised Constrained Schedule.

13. REPRESENTATIONS AND WARRANTIES

13.1. The Eligible Seller Warranties

13.1.1. The Eligible Seller hereby represents and warrants to the Market Operator that:

13.1.1.1. it is a validly existing legal entity under the Laws of Namibia;

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

13.1.1.3. it has the full legal capacity and authority to enter into and carry out its obligations under this MPA and this MPA

constitutes a valid, legally binding and enforceable obligation of the Eligible Seller;

- 13.1.1.4. to the best of the Eligible Seller's knowledge and belief, all Consents necessary to allow the Eligible Seller to enter into this MPA and to carry out the transactions contemplated herein, including approval by the relevant governance structure of the Eligible Seller, have been obtained before the Signature Date and it shall use its best efforts to keep them remaining in full force and effect for the duration of this MPA;
- 13.1.1.5. to the best of the Eligible 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 Eligible Seller or of any agreement by which the Eligible Seller is bound, which restrict or prohibit the ability of the Eligible Seller to enter into and perform the terms of this MPA;
- 13.1.1.6. execution of this MPA does not conflict with any provision of any Law or any provision of the articles or memorandum of association of the Eligible Seller in effect as at the Signature Date;
- 13.1.1.7. 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 Eligible Seller's knowledge are being threatened against the Eligible Seller or any of its assets, which might materially or adversely affect the Eligible Seller's ability to perform its obligations under this MPA or result in the dissolution of the Eligible Seller ;
- 13.1.1.8. execution of this MPA 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 Eligible Seller is a party or by which the Eligible Seller or its property is bound;
- 13.1.1.9. that the individual executing this MPA, and any document in connection herewith, on its behalf has been duly authorised to

execute this MPA and any document in connection herewith, and has the full power and authority to bind it;

- 13.1.1.10. that, except for registration as an Eligible Seller and/or the registration of any of its Generation Facilities under the Market Rules, it have obtained all permits, licences and other authorisations that may be necessary to enable it to carry on the business and perform the functions and duties of a Eligible Seller as described in this MPA and the Market Rules;
- 13.1.1.11. that the information provided in this MPA is up to date, true, accurate and complete in all respects;
- 13.1.1.12. that, subject to any derogation that it may have obtained pursuant to the Market Rules, its communication facilities and equipment comply with all applicable technical requirements of the Market Rules;
- 13.1.1.13. that it has adequate qualified employees and other personnel and organisational and other arrangements that are sufficient to enable it to perform all of the functions and duties applicable to Eligible Sellers and to the type of Eligible Seller of which it forms part, as described in this MPA and the Market Rules; and
- 13.1.1.14. that this MPA constitutes a legal and binding obligation on it, enforceable against it in accordance with its terms.

13.2. Market Operator Warranties

- 13.2.1. The Market Operator hereby represents and warrants to the Eligible Seller that:
 - 13.2.1.1. it is a validly existing legal entity under the Laws of Namibia which on the date of this MPA is wholly owned by the Government;
 - 13.2.1.2. it is a private limited company incorporated under the Laws of Namibia which has been in continuous existence since incorporation;

- 13.2.1.3. it has the full legal capacity and authority to enter into and carry out its obligations under this MPA and this MPA constitutes a valid, legally binding and enforceable obligation of the Market Operator;
- 13.2.1.4. all Consents necessary to allow the Market Operator to enter into this MPA and to carry out the transactions contemplated herein have been given or received and remain in full force and effect;
- 13.2.1.5. that it has adequate qualified employees and other personnel and organisational and other arrangements that are sufficient to enable it to perform all of the functions and duties applicable to the Market Operator as described in this MPA and the Market Rules;
- 13.2.1.6. there are no applicable Laws in force on the Signature Date or any provisions of any organisational document of Market Operator or of any agreement by which Market Operator is bound, which restrict or prohibit the ability of Market Operator to enter into and perform the terms of this MPA; and
- 13.2.1.7. that this MPA constitutes a legal and binding obligation on it, enforceable against it in accordance with its terms.

14. **FORCE MAJEURE**

14.1. **Definition of Force Majeure Event**

- 14.1.1. A "**Force Majeure Event**" means any event or circumstance which:
 - 14.1.1.1. is beyond the reasonable control of the Party affected by the Force Majeure (the "**Affected Party**") or its Contractors;
 - 14.1.1.2. 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 MSB agreement (including, in respect of the Affected Party, this MPA), Consents or applicable Law;
 - 14.1.1.3. 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

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

14.1.2. 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 14.1.1 above, that part of the event or circumstance that could have been mitigated shall not be a Force Majeure Event.

