

Confidential



TRANSMISSION CONNECTION AGREEMENT (TCA)

FOR AN

ELIGIBLE SELLER

BETWEEN

[•]

AND

NAMIBIA POWER CORPORATION (PTY) LTD

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PREAMBLE:

THIS TRANSMISSION CONNECTION AGREEMENT (TCA) 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: F/2051) and having its registered office at NamPower Centre, 15 Luther Street, Windhoek, Namibia (hereinafter referred to as the “**Network Operator**” or “**NamPower**” interchangeably),
- (together, the “**Parties**” and “**Party**” shall mean either of them).

RECITALS:

- (A) NamPower owns and operates the Transmission System and may enter into agreements with legal entities licensed to undertake the generation of electrical energy (a) for the connection of their licensed power plants to the Transmission System (as such term is defined below), (b) for the use by such licensed entities of the Transmission System in connection with their generation undertakings, and (c) for matters relating to the operational interface between such licensed power plants and the Transmission System.
- (B) Whereas, the Eligible Seller has registered with the Market Operator and the Electricity Control Board (ECB) to be an eligible seller to generate electricity using the NamPower Transmission System, to convey electricity under the Market Rules as issued by the ECB.
- (C) In order to use the Transmission System under the Market Rules, the Eligible Seller has applied to NamPower for connection of the Generation Facility to be developed by the Eligible Seller;
- (D) Whereas NamPower submitted a Connection Offer Letter to the Eligible Seller, which the Eligible Seller has duly accepted, attached hereto as Annexure A, and the effectiveness of the Connection Offer Letter being subject to the conclusion and coming into effect of this TCA.
- (F) NamPower has agreed to the connection of the Generation Facility to the Transmission System at the Point of Connection, for the use by the Eligible Seller of the Transmission System in connection with their generation undertakings and for other matters relating to the operational interface between such licensed Generation Facility and the Transmission System in accordance with this TCA.

- (G) This TCA, among other, sets out the terms and conditions upon which (a) NamPower and/or the Eligible Seller shall undertake the connection works which will physically connect the Generation Facility (as such term is defined below) to the Transmission System (b) the cooperation amongst the Parties in relation to the operational interface between the Generation Facility and the Transmission System during this period, and (c) the charges that the Eligible Seller is required to pay.
- (H) The Parties will enter into a separate agreement which agreement shall regulate the use of the Transmission System in connection with its licensed generation undertaking at the Generation Facility, and/or any other transaction contemplated under the Market Rules with other Market Participants, such agreement(s) being the Transmission Use of System Agreement.
- (I) The Parties acknowledge that the Electricity Control Board's regulatory oversight extends to amendments to this Transmission Connection Agreement (TCA) and that any amendments to the TCA 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 TCA capitalised expressions or word used in this agreement have the meanings ascribed thereto in the Market Rules or any of the relating MSB Agreements as is applicable. In this TCA the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings:

1.1.1.	"Affected Party"	means a Party affected by a Force Majeure event as contemplated in clause 15;
1.1.2.	"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>1.1.2.1. is controlled by such Party; or</p> <p>1.1.2.2. controls such Party; or</p> <p>1.1.2.3. is controlled by a company which directly or indirectly controls such Party.</p> <p>For the purposes of the foregoing definition:</p> <p>1.1.2.3.1. a company is directly controlled by another company, if the latter company holds shares, quotas or voting rights, carrying in the aggregate the majority (more than fifty percent) of the votes exercisable at shareholders' meetings of the former company, and</p> <p>1.1.2.3.2. a particular company is indirectly controlled by a company, hereinafter called the "parent company", if a series of companies can be specified, beginning with the parent company and ending with the particular company, so related that each company of the series, except the parent company, is directly controlled</p>

		by one of the companies earlier in the series;
1.1.3.	"AFSA Rules"	means the rules relating to the conducting of arbitration as set by the Arbitration Foundation of Southern Africa;
1.1.4.	"Agreed Interest Rate"	means the prime rate of the banking institution with which NamPower's primary cheque account is placed;
1.1.5.	"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: 1.1.5.1. Bank Windhoek, Development Bank of Namibia, Nedbank Namibia, First National Bank (Namibia), Rand Merchant Bank Namibia, or Standard Bank Namibia; or 1.1.5.2. any financial institution approved in writing by NamPower;
1.1.6.	"Breaching Party"	has the meaning given to it in Clause 16.1 (Breach and Events of Default);
1.1.7.	"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;
1.1.8.	"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 TCA (or any transaction or agreement contemplated herein);
1.1.9.	"Conditions Precedent"	means the listed conditions set out in clause 5.2, which must each be met or waived in order to achieve the Effective Date;

1.1.10.	"Confidential Information"	means any and all information and data disclosed by either Party in connection with this TCA in any form whatsoever, and including this TCA itself;
1.1.11.	"Connection Charge" or "Connection Charges"	means the charges specified in the Connection Offer Letter and reflects the amount payable by the Eligible Seller to NamPower for the performance by NamPower of the Connection Works, and as set out in clause 10.1;
1.1.12.	"Connection Date"	means the date of connection of the Generation Facility to the Transmission System;
1.1.13.	"Connection Facility"	means the equipment forming part of the Transmission System that are required to provide connection for the Eligible Seller's Generation Facility;
1.1.14.	"Connection Offer Letter"	means the offer made by NamPower and accepted by the Eligible Seller, which contains the terms and conditions to connect to NamPower's Transmission System, which is attached as Annexure A;
1.1.15.	"Connection Works"	means the Connection Facility to be designed, engineered, procured, constructed, installed and tested by either NamPower or the Eligible Seller;
1.1.16.	"Consent" or "Consents"	means the permits, licences, consents, authorisations, approvals, concessions, acknowledgements, access rights, way leaves, exemptions or like or similar documentation required to be obtained in relation to this TCA and participating in the Modified Single Buyer market;
1.1.17.	"Construction Programme"	means the programme attached as per Annexure E, which will include the activities from the Effective Date to the completion date of the Connection Works;
1.1.18.	"Contractor(s)"	means any supplier or contractor engaged by either Party to undertake the whole or any part of the Connection Works, including any sub-contractors appointed by any person who falls within this definition;

1.1.19.	"Day" or "Days"	means a calendar day(s);
1.1.20.	"Defects Notification Period"	means the period for notifying defects and/or damaged in the Connection Works, which shall be a period of two (2) years after the Connection Date;
1.1.21.	"Deemed Connection Date"	has the meaning assigned to it in clause 7.4.2;
1.1.22.	"Disconnect"	means the removal of all or any of the Connection Facility to such extent that the Point of Connection can no longer be energised and "Disconnection" and "Disconnecting" shall be construed accordingly;
1.1.23.	"Dispute"	means any dispute or disagreement of any kind whatsoever between the Parties arising under, in connection with, or relating to, this TCA or the transactions contemplated herein;
1.1.24.	"Donation Agreement"	means the agreement executed between the NamPower and the Eligible Seller, giving effect to the transfer of ownership of the specific allocated Connection Facility which NamPower will own and operate, which may have formed part of the Eligible Seller Connection Works, and attached as Annexure K hereto;
1.1.25.	"Effective Date"	means the date on which all of the conditions precedent have been satisfied or duly waived by both Parties as provided for in clause;
1.1.26.	"Electricity Act"	means the Electricity Act, Act No 4 of 2007, as amended or superseded from time to time;
1.1.27.	"Electricity Control Board" or "ECB"	means the Electricity Control Board, the regulatory authority for electricity established in terms of the Electricity Act, 4 of 2007 or any successor thereto;
1.1.28.	"Eligible Seller Connection Works"	means that part of the Connection Works and the Connection Facility which the Customer shall design, engineer, procure, supply, deliver, construct, install, and test on behalf of NamPower as set out in the Connection Offer Letter and the

		Scope of Works Allocation Matrix attached as Annexure C hereto;
1.1.29.	"Eligible Seller Event of Default"	has the meaning set forth in clause 16.3;
1.1.30.	"Energise"	means the closing of any isolator, breaker or switch, or the insertion of any fuse or meter to deliberately enable the flow of active power and reactive power to be transferred through the Delivery Point to or from the Generation Facility or to or from the Transmission System, and "Energisation", "Energised" and "Energising" and "synchronisation" and "synchronise" and "synchronising" shall be construed accordingly;
1.1.31.	"Force Majeure Event"	has the meaning given to it in clause 15.1.1;
1.1.32.	"Generation Facility" or "Generation Facilities"	means the generation facility including, but not limited to, all Schedule Units, switchgears, transformers, related transmission connection equipment and any probable plant and/or equipment related to the generator(s);
1.1.33.	"Generation Licence"	means the generation licence issued by the Ministry of Mines and Energy on recommendation of the Electricity Control Board in relation to Eligible Seller's Generation Facility;
1.1.34.	"Generator"	has the meaning given to it in the Market Rules;
1.1.35.	"Government Action"	means: 1.1.35.1. 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>1.1.35.1.1. the enjoyment by the Eligible Seller of any of the rights and benefits contemplated by this TCA, or</p> <p>1.1.35.1.2. the performance by the Eligible Seller of any of its obligations under or pursuant to this TCA, 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>
1.1.36.	"Government"	means the Government of the Republic of Namibia and all its agencies as applicable;
1.1.37.	"Grid Code"	means, at any time, the most recent version of the grid code published by the ECB in terms of the Electricity Act, 4 of 2007 and as updated from time to time;
1.1.38.	"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;
1.1.39.	"Long Stop Effective Date"	means [●] ([●]) months from the Signature Date of this TCA;
1.1.40.	"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);
1.1.41.	"Market Operator"	has the meaning given to it in the Market Rules;

