

*Confidential*



# **TRANSMISSION USE OF SYSTEM AGREEMENT (TUOSA)**

**FOR AN**

**ELIGIBLE SELLER**

**BETWEEN**

**[•]**

**AND**

**NAMIBIA POWER CORPORATION (PTY) LTD**



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**PREAMBLE:**

**THIS TRANSMISSION USE OF SYSTEM AGREEMENT (TUOSA)** 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) Whereas, NamPower owns and operates the Transmission System in Namibia.
- (B) Whereas, the Eligible Seller has registered with the Market Operator and the Electricity Control Board (ECB) to be an eligible seller to [generate and/or trade and/or export] electricity using the NamPower Transmission System, to convey electricity under the Market Rules as issued by the ECB.
- (C) NamPower has agreed to permit the use of its Transmission System to convey electricity through the Transmission System.
- (D) The Eligible Seller and NamPower have agreed to enter into this TUOSA to record the terms and conditions on which NamPower allows the Eligible Seller to connect to the Transmission System at the Delivery Point and/or wheel electricity through the Transmission System under the Market Rules to a Point of Delivery;
- (E) Whereas, this TUOSA is subject to the applicable Market Rules and related Market Frameworks.

**WHEREBY THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS**

1.1. Unless otherwise indicated in this TUOSA 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 TUOSA the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings:

1.1.1.	<b>"Active Trading Status"</b>	has the meaning given in the Market Participation Agreement;
1.1.2.	<b>"Affected Party"</b>	means a Party affected by a Force Majeure event as contemplated in clause 13;
1.1.3.	<b>"Affiliate(s)"</b>	<p>means in respect of either Party, any person (excluding any government), hereinafter referred to as "<b>company</b>" which directly or indirectly:</p> <p>1.1.3.1. is controlled by such Party; or</p> <p>1.1.3.2. controls such Party; or</p> <p>1.1.3.3. is controlled by a company which directly or indirectly controls such Party.</p> <p>For the purposes of the foregoing definition:</p> <p>1.1.3.3.1. a company is directly controlled by another company, if the latter company holds shares, quotas or voting rights, carrying in the aggregate the majority (more than fifty percent) of the votes exercisable at shareholders' meetings of the former company, and</p> <p>1.1.3.3.2. a particular company is indirectly controlled by a company, hereinafter called the "parent company", if a series of companies can be specified, beginning with the parent company and ending with the particular</p>

		company, so related that each company of the series, except the parent company, is directly controlled by one of the companies earlier in the series;
1.1.4.	<b>"AFSA Rules"</b>	means the rules relating to the conducting of arbitration as set by the Arbitration Foundation of Southern Africa;
1.1.5.	<b>"Agreed Interest Rate"</b>	means the prime rate of the banking institution with which NamPower's primary cheque account is placed;
1.1.6.	<b>"Approved Provider"</b>	means a registered banking institution registered in terms of the Banking Institutions Act (Act No. 13 of 2023) and for the time being:  1.1.6.1. Bank Windhoek, Development Bank of Namibia, Nedbank Namibia, First National Bank (Namibia), Rand Merchant Bank Namibia, or Standard Bank Namibia; or  1.1.6.2. any financial institution approved in writing by NamPower;
1.1.7.	<b>"Auxiliary Power"</b>	means power purchased by the Eligible Seller from NamPower and imported to its facilities for own consumption;
1.1.8.	<b>"Available Network Capacity"</b>	has the meaning given to it in the Market Rules;
1.1.9.	<b>"Breaching Party"</b>	has the meaning given to it in Clause 14.1 (Breach and Events of Default);
1.1.10.	<b>"Business Day"</b>	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;
1.1.11.	<b>"Charge" or "Charges"</b>	means all the Transmission Charges which may be levied by NamPower in its capacity as Network Operator and as fully specified in Annexure (insert) of this Transmission Use of System Agreement as approved by the Electricity Control Board and as may be amended from time to time, and any

		additional charges that may become applicable pursuant to Clause (insert) ("Disputed Amounts")
1.1.12.	<b>"Competent Authority"</b>	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 TUOSA (or any transaction or agreement contemplated herein);
1.1.13.	<b>"Confidential Information"</b>	means any and all information and data disclosed by either Party in connection with this TUOSA in any form whatsoever, and including this TUOSA itself;
1.1.14.	<b>"Connection Charge" or "Connection Charges"</b>	means the charges specified in the Connection Offer Letter and the Transmission Connection Agreement, as applicable, and as they may be amended from time to time;
1.1.15.	<b>"Connection Date"</b>	has the meaning given in the Transmission Connection Agreement;
1.1.16.	<b>"Connection Facility"</b>	means the equipment forming part of the Transmission System that are required to provide connection for the Eligible Seller's Generation Facility;
1.1.17.	<b>"Connection Offer Letter"</b>	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 referred to as Annexure A to the Transmission Connection Agreement;
1.1.18.	<b>"Consent" or "Consents"</b>	means the permits, licences, consents, authorisations, approvals, concessions, acknowledgements, exemptions or like or similar documentation required to be obtained in relation to participating in the Modified Single Buyer market;