14.1.3. 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 14.1.1 above:

14.1.3.1. 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

14.1.3.2. 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

14.1.3.3. pandemic, epidemic, famine or plague; or

14.1.3.4. any event or circumstance constituting a Force Majeure Event under any other MSB agreement; or

14.1.3.5. 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

14.1.3.6. radioactive contamination or ionising radiation; or

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

14.1.4. The following shall not constitute a Force Majeure Event unless caused by or resulting from a Force Majeure Event:

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

14.1.4.2. late delivery or interruption in the delivery of machinery, equipment, materials, spare parts or consumables;

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

14.1.4.4. any technical or operational problems with the Generation Facilities or Schedule Units arising from a fault in the construction, operation and/ or maintenance of the Generation Facilities or Schedule Units which is attributed to any failure by the Affected Party to obtain and/ or maintain a Consent;

14.1.4.5. wear and tear, flaws, breakdown in or degradation of any equipment or machinery; or

14.1.4.6. intentional acts, errors or omissions of the Affected Party or its Contractors.

14.2. Procedure

14.2.1. If an Affected Party wishes to cite a Force Majeure Event as being the cause of it being unable to meet any or some of its obligations hereunder, the Affected Party shall, as soon as reasonably practicable of it becoming aware of the Force Majeure Event, but not later than two (2) 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.

14.2.2. 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 MPA and shall consult to develop and implement a remedial plan to minimise each Party's losses.

- 14.2.3. The Affected Party shall promptly provide notice to the other Party of:
 - 14.2.3.1. the cessation of the Force Majeure Event; and
 - 14.2.3.2. its ability to immediately recommence performance of its obligations under this MPA by reason of the cessation of the Force Majeure Event.
- 14.2.4. During the occurrence of a Force Majeure Event, each Party shall bear its own costs resulting from the occurrence of the Force Majeure Event.

14.3. Consequences of a Force Majeure Event

- 14.3.1. Notwithstanding any other provisions of this MPA, to the extent the Affected Party hereto is unable to perform any of its obligations under this MPA or the Market Rules 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 14.3 (Consequences of a Force Majeure Event).
- 14.3.2. 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 14.2 (Procedure), not be liable for any failure to perform an obligation under this MPA as a consequence of such Force Majeure Event, to the extent only that:
 - 14.3.2.1. such performance is prevented, hindered or delayed by the Force Majeure Event; and
 - 14.3.2.2. such failure could not have been mitigated by the Affected Party acting in accordance with Prudent Industry Practice.

14.4. Termination on Account of Force Majeure

- 14.4.1. 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 MPA, either Party may serve a Notice of Intention to Terminate on the other Party.

15. BREACH AND EVENTS OF DEFAULT

15.1. Breach Notification and Remedy Procedure

- 15.1.1. If either Party becomes aware that it is or could be in breach of any of the provisions of this MPA (other than a breach of any of its payment obligations under this MPA), the Market Rules, SAPP Market Rules or other requirement in force at the time (the “**Breaching Party**”), then such Breaching Party shall as soon as reasonably practicable, but no later than fourteen (14) Business Days after becoming so aware, notify the other Party (the “**Non-Breaching Party**”) of the breach or potential breach and advise whether in its opinion the breach can be remedied and the timescale for the remedy and giving sufficient details thereof to the Non-Breaching Party to enable it to assess the importance of the breach.
- 15.1.2. If either Party in its opinion believes (the “**Notifying Party**”) that the other Party is or could be in breach of any of the provisions of this MPA (other than a breach of any of its payment obligations under this MPA) or the Market Rules, SAPP Market Rules or other requirement in force at the time (the “**Potentially Breaching Party**”) then the Notifying Party shall notify as soon as reasonably practicable, but no later than fourteen (14) Business Days after coming to such belief, the Potentially Breaching Party of the breach or potential breach and request the Potentially Breaching Party to advise whether the breach can be remedied and the timescale for the remedy and giving sufficient details thereof to enable the Notifying Party to assess the importance of the breach.
- 15.1.3. If either Party has determined that the other Party is in breach of this MPA (other than a breach of any of its payment obligations under this MPA) or the Market Rules, SAPP Market Rules or other requirement in force at the time, the Parties shall discuss the breach in good faith with the aim of agreeing on a means of remedying the breach.
- 15.1.4. If the breach is capable of remedy the Parties shall agree upon a time period, but in any event no longer than sixty (60) Business Days, within which the Breaching Party shall remedy the breach (the “**Remedy Period**”) provided that if such failure cannot be remedied by the Breaching