1.1.42.	"Market Participation Agreement"	means the agreement executed between the Market Operator and the Eligible Seller, giving effect to the registration of the Eligible Seller to become a Market Participant;
1.1.43.	"Market Participant"	means a party eligible to participate in the Modified Single Buyer market, and as more clearly defined in the Market Rules, which in this case is the Eligible Seller. For purposes of this TCA, Eligible Seller and Market Participant may be used interchangeably;
1.1.44.	"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;
1.1.45.	"Maximum Export Capacity"	means the maximum capacity expressed in MVA, which the Eligible Seller may inject from the Generation Facility into the Transmission System at the Delivery Point, not exceeding [●]MVA, as set out in this Transmission Connection Agreement and the Connection Offer Letter;
1.1.46.	"Maximum Import Capacity"	means the maximum amount of electricity expressed in kilovolt amperes (kVA) which will be supplied from the Transmission System at the Delivery Point to the Eligible Seller's Generation Facility not exceeding [●]kVA, as set out in this Transmission Connection Agreement and the Connection Offer Letter;
1.1.47.	"Mechanical Completion Certificate"	means a certificate issued by the Eligible Seller to indicate that the Generation Facility is constructed and capable of being operated, subject to being physically interconnected to the grid and completion of performance/commissioning testing;
1.1.48.	"Megavolt-amperes" or "MVA"	means a measure of active and reactive electrical power equal to one million volt-amperes;
1.1.49.	"Metering Equipment"	means the main and the check measuring system, inclusive of meters and all related equipment and or devices for

		measuring active and reactive power, in accordance with the Grid Code, and as described the Connection Offer Letter and the Transmission Connection Agreement. The “ Main Meter ” and “ Check Meter ” shall be construed according;
1.1.50.	"Milestone"	means the completion of each key stage or activity during the construction period as identified in the Construction Programme;
1.1.51.	"Modified Single Buyer" or "MSB"	means the electricity market structure, adopted by the Government, in September 2019;
1.1.52.	"MSB Agreements"	means this TCA, the Market Participation Agreement, the Transmission Connection Agreement, the Connection Offer Letter, Power Supply Agreement (if applicable) and any other agreement that the Parties agree to enter into in writing, in relation to contracting the Market Participant to participate in the Modified Single Buyer market;
1.1.53.	"MVAh"	means a measure of active and reactive energy equal to one MVA of active and reactive electrical power supplied, conveyed or consumed in one hour;
1.1.54.	"MW"	means megawatt;
1.1.55.	"MWh"	means megawatt hours;
1.1.56.	"NAD" or "Namibia Dollar(s)"	means the official currency of the Republic of Namibia;
1.1.57.	"NamPower Technical Specifications and Requirements"	means, at any time, the most recent version of the NamPower technical specification and requirements, as approved by the ECB, and as forming part of the Connection Offer Letter and attached as Annexure G hereto;
1.1.58.	"NamPower Transmission Event of Default"	has the meaning set forth in clause 16.2;
1.1.59.	"NamPower Works"	means the works to be performed by NamPower in accordance with the Connection Offer Letter and

		Annexure B, Annexure C and Annexure E relating to the scope of works and the testing and commissioning and scheduling;
1.1.60.	"National Connection Charge Policy"	means, the most recent version of the National Connection Charge Policy published by the ECB pursuant to the Electricity Act of 2007, and as amended or superseded from time to time;
1.1.61.	"National Control Centre"	means the centre for control and coordination of power flows within Namibia;
1.1.62.	"National Electricity Grid"	Means any of: 1.1.62.1. Transmission System, or 1.1.62.2. Distribution System,
1.1.63.	"Network Operator"	means the licenced developer and operator of the Transmission System, and as more clearly defined in the Market Rules, which in this case is managed by the Transmission Business Unit within NamPower and for the purposes of this TCA, "NamPower" shall mean the Network Operator;
1.1.64.	"Parties"	means the Eligible Seller and the Network Operator, or their successors-in-title, and "Party" shall be construed accordingly,
1.1.65.	"Point of Connection"	means the physical point at which the Generation Facility of the Eligible Seller is physically connected to the Transmission System as indicated in the Connection Offer Letter and Annexure B hereto;
1.1.66.	"Project "	means the development, construction and commissioning of the Connection Facility located at the Project Site and includes all the required and related Connection Works;
1.1.67.	"Project Costs"	has the meaning given to it in clause 10 (Charges and Payments for Connection Works);

1.1.68.	"Project Documents"	means this TCA, the related engineering, procurement and construction (EPC) contracts, the Generation Licence, the Consents, the related operation and maintenance (O&M) agreements, and any other agreements or contracts in relation to the Project;
1.1.69.	"Project Site"	means the location of the Project will be executed, as described in delineated in the Connection Offer and set out in clause 6;
1.1.70.	"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>1.1.70.1. complying with:</p> <ul style="list-style-type: none"> 1.1.70.1.1. recognised standards pertaining to that activity; 1.1.70.1.2. manufacturers' instructions and operating manuals; and 1.1.70.1.3. the terms of this TCA; and <p>1.1.70.2. taking reasonable steps to ensure that:</p> <ul style="list-style-type: none"> 1.1.70.2.1. adequate materials, resources and supplies are available at the necessary places under normal conditions associated with existing operations; 1.1.70.2.2. sufficient experienced and trained operating personnel are available to

		<p>operate the Schedule Units and the Connection Facility, as the case requires, properly, efficiently and within manufacturer's guidelines and specifications and are able to respond to emergency conditions;</p> <p>1.1.70.2.3. 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>1.1.70.2.4. appropriate monitoring and testing is carried out to ensure that equipment will function properly under normal and emergency conditions;</p> <p>1.1.70.2.5. 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 Facility, as the case requires;</p>
1.1.71.	"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</p>

		“standards of a Reasonable and Prudent Operator” shall be construed accordingly;
1.1.72.	"Scheduled Connection Date"	means the intended Connection Date as planned and indicated in the Connection Offer Letter and Annexure E hereto;
1.1.73.	"Signature Date"	means the date this TCA is duly signed and dated by the last Party signing it;
1.1.74.	"System Operator"	has the meaning given to it in the Market Rules;
1.1.75.	"Termination Date"	means the date of termination of this TCA;
1.1.76.	"Termination Notice"	means a written notice of termination served by the Eligible Seller or NamPower to the other Party, as the case may be;
1.1.77.	"Transmission Connection Security"	means a bank guarantee in favour of NamPower;
1.1.78.	"Transmission Licence"	means the transmission licence granted by the Ministry of Mines and Energy on recommendation of the Electricity Control Board and issued by the ECB as provided for under the Electricity Act, Act 4 of 2007, for NamPower to operate and maintain the transmission system in the Republic of Namibia, as amended, modified, consolidated, substituted or renewed from time to time;
1.1.79.	"Transmission System"	means the electricity transmission infrastructure in Namibia owned and operated by NamPower;
1.1.80.	"Transmission Tariff Methodology"	means the method for calculating the charges for the provision by NamPower of transmission-related services as approved from time to time by the ECB;
1.1.81.	"Transmission Use of System Agreement" or "TUOSA"	means the agreement(s) for the use of the Transmission System, entered into between the Eligible Seller(s) and the Network Operator for any transaction contemplated under the Market Rules with other Market Participants;

1.1.82.	"Week"	means the period between 00:00 hours on a Monday and 24:00 hours on the following Sunday;
1.1.83.	"Year"	means the period starting 01 July and ending 30 June annually.

2. INTERPRETATION

- 2.1. In this TCA, 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 TCA;
 - 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 TCA;
 - 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 MSB Agreements or documents, including this TCA and the Connection Offer Letter or a provision of this TCA or the Connection Offer Letter, 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 TCA 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 TCA;
 - 2.1.9. This TCA 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 TCA 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 TCA 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 TCA 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;
- 2.1.15. Any reference to a month shall mean a calendar month; and
- 2.1.16. A time of day shall be construed as a reference to Namibian time.