1.1.19.	<b>"Contestable Customer"</b>	has the meaning given to it in the Market Rules;
1.1.20.	<b>"Contestable Distributor"</b>	has the meaning given to it in the Market Rules;
1.1.21.	<b>"Contestable End Consumer"</b>	has the meaning given to it in the Market Rules;
1.1.22.	<b>"Contestable Supply Point"</b>	has the meaning given to it in the Market Rules;
1.1.23.	<b>"Contractor(s)"</b>	means any supplier or contractor engaged by either Party to undertake the whole or any part of either Party's respective obligations under this TUOSA, including any sub-contractors appointed by any person who falls within this definition;
1.1.24.	<b>"Day" or "Days"</b>	means a calendar day(s);
1.1.25.	<b>"De-Energise"</b>	means the operation of any isolator, breaker or switch so as to prevent 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 <b>"De-Energisation"</b> , <b>"De-Energised"</b> and <b>"De-Energising"</b> shall be construed accordingly;
1.1.26.	<b>"Delivery Point Outage"</b>	means a pre-scheduled interruption in the transmission availability at the Point of Connection as agreed between the Parties in accordance with Clause 7.6 (Maintenance and Outage Coordination), as the case may be;
1.1.27.	<b>"Delivery Point(s)"</b>	has the meaning given to it in the Market Rules and as more specifically set out in Clause 6.2, which point, the Eligible Seller's Generation Facilities have been connected to the Transmission System for the export of the allocated Maximum Export Capacity into the Transmission System and to consume electricity, limited to the Maximum Import Capacity, from the Transmission System;
1.1.28.	<b>"Dispute"</b>	means any dispute or disagreement of any kind whatsoever between the Parties arising under, in connection with, or



		relating to, this TUOSA or the transactions contemplated herein;
1.1.29.	<b>"Distribution System"</b>	means a system which consists wholly or mainly of medium and low voltage networks through which electricity is conveyed to a customer;
1.1.30.	<b>"Distributor"</b>	has the meaning given to it in the Market Rules;
1.1.31.	<b>"Due Date"</b>	means thirtieth (30 <sup>th</sup> ) day of any respective month, or thirty (30) days following the first day for a respective month with less days.
1.1.32.	<b>"Electricity Act"</b>	means the Namibian Electricity Act, Act No 4 of 2007, as amended or superseded from time to time;
1.1.33.	<b>"Electricity Control Board" or "ECB"</b>	means the Electricity Control Board, the Namibian regulatory authority for electricity established in terms of the Electricity Act, 4 of 2007 or any successor thereto;
1.1.34.	<b>"Eligible Seller Event of Default"</b>	has the meaning set forth in clause 14.3;
1.1.35.	<b>"End Customer"</b>	means a user of electricity that is connected to the National Electricity Grid;
1.1.36.	<b>"Energise"</b>	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;
1.1.37.	<b>"Exporter"</b>	has the meaning given to it in the Market Rules;
1.1.38.	<b>"Force Majeure Event"</b>	has the meaning given to it in clause 13.1.1;
1.1.39.	<b>"Generation Facility" or</b>	means the generation facility including, but not limited to, all Schedule Units, switchgears, transformers, related