or Potentially Breaching Party within such period of sixty (60) Business Days with the exercise of reasonable diligence, then such Remedy Period shall be extended by mutual agreement for an additional reasonable period of time (not to exceed a further sixty (60) Business Days).

15.2. Market Operator Event of Default

15.2.1. The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the Eligible Seller of its obligations under this MPA or an Eligible Seller Event of Default, shall constitute a NamPower Default:

15.2.1.1. Any event, to the extent caused by NamPower, which prevents the Eligible Seller from participating in the MSB market; or

15.2.1.2. If NamPower is in breach of any of its obligation pursuant to clause 15.1, and such material breach is not rectified by NamPower within the Remedy Period, provided that such breach is not on account of Eligible Seller's failure to comply with its material obligations pursuant to this MPA.

15.3. Eligible Seller Event of Default

15.3.1. Each of the following shall constitute an Eligible Seller Event of Default, save to the extent excused by a Force Majeure Event (clause 14), and shall entitle the Market Operator to issue a Notice of Intention to Terminate to the Eligible Seller:

15.3.1.1. a default is caused by the Eligible Seller under the Connection Agreement(s) and is not remedied within the period, if any, specified for remedy for such breach in the respective agreement;

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

- 15.3.1.3. the Eligible Seller is in material breach of its obligations under this MPA;
- 15.3.1.4. the Eligible Seller has not participated in the MSB Market under the Market Rules in any transaction for any continuous period longer than three (3) months;
- 15.3.1.5. any lawful revocation or suspension of the Generation Licence, Export Licence, Import Licence or Trading licence, as applicable, due to the Eligible Seller's material failure to comply with the terms of the respective licence by the ECB;
- 15.3.1.6. failure of the Eligible Seller to pay any sum or sums due and owing to the Market Operator.

16. **TERMINATION**

16.1. **Events of Termination**

- 16.1.1. This MPA shall terminate on the earliest to occur of:
 - 16.1.1.1. Date of Market Operator serving a Termination Notice; or
 - 16.1.1.2. The date of the Market Operator receiving a Termination Notice from the Eligible Seller;
 - 16.1.1.3. the total dissolution of the MSB market as a result of amendments to the Market Rules.
 - 16.1.1.4. Upon the termination of the Connection Agreement(s).

16.2. **Notice of Intention to Terminate and Termination Notice**

- 16.2.1. A Party shall serve a Notice of Intention to Terminate on the other Party upon the occurrence of any of the following events:
 - 16.2.1.1. in the event that the Eligible Seller is unable to perform all or a material part of its obligations under this MPA for reasons for a Force Majeure Event (or the effects thereof) continuing for a consecutive period of more than twelve (12) months; or
 - 16.2.1.2. in the event of an Eligible Seller Event of Default; or

- 16.2.1.3. in the event of a Market Operator Event of Default; or
- 16.2.1.4. in the event that the Eligible Seller no longer wishes to participate in the market, at least thirty (30) days before issuance of the Termination Notice to the Market Operator.
- 16.2.2. Following the issue of a Notice of Intention to Terminate pursuant to clause 16.2.1.1 or clause 16.2.1.2, the conditions of clause 15.1.3 and clause 15.1.4 shall apply *mutatis mutandis*.
- 16.2.3. In the event the Parties do not remedy the breach as envisaged in clause 16.2.2 in the time periods provided, the Party who issued the Notice of Intention to Terminate may issue the Termination Notice.
- 16.2.4. At the same time of issuing a Termination Notice, the same Party shall duly inform the ECB.