2.2. Inclusion of Dates

- 2.2.1. When any number of days are prescribed in this TCA 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 TCA shall be interpreted against the Party responsible for the drafting or preparation of this TCA shall not apply.

2.4. Annexures

2.4.1. The Annexures to this TCA 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 TCA 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 TCA 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 Transmission 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 TCA (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 TCA 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. COMMENCEMENT AND TERM

4.1. Term

4.1.1. This TCA shall commence on the Signature Date and shall become fully effective, in line with the provisions set out in clause 5 (Conditions Precedent) and shall continue in full force and effect until terminated in accordance with clause 17 (Termination).

5. CONDITIONS PRECEDENT

5.1. On Signature Date

5.1.1. The rights and obligations of the Parties under this TCA set out in clause 2 (Interpretation), clause 3 (Related Legislation and Market Rules), clause 5 (Conditions Precedent), clause 15 (Force Majeure), clause 17 (Termination), clause 18 (Dispute Resolution), clause 19 (Liability for Damages or Losses), clause 20 (Cession and Assignment), clause 21 (Confidentiality), clause 22 (Survival), clause 23 (Notices and Domicilium), clause 24 (Applicable Law and Jurisdiction) and clause 25 (General and Miscellaneous) shall come into force and effect on and from the Signature Date.

5.1.2. None of the other provisions of this TCA shall be effective until each of the Conditions Precedent enumerated in clause 5.2 have either been fulfilled or waived by the Parties.

5.2. On Effective Date

5.2.1. The remainder of this TCA shall only come in full force and effect on the Effective Date, upon the fulfilment or waiving in writing, of each of the following Conditions Precedent:

5.2.1.1. NamPower, in respect of the NamPower Works, acquiring of all Consents required for the Project and Connection Facility;

- 5.2.1.2. The Eligible Seller, in respect of the Eligible Seller Connection Works, acquiring of all Consents required for the Project and Connection Facility;
- 5.2.1.3. The Eligible Seller obtaining and holding a valid Generation Licence;
- 5.2.1.4. The site for the Connection Facility and the transmission infrastructure related thereto being made available by NamPower to the Customer for the duration of the Project;
- 5.2.1.5. The Transmission Connection Security requirements in clause 11 required by NamPower to be provided by the Eligible Seller having been provided to NamPower in form and substance satisfactory to NamPower;
- 5.2.1.6. NamPower and the Eligible Seller entering into a Donation Agreement, if applicable, and
- 5.2.1.7. The Eligible Seller being registered as a Market Participant with the Market Operator.

5.3. Responsibilities as regards to Conditions Precedent

- 5.3.1. The Parties shall be responsible at their own expense and risk for satisfying and procuring the satisfaction of the Conditions Precedent referred to in clause 5.2 (On Effective Date).
- 5.3.2. The Parties shall use their reasonable endeavours to cause the Conditions Precedent enumerated in clause 5.2 (On Effective Date) to be satisfied by the Long Stop Effective Date.
- 5.3.3. NamPower shall provide the Seller with such reasonable cooperation as may be necessary to assist the Seller in satisfying the Conditions Precedent listed in clause 5.2 above.
- 5.3.4. Notwithstanding an extension of the Long Stop Effective Date by NamPower in accordance with this TCA, NamPower reserves the right to amend the Connection Offer Letter and consequently the Project Costs in the event that the Transmission System conditions have changed to a material extent that warrants a review in accordance with the Transmission Connection Charge Policy. In the event the Eligible Seller

refuses to accept the amended Connection Offer Letter or the Project Costs, NamPower reserves the right to terminate the TCA by issuing a Termination Notice. Neither Party shall have any liability whatsoever to the other Party in respect of such termination, except in relation to any antecedent breaches of this TCA.

5.3.5. In the event of a failure of a Party to satisfy the Conditions Precedent due to Force Majeure, Change in Law or Government Action, the Parties by agreement may extend the Long Stop Effective Date for a period to be agreed between the Parties.

5.4. Notice

5.4.1. Each Party shall notify the other in writing by the fifteenth (15th) day of each month on the progress made in satisfying the Conditions Precedent enumerated in clause 5.2.1 for which it is responsible.

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

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

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

5.4.5. A Party who wishes to waive any Condition Precedent must provide the other Party with evidence (to the other Party's reasonable satisfaction) that the waiver of such Condition Precedent will not have a material adverse effect on its ability to satisfy its obligations under this TCA.

5.5. Non-fulfilment of Conditions Precedent

5.5.1. If the Conditions Precedent are not satisfied or waived on or before the Long Stop Effective Date, and if the Long Stop Effective Date has not been extended by mutual agreement between the Parties, then either Party shall have the right to terminate this TCA by issuing a Termination Notice to the other Party, within a period of thirty (30) days after the occurrence of the Long Stop Effective Date. Subject to clause 5.5.2, neither Party shall

have any liability whatsoever to the other Party in respect of such termination, except in relation to any antecedent breaches of this TCA.

5.5.2. NamPower shall be entitled to exercise its rights under the Transmission Connection Security, to cover any payment due or cost incurred at the time of termination of this TCA due to the Seller's failure to meet any or all Conditions Precedent on or before the Long Stop Effective Date.

6. PROJECT SITE AND POINT OF CONNECTION

6.1. Project Site

6.1.1. The Project Site shall be located at the area generally described:

6.1.1.1. **Site:** [●]

6.1.1.2. **Transmission Substation:** [●]

6.1.1.3. **Town:** [●]

6.1.1.4. **Location/ District:** [●]

6.1.1.5. **GPS Coordinates:**

Lat	Long	Name

6.2. Point of Connection

6.2.1. The Point of Connection shall be located at the area generally described:

6.2.1.1. **Site:** [●]

6.2.1.2. **Transmission Substation:** [●]

6.2.1.3. **Town:** [●]

6.2.1.4. **Location/ District:** [●]

6.2.1.5. **GPS Coordinates:**

Lat	Long	Name

7. **CONSTRUCTION AND DEVELOPMENT OF THE CONNECTION FACILITY**

7.1. **Eligible Seller Responsibilities**

7.1.1. The Eligible Seller shall carry out, or procure, and be responsible for all engineering and design of the Eligible Seller Connection Works. The design shall be prepared by qualified designers who are engineers or other professionals who have the level of skill, experience, and capability necessary to undertake such design as a Reasonable and Prudent Operator in accordance with the standards of a Reasonable and Prudent Operator. The Eligible Seller Connection Works shall be fit for its intended purpose and shall meet the NamPower Technical Specifications and the Grid Code. The Parties record that the Eligible Seller shall procure equipment, develop, construct and install as per NamPower Technical Specifications and Requirements.

7.1.2. The Eligible Seller shall ensure that the Generation Facility is compliant with the NamPower Technical Specifications and Requirements as well as the Grid Codes requirements for connections to the Transmission System.

7.1.3. If NamPower (acting reasonably) believes that the Generation Facility do not meet the relevant design standards in or referred to in the NamPower Technical Specifications and Requirements and/or the Grid Code and/or may pose a threat to the safety and reliability of the Transmission System,

then NamPower may, following consultation with the Eligible Seller, and a delivery of a written notice which shall detail its basis, reject the connection of the Generation Facility. In such a case, if disputed by the Eligible Seller, the matter will be referred to an Independent Engineer as per the provisions of this TCA. If the rejection was found by the Independent Engineer to be unjustified and the rejection caused a delay in the commissioning of the Generation Facility as per the Construction Programme, the Eligible Seller will be entitled to extension of time for completion.

- 7.1.4. The Eligible Seller shall obtain and maintain all Consents in connection with the design, engineering, procurement, supply, erection, delivery, construction, installation, improvement, testing, commissioning, operation and maintenance of the Generation Facility and the export of electrical energy into the Transmission System at the Point of Connection.
- 7.1.5. The Eligible Seller shall commence the construction of the Generation Facility and the Eligible Seller Connection Works not later than fourteen (14) days from the Effective Date so as to ensure it achieves the construction Milestones by the corresponding dates to enable NamPower to connect the Generation Facility by the Scheduled Connection Date. In the event of a failure of the Eligible Seller to construct the Generation Facility and Eligible Seller Connection Works by the corresponding dates to ensure the connection of the Generation Facility by the Scheduled Connection Date, it shall not be regarded as a Transmission Default and NamPower shall not be held liable.
- 7.1.6. The Eligible Seller shall achieve the construction Milestones as provided in Annexure E (Customer/Eligible Seller Construction Programme/Milestone Dates) by the corresponding dates, so as to enable NamPower to complete the Connection Works in accordance with Annexure C (NamPower Construction Scope of Works) and, in particular, to commission the Connection Facility by the Scheduled Connection Date. Without limiting the foregoing, the Eligible Seller shall promptly notify NamPower in writing of any deviations from any of the Milestones as provided in Annexure E (Customer/Eligible Seller Construction Programme/Milestone Dates).
- 7.1.7. NamPower shall be entitled, at any time upon reasonable notice, to inspect:

- 7.1.7.1. The Eligible Seller Connection Works to confirm the compliance with the standards of a Reasonable and Prudent Operator and NamPower Technical Specifications and Requirements as well as the Grid Code. In the event any deficiencies are identified, the Eligible Seller shall be obliged to propose measures to remedy such deficiencies, and implement the same following agreement by the Parties; and
- 7.1.7.2. Equipment and materials to be incorporated into the Eligible Seller Connection Works prior to incorporation into those works.
- 7.1.7.3. Notwithstanding the inspection rights under this clause, neither Party shall interfere with the other's works when undertaking such inspections.

7.1.8. For the period from Signature Date to the Effective Date, and no later than the last day of each month, the Parties shall deliver to each other a written report setting out the development activities undertaken in the preceding period as well as the overall progress in the development of the Project with reference to all Conditions Precedents and Milestones. This includes all information on progress payments related to the Connection Charges.

7.2. NamPower Responsibilities

- 7.2.1. NamPower shall achieve the Connection Date prior to or on the Scheduled Connection Date as provided in Annexure E (NamPower Construction Programme Scope of Works), so as to enable the Eligible Seller to complete the construction works of the Generation Facility in accordance with Annexure E (Customer/Eligible Seller Construction Programme/Milestone Dates) and, in particular, the commissioning of the Connection Works prior to or on the Scheduled Connection Date.
- 7.2.2. NamPower shall promptly notify the Customer in writing of any deviations from any of the milestones as provided in Annexure E (NamPower Construction Scope of Works), which notice shall identify:
 - 7.2.2.1. The nature of the reason for the deviation;
 - 7.2.2.2. The impact which such deviation has had, or in the reasonable opinion of NamPower (acting as a Reasonable and Prudent

Operator), is likely to have, on its ability to achieve any Milestone on the applicable due date; and

7.2.2.3. The steps which NamPower (acting as a Reasonable and Prudent Operator) has taken, is taking and will take to mitigate adverse consequences of such deviation.

7.3. Delays in achieving the Scheduled Connection Date

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

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

7.4. Deemed Connection Date

7.4.1. If the Connection Date is not achieved on or before the Scheduled Connection Date, other than due to a Transmission Event of Default, then the provisions of clause 7.3.2 shall apply.

7.4.2. If a delay, default or circumstance occurs as a result of a Transmission Event of Default, and, as a consequence, NamPower is unable to achieve the Connection Date on or by the Scheduled Connection Date had such delay, default or circumstance not occurred, the Eligible Seller shall be entitled to enjoy certain rights as set out in this clause 7.4 (Deemed Connection Date) with effect from the date on which the Connection Date would have occurred had such delay, default or circumstance not occurred (the "**Deemed Connection Date**").

7.4.3. In the case of a delay, default or circumstance as contemplated by clause 7.4.1:

- 7.4.3.1. each Party shall keep the other informed on a regular basis of the date upon which it anticipates that such delay, default or circumstance will be resolved;
- 7.4.3.2. the Parties shall undertake all reasonable measures to ensure that the delayed Connection Date due to the circumstances contemplated by clause 7.4.1 shall be undertaken as soon as possible after the circumstances that resulted in such delay, default or circumstance are no longer in place; and
- 7.4.3.3. Provided that the Eligible Seller was ready and in a position to achieve its obligations for the Connection Date and its Generation Facilities was ready to be Energised and as such the Eligible Seller was hindered or obstructed solely as a result of a delay, default or circumstance as contemplated by clause 7.4.1, NamPower shall pay the liquidated damages, (the **"Deemed Connection Date Payment"**) to the Eligible Seller in respect of such delay. The Deemed Connection Date Payment shall be calculated as provided for in Annexure M but shall be capped at the maximum value as set out in Clause 19.1.2.

7.4.4. In the event that the delay, default or circumstance contemplated by clause 7.4.1 is remedied, and the Eligible Seller fails to meet any obligation such as, but not limited to, mechanical completion, Eligible Seller Connection Works being completed, the Generation Facility not ready or failing any grid compliance test as may be described in the Transmission Use of System Agreement, the Eligible Seller shall be liable to repay the Deemed Connection Date Payments paid to it under this clause 7.4 to NamPower.

7.5. Mechanical Completion of the Eligible Seller Connection Works

7.5.1. By the date that is five (5) Business Days after the date on which mechanical completion of the portion of the Eligible Seller Connection Works, the Eligible Seller shall promptly certify to NamPower in writing that all requirements under this TCA for mechanical completion of its construction obligations in respect to the Connection Facility and related Generation Facilities have been achieved. The Customer will submit all supporting documentation, inclusive of a Mechanical Completion

Certificate, reasonably necessary to verify to NamPower that the requirements for mechanical completion have been fulfilled.

7.5.2. NamPower will be entitled to, during the seven (7) days following receipt of the relevant Mechanical Completion Certificate, inspect the works and will either:

7.5.2.1. Countersign and deliver the relevant Mechanical Completion Certificate to the Eligible Seller if the requirements under this TCA for mechanical completion of the relevant works have been satisfied, in which case mechanical completion of those Eligible Seller Connection Works shall be deemed to have occurred on the date the Mechanical Completion Certificate was received by NamPower from the Eligible Seller; or

7.5.2.2. If the requirements of this TCA for mechanical completion of the relevant Eligible Seller Connection Works have not been achieved, notify the Eligible Seller in writing that mechanical completion of those Eligible Seller Connection Works has not been achieved and set out particulars and details of where further works are required.

7.5.3. If NamPower fails to execute the relevant Mechanical Completion Certificate or fails to deliver notification to the Eligible Seller pursuant to clause 7.5.2, then:

7.5.3.1. Such Mechanical Completion Certificate shall be deemed to have been accepted by NamPower on the date that is seven (7) Days after receipt by NamPower of such Mechanical Completion Certificate from the Eligible Seller; and

7.5.3.2. Mechanical completion of those Eligible Seller Connection Works shall be deemed to have occurred on the date the Mechanical Completion Certificate was received by NamPower from the Eligible Seller.

7.5.4. If NamPower delivers a notice pursuant to clause 7.5.2.2 when mechanical completion of the relevant Eligible Seller Connection Works has not been achieved, the Eligible Seller shall promptly take such action or perform such additional work as is required to achieve mechanical completion of the relevant Eligible Seller Connection Works and shall

issue a new Mechanical Completion Certificate in relation to the relevant Eligible Seller Connection Works to NamPower. Any previously issued Mechanical Completion Certificate shall be deemed void. The procedures in this clause 7.5 shall apply *mutatis mutandis* following receipt by NamPower of any such subsequent Mechanical Completion Certificate until:

7.5.4.1. NamPower countersigns and delivers the Mechanical Completion Certificate as per clause 7.5.2.1; or

7.5.4.2. The Mechanical Completion Certificate is deemed accepted by NamPower as per clause 7.5.2.

7.5.5. Should NamPower deliver a notice pursuant to clause 7.5.2.2, but the Parties fail to agree on whether mechanical completion of the relevant Eligible Seller Connection Works has been achieved, either Party may submit such dispute to the Independent Engineer for resolution in accordance with this TCA.

7.6. Donation of the Transmission Connection Assets

7.6.1. The Eligible Seller Connection Works shall transfer to NamPower in accordance with the terms and conditions of the Donation Agreement, and in any event no earlier than the Connection Date.

8. TRANSMISSION CONNECTION SERVICES

8.1. Connection Services

8.1.1. NamPower shall connect the **Connection Facility** and the Eligible Seller shall connect the Generation Facility at the Point of Connection in each case, so as to enable the Eligible Seller to inject power into the Transmission System, up to the Maximum Export Capacity and/or to take power from the Transmission System at up to the Maximum Import Capacity.