16.3. Consequences of Termination

- 16.3.1. Notwithstanding the provisions of clause 16.1 and clause 16.2 above, if the status of the Eligible Seller becomes a Terminated **Trading** Status or this MPA is terminated, as the case may be, the Eligible Seller shall remain subject to and liable for all of its obligations and liabilities as a Eligible Seller which were incurred or arose under the Market Rules prior to the date of termination, as the case may be, regardless of the date on which any claim relating thereto may be made.
- 16.3.2. Upon termination of this MPA, both Parties shall be excused and relieved of all obligations and liabilities under this MPA, 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.
- 16.3.3. For avoidance of doubt, the Market Operator shall not assume any liability for termination of this MPA as a result of a Force Majeure Event, Eligible Seller Event of Default, termination by the Eligible Seller as per clause 16.2.1.4 or Government Action as per clause 16.3.4 below.
- 16.3.4. If a 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

Eligible Seller to perform its obligations under this MPA then either Party may upon not less than thirty (30) days' notice, terminate this MPA.

17. DISPUTE RESOLUTION

17.1. Procedure

- 17.1.1. If any Dispute arises relating to a MSB Agreement or any claims for damages or otherwise are made as the result of breach of any obligation thereunder, 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, in which case the Parties shall follow the applicable dispute resolution as set by the ECB.
- 17.1.2. Should the Parties fail to resolve such Dispute in accordance with clause 17.1.1 above within seven (7) days of their meeting or such longer period as the Parties may agree, the matter shall be elevated to chief executive (or equivalent) level for resolution.
- 17.1.3. Should the chief executives (or equivalent) of the Parties fail to resolve such Dispute in accordance with clause 17.1.2 above within fourteen (14) days of their meeting or such longer period as the Parties may agree, any Party may refer such dispute or difference to arbitration to be undertaken by three (3) arbitrators. The Parties shall agree on the identity of the arbitrators. Should the Parties fail to agree on the arbitrators within fourteen (14) days of the referral of the dispute to arbitration, the President of the AFSA shall appoint the arbitrators from a list of approved arbitrators having the requisite experience and expertise in the field of the Dispute.

17.2. Arbitration

- 17.2.1. Except where otherwise specifically provided for, any Dispute at any time between the Parties or any failure by them to reach agreement in regard to any matter arising out of or in connection with the MSB Agreements or regarding its interpretation, validity, execution, implementation, termination or cancellation, the said Dispute may, on written demand by any Party to the Dispute, be submitted to arbitration in accordance with AFSA Rules, this clause 17.2 being an arbitration agreement within the meaning of the aforementioned rules.

- 17.2.2. If any Dispute is submitted to arbitration in accordance with clause 17.2.1, then the Parties agree that any related disputes in or arising from any of the MSB Agreements shall be simultaneously submitted to arbitration by the same arbitrators.
- 17.2.3. The decision of the arbitrators shall be given in writing as soon as reasonably possible after the dispute has been referred to the arbitrators but not longer than six (6) weeks from the date on which the hearing, including argument, was concluded.
- 17.2.4. The decision in clause 17.2.3 shall be final and binding upon the Parties to the MSB Agreements 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.
- 17.2.5. Each Party shall bear its own costs and the costs of arbitration shall be borne equally by the Parties unless the arbitrators decide otherwise.
- 17.2.6. Arbitration shall be conducted under the AFSA Rules and shall be held in Windhoek, Namibia 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. The arbitration shall be conducted in the English language.
- 17.2.7. The Parties may be legally represented and may present evidence by independent experts or as otherwise permitted by the arbitrators.
- 17.2.8. 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 17.2 (Arbitration).

17.3. Obligations during Disputes

- 17.3.1. While a Dispute is continuing, the Parties are required to continue to perform their respective obligations, under this MPA or the MSB

Agreements, as the case may, be until such dispute has been fully and finally resolved.

- 17.3.2. Where a Dispute has been referred for resolution by arbitration in accordance with the 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.

17.4. Proceedings in Confidence

- 17.4.1. 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 the MSB Agreements, shall not be open to third parties, it being agreed that for the purposes of the MSB Agreements 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 20 (Confidentiality).