8.1.2. The Eligible Seller may take power at the Point of Connection provided that:

8.1.2.1. The amount of power taken by the Eligible Seller at the Point of Connection does not exceed the Maximum Import Capacity;

- 8.1.2.2. the Eligible Seller has complied and at all times complies with the NamPower Technical Specifications and Requirements and the Grid Code and any instructions issued pursuant to the aforesaid documents. In the event of a conflict between the NamPower Technical Specifications and Requirements and the Grid Code, the Grid Code shall prevail to the extent of such conflict or any inconsistency; and
 - 8.1.2.3. the amount of power taken by the Eligible Seller at the Point of Connection shall be limited to Auxiliary Power requirements only.
 - 8.1.3. NamPower shall ensure that the NamPower Works are fully and properly interconnected and synchronised with the Transmission System and that all features and equipment for the NamPower Works are capable of delivering electrical energy and capacity continuously into the Transmission System in accordance with all applicable requirements set forth in the Consents, the Grid Code and the NamPower Technical Specifications and Requirements.
 - 8.1.4. The Eligible Seller shall ensure that the Eligible Seller Connection Works are fully and properly interconnected and synchronised with the Transmission System and that all features and equipment for the Eligible Seller Connection Works and/or Generation Facility are capable of delivering electric energy and capacity continuously into the Transmission System in accordance with the applicable requirements set forth in the Consents the Grid Code and the NamPower Technical Specifications and Requirements.
 - 8.1.5. NamPower will connect the Generation Facility to the Transmission System at the Connection Point and once connected will maintain the connection in accordance with the provisions of the Transmission Use of System Agreement.
 - 8.1.6. Under no circumstances shall the Eligible Seller be entitled to Energise the Generation Facility or export any electricity to the Transmission System prior to the Connection Date and the Transmission Use of System Agreement is effective.

8.2. Access to the Connection Facility

- 8.2.1. The Parties agree that whilst the NamPower substation shall be located in a NamPower owned area, certain ancillary facilities, equipment, lines, cables and wires included in the Connection Facility (such as tele-control equipment) may be installed by or on behalf of NamPower at the Generation Facility.
- 8.2.2. The Eligible Seller shall at its own expense grant to NamPower all consents as are reasonably required to be given by the Eligible Seller for the installation, operation, maintenance, inspection, removal of and access to NamPower's plant and equipment situated at or on the Generation Facility.
- 8.2.3. NamPower's employees and/or authorised agents and/or subcontractors may, subject to the Eligible Seller's prior written approval, enter at times to be agreed between the Parties the Generation Facility to enable NamPower to carry out any works, modifications or inspections, or for operating, testing, repairing, renewing, maintaining, isolating, protecting or removing NamPower's equipment, material or temporary works, Disconnecting or De-Energising, monitoring compliance with the terms of this TCA, or the Grid Code, or to enable NamPower to fulfil its obligations under this TCA and the Transmission Use of System Agreement. NamPower shall give the Eligible Seller forty-eight (48) hours notice prior to requiring access to the Eligible Seller's premises, such consent to be given or denied (with reasonable justification) within the forty-eight hour notice.
- 8.2.4. NamPower shall grant access to the Eligible Seller, its employees and/or agents to NamPower's portion of land (excluding the fenced off substation area), and the access road for the purposes of construction, operation and maintenance of the Generation Facility and the Connection Facility.

8.3. Inspection Rights

- 8.3.1. NamPower shall have the right from time to time, on not less than forty-eight (48) hours' written notice, to designate not more than four (4) of NamPower's representatives who shall be entitled to have access to the Generation Facilities at reasonable times for the purpose of viewing the Generation Facilities and verifying the Eligible Seller's compliance with its obligations under this TCA, provided that NamPower shall ensure that its representatives shall comply with all related health and safety precautions

and standards and shall not interfere with the construction, operation and maintenance of the Generation Facilities. Such request from NamPower shall not be unreasonably refused by the Eligible Seller.

9. OWNERSHIP OF EQUIPMENT

9.1. Connection Facility

9.1.1. NamPower shall at all times retain ownership of, risk in, and title to the Connection Facility. The Eligible Seller shall not encumber or attempt to encumber or cause to be encumbered any of the Connection Facility.

9.1.2. The Parties acknowledge and agree that nothing herein, including the payment by the Eligible Seller of the Project Costs, shall confer on the Eligible Seller any right of ownership or any encumbrance over or other legal or beneficial right in respect of, any of the Connection Facility.

9.2. Generation Facilities

9.2.1. The Eligible Seller shall at all times retain ownership of, risk in, and title to the Generation Facilities.

10. CHARGES AND PAYMENT FOR CONNECTION WORKS

10.1. Connection Charges

10.1.1. The Eligible Seller shall pay to NamPower the payment of the costs set out in the following schedule as the Project Costs, reflective as the Connection Charges:

	Amount or Value (NAD) VAT excluded	In Consideration of	Scheduled and agreed payment dates
1	NAD [●]	[●]	On or before the Effective Date
2	NAD [●]	[●]	[●]th month from Effective Date
3	NAD [●]	[●]	[●]th month from Effective Date
4	NAD [●]	[●]	[●]th month from Effective Date
5	NAD [●]	[●]	[●]th month from Effective Date

6	NAD [●]	[●]	[●]th month from Effective Date
	NAD		Project Cost

- 10.1.2. The Project Costs does not include VAT.
- 10.1.3. The Project Costs (estimated) are specified in Namibia Dollars as at the date of the Connection Offer Letter and may be adjusted for inflation by NamPower from the date of the Connection Offer Letter to the date on which the amount is invoiced for payment. The inflation - adjusted amounts payable shall be invoiced by NamPower.
- 10.1.4. The respective payment dates as indicated above shall remain as is and shall not be adjusted for any delay or nonachievement of any Milestone.

10.2. Final Costs

- 10.2.1. The final Project Costs are subject to the final reconciliation once all works have been completed and will be invoiced on a total cost to project basis. Any capital refund or capital shortfall shall be allocated to the Eligible Seller's account, and subject to clause 10.1.3, upon completion of the Project.

11. TRANSMISSION CONNECTION SECURITY

11.1. Transmission Connection Security Requirements

- 11.1.1. The Eligible Seller shall submit the following as Transmission Connection Security guaranteeing its payment obligations as an Eligible Seller for its Connection Charges that are or may become payable, as set out in clause 10.1, in accordance with this TCA as follows:
 - 11.1.1.1. a valid bank guarantee from an Approved Provider in its substantial form as set out and attached as Annexure L;
- 11.1.2. The minimum Transmission Connection Security amount which must be maintained at all times shall be equivalent to the full Project Cost.

11.2. Management of the Transmission Use of System Security

- 11.2.1. NamPower shall periodically monitor the related Transmission Connection Security requirements and promptly notify the Eligible Seller of any adjustment requirements related to the minimum value of the Transmission Connection Security. Such updated Transmission Connection Security should be provided within thirty (30) days from the respective date of notice to reissue or increase the Transmission Connection Security.

12. **INVOICING AND PAYMENT**

12.1. **Invoicing Frequency**

- 12.1.1. NamPower shall invoice the Eligible Seller for the Connection Charges as they become payable.

12.2. **Payments Free from Tax**

- 12.2.1. All sums payable by either Party under this TCA shall be paid:
 - 12.2.1.1. free of any restriction or condition; and
 - 12.2.1.2. 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.

12.3. **Deductions Made Whole**

- 12.3.1. Each Party shall make any payments payable by it under this TCA, without withholding or deduction of, or in respect of, any tax, unless required by Law.
- 12.3.2. 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.

12.4. **Invoicing and Payment Procedure**

- 12.4.1. The Eligible Seller shall pay an amount equal to 30% of the Connection Charge, which will be invoiced (together with any value-added tax or any other applicable taxes), by NamPower to the Eligible Seller by the date that is twenty (20) Business Days after the Effective Date.
- 12.4.2. The Eligible Seller shall pay the balance of the Connection Charges (together with any value-added tax or any other applicable Taxes) by NamPower to the Eligible Seller in [five (5) equal] instalments as per the clause 10.1.
- 12.4.3. NamPower shall invoice the balance of the Connection Charges as to so effect the payment thereof by the due date, which shall be by the date that is twenty (20) Business Days after respective invoice date.
- 12.4.4. NamPower may request acceleration of a balance of the Connection Charge if NamPower can demonstrate it is required to avoid delay to the relevant phase of the NamPower Works.
- 12.4.5. Any amounts properly due from one Party to the other Party pursuant to this TCA 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.
- 12.4.6. If the Eligible Seller believes the invoice to be in error, it shall notify NamPower forthwith and:
- 12.4.6.1. if the invoice is in error NamPower shall send the Eligible Seller a revised invoice and adjust the Due Date accordingly;
- 12.4.6.2. if the invoice is not in error, NamPower shall advise the Eligible Seller forthwith of the same and the Due Date shall remain unchanged.
- 12.4.7. Should a Party dispute an invoice it shall notify the other Party within ten (10) 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.

- 12.4.8. 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.
- 12.4.9. NamPower shall notify the Eligible Seller of its bank account details for payment of any payments due.
- 12.4.10. All payments shall be in Namibia Dollars.
- 12.4.11. 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.
- 12.4.12. NamPower may at any time invoke its rights under the Transmission Connection Security to recover any payments owed to it by the Eligible Seller.