17.5. Related Disputes

- 17.5.1. The Parties agree that where a dispute under the MSB Agreements raises issues which are substantially the same as or connected with issues between the Eligible Seller and any other contractor employed by the Eligible Seller or other market participant as anticipated in the Market Rules in respect of a Generation Facility and/or any third party ("**Other Entity**"), including any counterparty under other MSB agreements ("**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 MPA 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.
- 17.5.2. Subject to the agreement of the Other Entities in respect to which a Related Dispute relates, either Party to this MPA 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 MPA, on the ground that:

- 17.5.2.1. a common question of law or fact arises in two or more of the arbitral proceedings,
 - 17.5.2.2. the rights to relief claimed in those arbitral proceedings are in respect of, or arise out of the transaction contemplated herein or
 - 17.5.2.3. for some other reason specified in the application, it is desirable that the arbitral proceedings be consolidated.
- 17.5.3. 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 17.5.2:
- 17.5.3.1. The arbitral proceedings be consolidated on terms specified in the order; or
 - 17.5.3.2. The arbitral proceedings be heard at the same time or in a sequence specified in the order; or
 - 17.5.3.3. Any of the arbitral proceedings be stayed pending the determination of any other of the arbitral proceedings.
- 17.5.4. Where an application has been made under clause 17.5.3 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:
- 17.5.4.1. 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.
 - 17.5.4.2. If two or more arbitrators are hearing the Related Proceedings:
 - 17.5.4.2.1. the arbitrator that received the application will communicate the substance of the application to the other arbitrators concerned; and

17.5.4.2.2. the arbitrators will, as soon as practicable, deliberate jointly on the application.

17.5.4.3. Where the arbitrators agree, after deliberation on the application, that a particular order should be made in relation to the Related Proceedings:

17.5.4.3.1. the arbitrators must jointly make the order and such order as to costs or wasted costs as may be appropriate;

17.5.4.3.2. the Related Proceedings must be dealt with in accordance with the order;

17.5.4.3.3. 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; and

17.5.4.3.4. The judgment upon the award rendered by the arbitrator may be entered in any court having competent jurisdiction.

18. **LIABILITY FOR DAMAGE OR LOSS AND INDEMNIFICATION**

18.1. **Indemnity**

18.1.1. Each Party (the "**Indemnifying Party**") shall indemnify, defend and hold harmless the other Party (the "**Indemnified Party**") against:

18.1.1.1. Any and all third party claims, actions, suits or proceedings against the Indemnified Party for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Indemnifying Party of any

of its obligations under any MSB Agreement, except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of the MSB Agreement or breach of statutory duty on the part of the Indemnified Party, its contractors, servants or agents; and

18.1.1.2. any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by the Indemnified Party from third party claims arising by reason of:

18.1.1.2.1. breach by the Indemnifying Party of any of its obligations under this Agreement, except to the extent that any such losses, damages, costs and expenses including legal costs, fines, penalties and interest (together to constitute "**Indemnifiable Losses**") has arisen due to a negligent act or omission, breach of a MSB Agreement or breach of statutory duty on the part of the Indemnified Party, its contractors, servants or agents; or

18.1.1.2.2. any of the representations or warranties of the Indemnifying Party under the MSB Agreements being found to be inaccurate or untrue.

18.1.2. Provided that this clause 18 shall not apply to such breaches by the Indemnifying Party, for which specific remedies have been provided for under any MSB Agreements.

18.1.3. Neither Parties shall be liable for any breach of the MSB Agreements directly or indirectly caused by a Force Majeure Event, except to the extent that the Indemnified Party is at fault or is negligent and save for any and all payment obligations as have been provided for in the MSB Agreements.

18.2. Limitation of Liability

18.2.1. 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.

18.2.2. 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 the MSB Agreements.

18.2.3. The liability of the defaulting Party in respect of all Losses suffered or incurred by the non-defaulting Party shall in no circumstances exceed NAD [1,000,000.00 (One Million Namibia Dollar)] per incident or series of related incidents arising out of or in connection with any one event across any MSB Agreement, and the maximum aggregate liability of the defaulting Party in respect of all Losses suffered or incurred by the non-defaulting Party in respect of any events occurring across any MSB Agreement in any Year shall not exceed NAD [5,000,000.00 (Five Million Namibia Dollars)].