13. METERING AND PROTECTION

13.1. Metering Installations

- 13.1.1. NamPower reserves the right to introduce prepayment metering at any time during the contract period on the Maximum Import Capacity as Auxiliary Power.
- 13.1.2. The Parties acknowledge and agree that the ownership and responsibility of Metering Equipment for billing purposes shall remain with NamPower.
- 13.1.3. All Metering Equipment shall be according to the Grid Code and shall comprise one (1) main tariff meter and one (1) check tariff meter. These two (2) tariff meters shall be suitable for three phase imbalanced loads, and measure power in full four-quadrant mode. The class type and accuracy tolerances shall be in accordance to the prevailing NRS057 or

such other standard as may be referenced in the Grid Code from time to time.

- 13.1.4. The Eligible Seller shall have the right to install check metering to monitor the Metering Equipment of NamPower.

13.2. Protection Installations

- 13.2.1. As specified in the Connection Offer Letter, the Eligible Seller shall, at its own expense, provide and install as part of the Generation Facility and in accordance with the NamPower Technical Specifications and Requirements, the Grid Code and any requirements set out in the Annexures, to this TCA:

- 13.2.1.1. Communication and other equipment, as are reasonably required by NamPower for the purposes of operation of the Transmission System and the MSB Market Model. For information purposes only, and without limitation, such equipment may include dial up telephone line connections and/or fibre optic link between the Eligible Seller and NamPower and via the public telephone network for voice communication and data collection from the Metering Installation as detailed in the NamPower Technical Specifications and Requirements and the Grid Code;

- 13.2.1.2. power supplies for the operation of metering, operational instrumentation, NamPower's switchgear, control and protection equipment. Such power supplies, unless otherwise advised by NamPower, shall be 230V AC, 50Hz or 110V DC or 220V DC; (to be confirmed with NamPower in writing);

- 13.2.1.3. control and protection equipment, associated instrument transformers and cabling and power supplies therefore, as specified in the Connection Offer Letter and as detailed in the NamPower Technical Specifications and Requirements and the Grid Code;

- 13.2.2. The Eligible Seller shall provide to NamPower any and all relevant signalling and indications as required by NamPower (acting reasonably). Such signalling and indications shall provide NamPower with parameters of the Generation Facility including the status of switchgear, power flows

and voltages, as well as any other information required by the NamPower to operate and maintain a safe Transmission System.

14. CHANGE IN LAW

14.1. Required Changes

14.1.1. If there is a Change in Law which:

14.1.1.1. requires a change to the scope, specifications (including performance standards) or other characteristics of the NamPower Works, NamPower will effect the necessary changes; or

14.1.1.2. requires a change to the scope, specifications (including performance standards) or other characteristics of the Eligible Seller Connections Works, as previously approved by NamPower, the Eligible Seller will effect the necessary changes, provided that:

14.1.1.2.1. any change to the Connection Works shall be notified by NamPower to the Eligible Seller and in writing and in sufficient detail to enable the Eligible Seller revisions in the design and its schedule; and

14.1.1.2.2. before effecting any changes the Parties have agreed on the respective impact and changes on the Construction Programme.

15. FORCE MAJEURE

15.1. Definition of Force Majeure Event

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

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

15.1.1.2. 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 TCA), Consents or applicable Law;

15.1.1.3. 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

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

15.1.2. 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 15.1.1 above, that part of the event or circumstance that could have been mitigated shall not be a Force Majeure Event.

15.1.3. 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 15.1.1 above:

15.1.3.1. 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

15.1.3.2. 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

15.1.3.3. pandemic, epidemic, famine or plague; or

15.1.3.4. any event or circumstance constituting a Force Majeure Event under any other MSB Agreement; or

15.1.3.5. 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

- 15.1.3.6. radioactive contamination or ionising radiation; or
- 15.1.3.7. labour unrest, strike, go-slow or other labour action but not those affecting only the personnel of a Party;
- 15.1.4. The following shall not constitute a Force Majeure Event unless caused by or resulting from a Force Majeure Event:
 - 15.1.4.1. a failure or inability to make any payment, any inability to raise finance or any changes in price or market conditions;
 - 15.1.4.2. late delivery or interruption in the delivery of machinery, equipment, materials, spare parts or consumables;
 - 15.1.4.3. a delay or failure by a third party which prevents, hinders or delays the Affected Party in the performance of its obligations under this TCA, save where the cause of such delay or failure by the third party would constitute a Force Majeure Event pursuant to this TCA;
 - 15.1.4.4. 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;
 - 15.1.4.5. wear and tear, flaws, breakdown in or degradation of any equipment or machinery; or
 - 15.1.4.6. intentional acts, errors or omissions of the Affected Party or its Contractors.

15.2. Procedure

- 15.2.1. 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.

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

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

15.2.3.1. the cessation of the Force Majeure Event; and

15.2.3.2. its ability to immediately recommence performance of its obligations under this TCA by reason of the cessation of the Force Majeure Event.

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

15.3. Consequences of a Force Majeure Event

15.3.1. Notwithstanding any other provisions of this TCA, to the extent the Affected Party hereto is unable to perform any of its obligations under this TCA or the Market Rules due to a Force Majeure Event then the Affected Party shall be relieved from liability in respect of such obligations, save for clause 15.4, and shall be entitled to suspend performance of such obligations in accordance with and subject to clause 15.3 (Consequences of a Force Majeure Event).

15.3.2. 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 15.2 (Procedure), not be liable for any failure to perform an obligation under this TCA as a consequence of such Force Majeure Event, to the extent only that:

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

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

15.4. Payment of Charges

- 15.4.1. Any event or circumstance of Force Majeure shall not relieve either Party from any obligations to pay amounts due (or which become due) under this TCA or its rights under the Transmission Connection Security.

16. BREACH AND EVENTS OF DEFAULT

16.1. Breach Notification and Remedy Procedure

- 16.1.1. If either Party becomes aware that it is or could be in breach of any of the provisions of this TCA (other than a breach of any of its payment obligations under this TCA), the NamPower Technical Specifications and Requirements or the Grid Code or any relevant safety regulation or other requirement in force at the time (the “**Breaching Party**”), then such Breaching Party shall as soon as reasonably practicable, but no later than fourteen (14) 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.
- 16.1.2. 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 TCA (other than a breach of any of its payment obligations under this TCA) or the Grid Code or the NamPower Technical Specifications and Requirements or any relevant safety regulation or other requirement in force at the time (the “**Potentially Breaching Party**”) then the Notifying Party shall notify as soon as reasonably practicable, but no later than fourteen (14) 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.
- 16.1.3. If either Party has determined that the other Party is in breach of this TCA (other than a breach of any of its payment obligations under this TCA) or the Grid Code or the NamPower Technical Specifications and Requirements or any relevant safety regulation or other requirement in

force at the time, the Parties shall discuss the breach in good faith with the aim of agreeing on a means of remedying the breach.

- 16.1.4. 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).

16.2. NamPower Transmission Event of Default

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

16.2.1.1. Any event, to the extent caused by NamPower, which prevents the Connection Date being reached by the Scheduled Connection Date;

16.2.1.2. If NamPower is in breach of any of its obligations pursuant to clause 16.1, 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 TCA.

16.3. Eligible Seller Event of Default

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

16.3.1.1. If the Eligible Seller has failed to make payment of a duly rendered invoice or any other amount due to NamPower under this TCA;

- 16.3.1.2. If NamPower has called on the Transmission Connection Security and the Eligible Seller fails to reinstate the Transmission Connection Security;
- 16.3.1.3. If the Eligible Seller has failed to obtain or maintain any licences, authorisations or other approvals required to generate, supply, import or export (as the case may be) electricity in Namibia;
- 16.3.1.4. If the Eligible Seller is in material breach of the Grid Code, the NamPower Technical Specifications and Requirements, or any relevant safety regulation or requirement in force at the time and such breach poses a serious threat to the secure operation of the Transmission System; or
- 16.3.1.5. If the Eligible Seller is in breach of any of its obligations pursuant to clause 16.1, and such material breach is not rectified by the Eligible Seller within the Remedy Period, provided that such breach is not on account of NamPower's failure to comply with its material obligations pursuant to this TCA.