18.2.4. In the event of a claim being made against an Indemnified Party:

18.2.4.1. The Indemnifying Party shall be promptly notified of the claim and may at its own expense conduct all negotiations for the settlement of the same, and any litigation that may arise from the claim;

18.2.4.2. The Indemnified Party shall not, unless and until the Indemnifying Party has failed to unconditionally agree in writing to take over the conduct of the negotiations or litigation in respect of the claim within ten (10) Business Days of receiving notice from the Indemnified Party requesting it to do so, make any admission, which might be prejudicial to the claim;

18.2.4.3. The conduct by the Indemnifying Party of such negotiations or litigation shall be conditional upon the Indemnifying Party having first given to the Indemnified Party such reasonable security as the Indemnified Party shall from time to time notify the Indemnifying Party that it requires to cover the amount ascertained or agreed or estimated, as the case may be of any Losses for which the Indemnified Party may become liable in respect of the claim; and

18.2.4.4. The Indemnified Party shall, at the request of the Indemnifying Party, afford all reasonable assistance for the purpose of contesting the claim, and shall be paid by the Indemnifying Party (within ten (10) Business Days of the date of its invoice thereof) all reasonable expenses incurred in so doing.

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

18.3. Damages

18.3.1. Other than as provided in this MPA, 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 (which shall include, but not be limited to, loss of production, revenue, income or profit) incurred by such Party or any third party as a result of the performance or non-performance of the obligations imposed pursuant to this MPA or other MSB Agreements, irrespective of the causes thereof, including fault or negligence.

18.3.2. 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.

19. CESSION AND ASSIGNMENT

19.1. Prior Consent

19.1.1. The Parties shall not be entitled to cede or assign this MPA or any of its rights and obligations without the prior written consent of the other Party except as provided in clause 19.2 (Restructuring) hereto. Such consent shall not be unreasonably withheld.

19.1.2. Upon the actual ceding, assignment or transferring taking place, the Eligible Seller's Trading Status will be considered as "Not-Active Trading

Status” until it has met the conditions precedent for being considered in “Active Trading Status”.

19.2. Restructuring

19.2.1. Notwithstanding the above, NamPower, acting as the Market Operator, shall be entitled to cede, assign or transfer its rights and obligations under this MPA to a third party but only in the context of:

19.2.1.1. the dissolution of NamPower;

19.2.1.2. the restructuring, amalgamation, reorganisation or analogous event of NamPower; or

19.2.1.3. 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.

20. CONFIDENTIALITY

20.1. Confidential Information

20.1.1. 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 this MPA.

20.2. Duty to Maintain Confidentiality

20.2.1. 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 20.1 will 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.

20.3. Exclusions

- 20.3.1. These provisions shall not apply to information which is:
- 20.3.1.1. publicly known or has become publicly known through no unauthorised act of the recipient Party;
 - 20.3.1.2. rightfully received by the recipient Party from a third party;
 - 20.3.1.3. independently developed by the recipient Party without use of the other Party's information;
 - 20.3.1.4. disclosed by the other Party to a third party without similar restrictions;
 - 20.3.1.5. 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
 - 20.3.1.6. publicly disclosed with the other Party's written consent.

20.4. Disclosure

- 20.4.1. All media releases, public announcements and public disclosures by any Party or their respective employees or agents relating to this MPA 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.

21. SURVIVAL

- 21.1. Termination of this MPA shall not affect the accrued rights and liabilities of the Parties hereto and the provisions of clause 23 (Applicable Law and Jurisdiction), clause 17 (Dispute Resolution) clause 15 (Termination), and clause 20 (Confidentiality) and under any other provision of this MPA 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 MPA.

22. NOTICES, DOMICILIUM AND ELIGIBLE SELLER GENERAL DATA

22.1. Domicilia Citandi et Executandi

22.1.1. The Parties choose as their *domicilia citandi et executandi* their respective addresses specified in clause 22.2 (Addresses) hereof, for all purposes arising out of or in connection with this MPA, at which addresses all process and notices arising out of or in connection with this MPA, its breach or termination may be served upon or delivered to the Parties.

22.2. Addresses

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

22.2.1.1. In the case of the Eligible Seller:

Physical address:

[•]

[•]

Postal address:

[•]

[•]

Contact person:

[Full names of authorised contact person]

[electronic mail address]

[Mobile phone number]

22.2.1.2. In the case of the Market Operator:

Namibia Power Corporation (Pty) Ltd

NamPower Centre

15 Luther Street

PO Box 2864

Windhoek, Namibia

MSBmarketoperator@nampower.com.na and

Legal@nampower.com.na

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

22.3. Delivery of Notices

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

22.3.1.1. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

22.3.1.2. 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

22.3.1.3. 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.)

22.4. Written Notice

22.4.1. Notwithstanding anything to the contrary contained in this MPA, 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.