17. TERMINATION

17.1. Right to Terminate

- 17.1.1. Either Party have the right to terminate this TCA on account of a Force Majeure Event, on the condition that 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 TCA, that Party may upon not less than thirty (30) days' notice terminate this TCA.
- 17.1.2. Either Party have the right to terminate this TCA on account of a failure to remedy a breach as provided for in clause 16.1:

- 17.1.2.1. If the breach is capable of remedy but is not remedied before the end of the Remedy Period; or
 - 17.1.2.2. If the breach is incapable of remedy; or
 - 17.1.2.3. If the Breaching Party is unwilling to remedy the breach and the breach poses a serious threat to the secure operation of the Transmission System and/or the Connection Facility and/or the Generation Facility and/or the Point of Connection, the Non-Breaching Party shall have the right to terminate this TCA on giving the Breaching Party thirty (30) Business Days written notice. Nothing in this Clause shall prevent any Party from availing itself of the usual remedies at law and/or to claim damages arising from such breach;
- 17.1.3. The Eligible Seller may upon not less than thirty (30) days' notice terminate this TCA on the occurrence and continuation of any NamPower Transmission Event of Default.
- 17.1.4. NamPower may upon not less than thirty (30) days' notice terminate this TCA on the occurrence and continuation of any Eligible Seller Event of Default.

17.2. Circumstances of Early Termination

- 17.2.1. This TCA shall terminate on the earliest occurrence of the following:
- 17.2.1.1. If the Conditions Precedent are not reached for this TCA to become fully effective by the Long Stop Effective Date;
 - 17.2.1.2. If the Connection Date is not achieved with or within sixty (60) Days following the Scheduled Connection Date.
 - 17.2.1.3. On either Party exercising its right to termination as provided for in this TCA;

17.3. Termination due to Effluxion of Time

- 17.3.1. This TCA shall automatically terminate due to effluxion of time, at the end of the Defects Notification Period.

17.4. Consequences of Termination

- 17.4.1. Any exercise by a Party of its right to terminate this TCA shall be without prejudice to the rights of such Party to exercise any other rights or remedies available to such Party under this TCA or in Law.
- 17.4.2. Upon termination of this TCA, both Parties shall be excused and relieved of all obligations and liabilities under this TCA, except for payment of all amounts due, and liabilities resulting from any action, inaction or event occurring before the date of termination or as a result of the termination.
- 17.4.3. The Eligible Seller acknowledges that NamPower will, in connecting the Generation Facility to the Transmission System, incur certain expenditures costs, payable by the Eligible Seller, which will be recoverable if this TCA is terminated early for whatever reason.
- 17.4.4. NamPower shall be entitled to disconnect the Generation Facility from the Transmission System following the early termination of this TCA.

18. DISPUTE RESOLUTION

18.1. Procedure

- 18.1.1. If any dispute arises relating to this TCA or any claims for damages or otherwise are made as the result of breach of any obligation hereunder, the Parties shall meet and use their reasonable efforts to resolve such dispute through good faith negotiation. The Parties acknowledge the ECB's entitlement to mediate the settlement of certain disputes between the Parties as provided in the Generation Licence. The Parties shall follow the applicable dispute resolution as set by the ECB.
- 18.1.2. Should the Parties fail to resolve such dispute in accordance with clause 18.1.1 above within seven (7) days of their meeting or such longer period as the Parties may agree, the matter shall be elevated to chief executive (or equivalent) level for resolution.
- 18.1.3. Should the chief executives (or equivalent) of the Parties fail to resolve such dispute in accordance with clause 18.1.2 above within fourteen (14) days of their meeting or such longer period as the Parties may agree, any Party may refer such dispute or difference (except for a technical dispute which shall be dealt with in accordance with clause 18.3) to arbitration to

be undertaken by three (3) arbitrators agreed to by the Parties in accordance with clause 18.4 (Arbitration). Should the Parties fail to agree on arbitrators within 14 (fourteen) days of the referral of the dispute to arbitration, the President of the AFSA shall appoint the arbitrators from a list of approved arbitrators having the requisite experience and expertise in the field of the dispute.

18.2. Obligations during Disputes

18.2.1. While a Dispute is continuing, the Parties are required to continue to perform their respective obligations, under this TCA until such dispute has been fully and finally resolved.

18.3. Reference to an Independent Engineer

18.3.1. If the Parties are unable to resolve a technical dispute through good faith negotiation or resolution by the chief executives (or equivalent), and the TCA explicitly allows for such provision, the dispute may be referred to a nominated technical expert ("Independent Engineer") agreed between and appointed by both Parties.

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

18.3.3. The Parties agree they will make every effort to supply whatever information, documents and materials the Independent Engineer considers necessary to address the matters referred and will act in good faith regarding matters falling within the ambit of this clause.

18.3.4. The Independent Engineer will endeavour to provide the Independent Engineer's decision within the shortest time possible. In most cases, it is expected that the Independent Engineer should be able to supply a decision to the Parties within fourteen (14) Business Days. If for any reason, the Independent Engineer requires longer than fourteen (14) Business Days, the Independent Engineer will provide the Parties a written

explanation for the required extension of time with an estimate of the likely timetable for a decision on the matter referred.

18.3.5. The Parties shall share equally the fees and expenses of the Independent Engineer.

18.3.6. Should the Independent Engineer fail to resolve such dispute in accordance with this clause 18.3 within fourteen (14) Business Days or such longer period as the Parties may agree, any Party may refer such dispute or difference to arbitration in accordance with the provisions of clause 18.1.

18.4. Arbitration

18.4.1. Except where otherwise specifically provided for, any Dispute at any time between the Parties or any failure by them to reach agreement in regard to any matter arising out of or in connection with this TCA, 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 18.4 being an arbitration agreement within the meaning of the aforementioned rules.

18.4.2. If any Dispute is submitted to arbitration in accordance with clause 18.4.1, 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.

18.4.3. 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.

18.4.4. The decision in clause 18.4.3 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.

- 18.4.5. Each Party shall bear its own costs and the costs of arbitration shall be borne equally by the Parties unless the arbitrators decide otherwise.
- 18.4.6. 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.
- 18.4.7. The Parties may be legally represented and may present evidence by independent experts or as otherwise permitted by the arbitrators.
- 18.4.8. The aforesaid notwithstanding, any Party shall be entitled to approach any competent court having jurisdiction for urgent relief on an interim basis, pending the finalisation of the resolution of the dispute in terms of this clause 18.4 (Arbitration).

18.5. Obligations during Disputes

- 18.5.1. While a Dispute is continuing, the Parties are required to continue to perform their respective obligations, under this TCA until such dispute has been fully and finally resolved.
- 18.5.2. Where a Dispute has been referred for resolution by arbitration in accordance with the AFSA Rules, then neither of the Parties shall be entitled to exercise any rights or election arising in consequence of any alleged default by the other arising out of the subject matter of the Dispute until the Dispute has been resolved by the decision of the arbitrators.

18.6. Proceedings in Confidence

- 18.6.1. All proceedings held by the Parties for the purpose of resolving Disputes shall be held in private and except as permitted or required by any other provision of this TCA, shall not be open to third parties, it being agreed that for the purposes of this TCA 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 21 (Confidentiality).

18.7. Related Disputes

- 18.7.1. The Parties agree that where a dispute under this TCA 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 TCA and, if such Other Entities agree for such disputes to be consolidated, the Parties agree that any order and/or awards made by the appropriate court and/or tribunal in respect of such consolidated disputes shall be binding upon the Parties.
- 18.7.2. Subject to the agreement of the Other Entities in respect to which a Related Dispute relates, either Party to this TCA 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 TCA, on the ground that:
- 18.7.2.1. a common question of law or fact arises in two or more of the arbitral proceedings,
 - 18.7.2.2. the rights to relief claimed in those arbitral proceedings are in respect of, or arise out of the transaction contemplated herein or
 - 18.7.2.3. for some other reason specified in the application, it is desirable that the arbitral proceedings be consolidated.
- 18.7.3. Subject to the agreement of the Other Entities in respect to which a Related Dispute relates, the arbitrator shall have power to make the following orders in relation to an application made under clause 18.7.2:
- 18.7.3.1. The arbitral proceedings be consolidated on terms specified in the order; or
 - 18.7.3.2. The arbitral proceedings be heard at the same time or in a sequence specified in the order; or

18.7.3.3. Any of the arbitral proceedings be stayed pending the determination of any other of the arbitral proceedings.

18.7.4. Where an application has been made under clause 18.7.3 in relation to two or more arbitral proceedings (“**Related Proceedings**”) and the Other Entities in respect to which a Related Dispute relates agrees to consolidate proceedings, the following provisions shall have effect:

18.7.4.1. If the Related Proceedings are being heard by the same arbitrator, the arbitrator may make such order as it thinks fit in relation to those Related Proceedings and, if such an order is made, the Related Proceedings will be dealt with in accordance with the order.

18.7.4.2. If two or more arbitrators are hearing the Related Proceedings:

18.7.4.2.1. the arbitrator that received the application will communicate the substance of the application to the other arbitrators concerned; and

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

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

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

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

18.7.4.3.3. 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

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

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

19.1. **Indemnity**

19.1.1. Each Party shall indemnify, defend and hold harmless the other Party against all losses, damages, claims, liabilities, costs or expenses which the other Party may suffer or incur by reason of any claim for or in respect of:

19.1.1.1. the death or personal injury of any individual; or

19.1.1.2. damage to property; or

19.1.1.3. any third-party liabilities and damages, arising out of the indemnifying Party's default under this TCA, save where that default is excused in terms of clause 15 (Force Majeure) of this TCA, except to the extent that the Party seeking to be indemnified is at fault or is negligent.