23. APPLICABLE LAW AND JURISDICTION

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

24. GENERAL AND MISCELLANEOUS

24.1. Entire Agreement

24.1.1. This MPA constitutes the entire agreement and understanding of the Parties and supersede any previous agreements between the Parties (whether written or oral) relating to the subject matter of this MPA and without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom.

24.2. Amendments

24.2.1. This MPA may be amended or modified only by way of writing and duly executed by the Parties hereto which states specifically that it is intended to amend or modify this MPA. No provision of this MPA shall be deemed waived by course of conduct unless such waiver is made in writing signed by the Parties hereto stating that it is intended specifically to modify this MPA, nor shall any course of conduct, that is a breach of this MPA, operate or be construed as a waiver of any subsequent breach of this MPA, whether of a similar or dissimilar nature.

24.2.2. Notwithstanding clause 24.2.1, NamPower reserves the right to impose amendments to this MPA on the following conditions:

24.2.2.1. That the amendments is required to be executed in the interest of the MSB to ensure it remains viable, functions as designed and operates in an efficient manner , and

24.2.2.2. That such amendments are applied unilaterally to all Market Participants with similar roles and responsibilities as provided for the MSB; and

24.2.2.3. That such amendments have received regulatory oversight from the ECB, which includes due stakeholder engagement with the respective Market Participants.

24.3. No Waiver of Rights

24.3.1. No delay, neglect, grant or extension of time or forbearance on the part of either Party in enforcing against the other Party any provision of this MPA shall be deemed to be a waiver of or shall in any way prejudice any right of that Party under this MPA. No waiver by either Party of any default or

defaults by the other Party in the performance of any of the provisions of this MPA shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character; or shall be effective unless in writing duly executed by a duly authorised representative of such Party. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions, and provisions of this MPA nor time or other indulgence granted by one Party to the other shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this MPA which shall remain in full force and effect.

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

24.4. No Third Party Rights

24.4.1. This MPA is intended solely for the benefit of the Parties. Other than as specifically provided for in this MPA, nothing in this MPA shall be construed to create any duty to, or standard of care with reference to, or any liability to any person not a Party to this MPA.

24.5. No Partnerships

24.5.1. This MPA does not create, nor is it evidence of a partnership or joint enterprise of any kind. Rather, the Parties are and shall remain independent and no Party has the power to bind the other for any purpose. Nothing contained in this MPA shall be construed to constitute either Party as any of the other Party's attorney, partner or agent.

24.6. Approvals and Consents

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

24.7. Waiver Of Sovereign Immunity

24.7.1. To the extent that NamPower or the Eligible Seller may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed), both NamPower and the Eligible Seller hereby irrevocably agree not to claim and hereby irrevocably waive such immunity to the full extent permitted by the laws of such jurisdiction.

24.8. Severability

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

24.9. Anti-Corruption Measures

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

24.10. Change in Law

24.10.1. Nothing in this MPA shall prejudice or affect the rights or powers of either Party under any statute, statutory instrument or regulation for the time being in force. If at any time following the Signature Date a change in law increases the cost to NamPower of performing its obligations under this MPA, the terms of this MPA shall be adjusted as soon as reasonably practicable to ensure that NamPower is not prejudiced as a result of that change in law. NamPower shall use its best efforts to discuss the proposed

adjustment with the Eligible Seller and amend it in a manner that does not increase the costs and/or tariffs levied on the Eligible Seller as set in this Agreement or the Transmission Agreements.

24.11. Counterparts

24.11.1. This MPA may be executed in any number of identical counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute one and the same agreement. No counterpart shall be effective until each Party has executed at least one part or counterpart.

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

Executed as a deed by **NAMIBIA POWER CORPORATION (PTY) LTD**

Acting by

**KAHENGE S. HAULOFU
MANAGING DIRECTOR**

[name of authorised signatory]

[Authorised signatory]

and

**KAANDALI P. IYAMBO
EXECUTIVE: MODIFIED SINGLE BUYER**

[name of witness]

[Authorised signatory]

And

**ZOE Y. NAMBAHU
CHIEF LEGAL ADVISOR**

[name of witness]

[Authorised signatory]

Thus done and signed in on the day of

Executed as a deed by the **Eligible Seller:**

Acting by

[name of authorised signatory]

[Authorised signatory]

and

[name of witness]

[Authorised signatory]

And

[name of witness]

[Authorised signatory]

Thus done and signed in on the day of

Annexure A FORM OF FINANCIAL SECURITY AS BANK GUARENTEE

The Managing Director
Namibia Power Corporation (Pty) Ltd.
15 Luther Street
P. O. Box 2864
Windhoek
Namibia



DATE: : [●]

OUR REF NUMBER: : [●]

PAYMENT GUARANTEE

MODIFIED SINGLE BUYER (MSB) FINANCIAL SECURITY FOR [●] PARTICIPATING AS AN ELIGIBLE SELLER IN THE MSB MARKET

We, the undersigned [●] and [●] in our capacities as [●] and [●] of [●] (Bank) **Namibia, a division of [●] Registration Number [●]** address for the serving of all notices for all purposes arising here from at [●] (physical address), Windhoek, Namibia Branch (“the Bank”), hold at the disposal **Namibia Power Corporation (Pty) Ltd** (“the Beneficiary”), the sum of **N\$[●] ([●] Namibia Dollars Only)** (the Guaranteed Amount) on behalf of **[●]Company], Registration Number [●]** address at [●] Street, [●] (Town), [●] (Country) (“the Applicant”).

At the request of the Beneficiary, we hereby irrevocably, unconditionally and on demand undertake to pay in full the Guaranteed Amount, or any portion thereof demanded, to the Beneficiary free of commission at our Corporate and Investment Banking Branch upon receipt by the Bank of the first written demand from the Beneficiary (signatures having been duly confirmed by its bankers), declaring that the Applicant is in default on the payment of its imbalanced energy under the Modified Single Buyer (MSB) Market and its related MSB Market Rules, Electricity Act, 2007 and that the Guaranteed Amount or any lesser amount stated by the Beneficiary is payable by the Applicant to the Beneficiary.

The Payment Guarantee is neither negotiable nor transferable and is restricted to the payment of money only.

The Bank's liability under this Payment Guarantee is principal and not accessory in nature. This Payment Guarantee is accordingly not a suretyship and payment hereunder shall not be refused or delayed by the existence of any dispute between the Applicant and the Beneficiary or the Beneficiary having to prove or show grounds or reasons for the demand.

The maximum amount payable by the Applicant to the Beneficiary under this Payment Guarantee is [insert amount in figures and in words equal to] NAD [●] (the "Maximum Sum")

This Payment Guarantee must be returned to the Bank against payment of the abovementioned Maximum Sum or in the event of cancellation.

The Bank reserves the right to withdraw from this Payment Guarantee on giving ninety (90) days written notice ("the notice period") to the Beneficiary of its intention to do so. The Beneficiary may, however, claim under this Payment Guarantee during the notice period from the date such notice is given.

The Payment Guarantee shall automatically expire on the earlier of either a remittance to our desk of a copy of a release notice OR on _____, after the Applicant has discharged its payment obligation for all due payments of its imbalanced energy in terms of the MSB Marker Rules, whichever is the later and when the original of the Payment Guarantee is returned to the Bank.

Payment under this Payment Guarantee will only be made upon written demand and against surrender of the original Payment Guarantee by the Beneficiary or the Beneficiary's duly authorised agent to the Bank.

No variation to the terms and/or conditions of this Payment Guarantee is permitted without the prior written consent of all the contracting parties who are legally bound hereby.

The Bank will not perform its obligations hereunder if the impact of this transaction/s is to breach or violate any anti-trafficking, anti-money laundering, counter terrorism financing, economic and trade sanctions laws or regulations, relevant to this transaction be they local or international. The Bank shall not be liable for any loss or damage of whatsoever nature suffered by any person arising from such non-performance of its obligations hereunder. Authorities may require the Bank to disclose information related to this Payment Guarantee and such disclosure will not be a breach of any duty of confidentiality owed by the Bank to any person.

This Payment Guarantee shall, in all respects, be construed, governed by and interpreted in accordance with the laws of the Republic of Namibia. Each party irrevocably submits to the exclusive jurisdiction of the High Court of Namibia with regard to all matters arising from or in connection with this Payment Guarantee and agrees that a judgment on any proceedings brought in the High Court of Namibia shall be conclusive and binding upon them and may be enforced in the courts of any other jurisdiction.

For and on behalf of [●] (bank), Registration Number [●].



Annexure B GENERATOR STANDING DATA

Annexure C EXPORT BALANCING SCHEDULE