19.1.2. Indemnification required from a Party under clause 19.1.1 shall be capped at the value of the Connection Charge.

19.1.3. Save to the extent expressly provided in this TCA, neither Party shall be liable to the other Party under this TCA or in delict for any Losses incurred directly or indirectly as a result of any action or omission of such Party unless the said action or omission is due to the negligence of the defaulting Party.

19.1.4. 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.

19.1.5. The Parties shall make all reasonable endeavours to mitigate any Losses they may suffer as a result of the breach of any of the other Party's material obligations under this TCA.

19.1.6. Other than as provided in this TCA, in no event shall either Party be liable to the other Party, at law or in equity and whether based on contract, tort or otherwise, for any indirect, incidental, special or consequential damages incurred by such Party or any third party as a result of the performance or non-performance of the obligations imposed pursuant to this TCA, irrespective of the causes thereof, including fault or negligence.

20. **CESSION AND ASSIGNMENT**

20.1. **Prior Consent**

20.1.1. The Parties shall not be entitled to cede or assign this TCA or any of its rights and obligations without the prior written consent of the other Party except as provided in clause 20.4 (Restructuring) hereto. Such consent shall not be unreasonably withheld.

20.2. **No Relief from Liability**

20.2.1. An assignment, pledge, charge or other disposition of any interest in this TCA by either Party shall not relieve that Party of its obligations under this TCA.

20.3. **Deemed Assignment**

20.3.1. It shall be deemed to be an assignment if by transfer or allotment of shares or by some other act or deed the effective control of a Party passes to any person not having effective control as at the Signature Date.

20.4. **Restructuring**

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

- 20.4.1.1. the dissolution of NamPower;
- 20.4.1.2. the restructuring, amalgamation, reorganisation or analogous event of NamPower; or
- 20.4.1.3. 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.

21. CONFIDENTIALITY

21.1. Confidential Information

- 21.1.1. 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 TCA.

21.2. Duty to Maintain Confidentiality

- 21.2.1. 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 21.1 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.

21.3. Exclusions

- 21.3.1. These provisions shall not apply to information which is:
 - 21.3.1.1. publicly known or has become publicly known through no unauthorised act of the recipient Party;
 - 21.3.1.2. rightfully received by the recipient Party from a third party;

- 21.3.1.3. independently developed by the recipient Party without use of the other Party's information;
- 21.3.1.4. disclosed by the other Party to a third party without similar restrictions;
- 21.3.1.5. 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
- 21.3.1.6. publicly disclosed with the other Party's written consent.

21.4. Disclosure

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

22. SURVIVAL

- 22.1. Termination of this TCA shall not affect the accrued rights and liabilities of the Parties hereto and the provisions of clause 24 (Applicable Law and Jurisdiction), clause 18 (Dispute Resolution) clause 17 (Termination), and clause 21 (Confidentiality), and any other provision of this TCA which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination, all inclusive, shall continue to have effect notwithstanding the termination of this TCA.

23. NOTICES, DOMICILIUM AND ELIGIBLE SELLER GENERAL DATA

23.1. Domicilia Citandi et Executandi

- 23.1.1. The Parties choose as their *domicilia citandi et executandi* their respective addresses specified in clause 23.2 (Addresses) hereof, for all purposes arising out of or in connection with this TCA, at which addresses all

process and notices arising out of or in connection with this TCA, its breach or termination may be served upon or delivered to the Parties.

23.2. Addresses

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

23.2.1.1. 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]

23.2.1.2. In the case of the NamPower:

Namibia Power Corporation (Pty) Ltd

NamPower Centre

15 Luther Street

PO Box 2864

Windhoek, Namibia

Legal@nampower.com.na

23.2.1.3. 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.

23.3. Delivery of Notices

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

- 23.3.1.1. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
- 23.3.1.2. 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
- 23.3.1.3. 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.)

23.4. Written Notice

- 23.4.1. Notwithstanding anything to the contrary contained in this TCA, 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.

24. APPLICABLE LAW AND JURISDICTION

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

25. GENERAL AND MISCELLANEOUS

25.1. Entire Agreement

- 25.1.1. This TCA 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 TCA and

without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom.

25.2. Amendments

25.2.1. This TCA may be amended or modified only by a written instrument executed by the Parties hereto which states specifically that it is intended to amend or modify this TCA. No provision of this TCA 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 TCA, nor shall any course of conduct, that is a breach of this TCA, operate or be construed as a waiver of any subsequent breach of this TCA, whether of a similar or dissimilar nature. Any amendment is subject to the prior regulatory oversight of the ECB.

25.3. No Waiver of Rights

25.3.1. 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 TCA shall be deemed to be a waiver of or shall in any way prejudice any right of that Party under this TCA. No waiver by either Party of any default or defaults by the other Party in the performance of any of the provisions of this TCA 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 TCA 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 TCA which shall remain in full force and effect.

25.3.2. 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.

25.4. No Third Party Rights

25.4.1. This TCA is intended solely for the benefit of the Parties. Other than as specifically provided for in this TCA, nothing in this TCA 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 TCA.

25.5. No Partnerships

25.5.1. This TCA 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 TCA shall be construed to constitute either Party as any of the other Party's attorney, partner or agent.

25.6. Approvals and Consents

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

25.7. Waiver Of Sovereign Immunity

25.7.1. 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.

25.8. Severability

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

25.9. Anti-Corruption Measures

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

25.10. Counterparts

25.10.1. This TCA 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 TCA 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

**LEANDRO KAPOLO
EXECUTIVE: TRANSMISSION**

[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 CONNECTION OFFER LETTER**
- Annexure B SINGLE LINE DIAGRAMS OF THE CONNECTION FACILITY**
(NamPower Standard Feeder Bay Elevations and Foundations;
132 kV Feeder Bay Elevations.
- Annexure C CONNECTION FACILITY – HV LINES AND SUBSTATIONS;**
- Annexure D PROJECT MONITORING;**
- Annexure E CONSTRUCTION PROGRAMME:**
Scope of Works Allocation Matrix;
Customer/Eligible Seller Construction Programme/Milestone Dates;
NamPower Construction Programme Scope of Works;
NamPower Construction Programme/Connection Works Milestone dates;
- Annexure F TRANSMISSION CHARGES;**
- Annexure G NAMPOWER TECHNICAL SPECIFICATIONS AND REQUIREMENTS;**
- Annexure H NAMPOWER TRANSMISSION TARIFF STRUCTURE;**
- Annexure I NAMPOWER EQUIPMENT PROFORMAS**
- Annexure J NOTARIAL LAND LEASE AGREEMENT**
- Annexure K DONATION AGREEMENT**

Annexure L FORM OF TRANSMISSION CONNECTION 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

TRANSMISSION CONECTION SECURITY FOR [●]

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 **NAD[●] ([●] 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 obligations under the Transmission Connection Agreement (TCA) 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 under the Transmission Connection Agreement (TCA), 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 M [DEEMED CONNECTION DATE PAYMENT SCHEDULE]

Drafting note: Insert details of the amounts parties may wish to set for not meeting the Connection Date by the Scheduled Connection Date. Parties may wish to incorporate additional terms around any liability for delay, as negotiated.

Drafting note: If not applicable, this schedule may be omitted.

M.1 DEEMED CONENCTION DATE PAYMENT

M.1.1 The Deemed Connection Date Payment means the liquidated damages payable by NamPower to the Eligible Seller for a delay, caused by the NamPower, in achieving the Connection Date by the Scheduled Connection Date at a rate of [NAD [●] or [●] %]¹ of the Connection Charge for every week or part thereof from the Scheduled Connection Date to the occurrence of the actual Connection Date.

M.2 AGREED CAP OF THE DEEMED CONNECTION DATE PAYMENT

M.2.1 The Deemed Connection Date Payment shall be capped at the value of the Connection Charge.

M.2.2 The payment of the Deemed Connection Date Payment shall not relieve the NamPower from his obligation to complete the Connection Works, or from any other duties, obligations or responsibilities which he may have under this TCA.

M.2.3 The Parties acknowledge that the liquidated damages, as set out in this schedule, are a reasonable and genuine pre-estimate of the likely extent of the damages suffered by the Eligible Seller as a result of such non-conformance.

M.2.4 The Parties agree that the liquidated damages shall be the full and final compensation to be paid in respect of a failure of NamPower to meet the Connection Date by the Scheduled Connection Date.

¹ NamPower Standard TOU tariff (Energy Component)