	<b>"Generation Facilities"</b>	transmission connection equipment and any probable plant and/or equipment related to the generator(s);
1.1.40.	<b>"Generation Licence"</b>	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;
1.1.41.	<b>"Generator"</b>	has the meaning given to it in the Market Rules;
1.1.42.	<b>"Government Action"</b>	<p>means:</p> <p>1.1.42.1. the expropriation (including creeping expropriation), compulsory acquisition, requisition, confiscation or nationalisation by any Competent Authority of any shares in the Eligible Seller or assets relating to the Schedule Units; or any material assets or rights of the Eligible Seller, or any other similar act of such Competent Authority that materially adversely affects:</p> <p>1.1.42.1.1. the enjoyment by the Eligible Seller of any of the rights and benefits contemplated by this TUOSA, or</p> <p>1.1.42.1.2. the performance by the Eligible Seller of any of its obligations under or pursuant to this TUOSA, 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>
1.1.43.	<b>"Government"</b>	means the Government of the Republic of Namibia and all its agencies as applicable;
1.1.44.	<b>"Grid Code"</b>	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;
1.1.45.	<b>"Law"</b>	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;
1.1.46.	<b>"Losses"</b>	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);
1.1.47.	<b>"Market Framework(s)"</b>	means the approved frameworks, including the Namibia Balancing Framework and Namibia Wheeling Framework, which govern the operation and management of the MSB Market as imposed in terms of the Electricity Act, 4 of 2007, and any updates from time to time;
1.1.48.	<b>"Market Operator"</b>	has the meaning given to it in the Market Rules;
1.1.49.	<b>"Market Participation Agreement"</b>	means the agreement executed between the Market Operator and the Eligible Seller, giving effect to the registration of the Eligible Seller to become as a Market Participant;
1.1.50.	<b>"Market Participant"</b>	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 TUOSA, Eligible Seller and Market Participant may be used interchangeably;
1.1.51.	<b>"Market Rules"</b>	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;
1.1.52.	<b>"Maximum Export Capacity"</b>	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 was provided for in the Transmission Connection Agreement and Connection Offer Letter;
1.1.53.	<b>"Maximum Import Capacity"</b>	means the maximum amount of electricity expressed in kilovolt amperes (kVA) or kilowatts (kW) which will be supplied from the Transmission System at the Delivery Point to the Eligible Seller's Generation Facility not exceeding [●]kVA or kW;
1.1.54.	<b>"Megavolt-amperes" or "MVA"</b>	means a measure of active and reactive electrical power equal to one million volt-amperes;
1.1.55.	<b>"Metering Equipment"</b>	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 <b>"Main Meter"</b> and <b>"Check Meter"</b> shall be construed according;
1.1.56.	<b>"Modified Single Buyer" or "MSB"</b>	means the electricity market structure, adopted by the Government, in September 2019;
1.1.57.	<b>"MSB Agreements"</b>	means this TUOSA, 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 in relation to the contracting the Market Participant to participate in the Modified Single Buyer market;
1.1.58.	<b>"MVAh"</b>	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;
1.1.59.	<b>"MW"</b>	means megawatt;
1.1.60.	<b>"MWh"</b>	means megawatt hours;
1.1.61.	<b>"NAD" or "Namibia Dollar(s)"</b>	means the official currency of the Republic of Namibia;

1.1.62.	<b>"NamPower Transmission Event of Default"</b>	has the meaning set forth in clause 14.2;
1.1.63.	<b>"National Control Centre"</b>	means the centre for control and coordination of power flows within Namibia;
1.1.64.	<b>"National Electricity Grid"</b>	Means any of:  1.1.64.1. Transmission System, or 1.1.64.2. Distribution System,
1.1.65.	<b>"Network Operator"</b>	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 TUOSA, "NamPower" shall mean the Network Operator;
1.1.66.	<b>"Other Customer"</b>	means any customer of NamPower (whether load or generator), other than the Eligible Seller;
1.1.67.	<b>"Parties"</b>	means the Eligible Seller and the Network Operator, or their successors-in-title, and 'Party' shall be construed accordingly,
1.1.68.	<b>"Point of Connection"</b>	means the physical point at which the Eligible Seller is physically connected to the Transmission System as indicated in Clause 6.1;
1.1.69.	<b>"Point of Delivery"</b>	has the meaning given to it in the Market Rules and as indicated and maintained in Annexure B;
1.1.70.	<b>"Point of Supply"</b>	means a physical point on the Transmission System where energy is metered and supplied to the Eligible Seller at the Maximum Import Capacity;
1.1.71.	<b>"Prudent Industry Practice"</b>	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

		<p>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>1.1.71.1. complying with:</p> <ul style="list-style-type: none"> <li>1.1.71.1.1. recognised standards pertaining to that activity;</li> <li>1.1.71.1.2. manufacturers’ instructions and operating manuals; and</li> <li>1.1.71.1.3. the terms of this TOUSA; and</li> </ul> <p>1.1.71.2. taking reasonable steps to ensure that:</p> <ul style="list-style-type: none"> <li>1.1.71.2.1. adequate materials, resources and supplies are available at the necessary places under normal conditions associated with existing operations;</li> <li>1.1.71.2.2. sufficient experienced and trained operating personnel are available to 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;</li> <li>1.1.71.2.3. 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</li> </ul>
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		<p>accordance with the manufacturer's recommendations;</p> <p>1.1.71.2.4. appropriate monitoring and testing is carried out to ensure that equipment will function properly under normal and emergency conditions;</p> <p>1.1.71.2.5. 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>
1.1.72.	<b>"Reasonable and Prudent Operator"</b>	means a person seeking in good faith to perform its obligations and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence, responsibility and foresight which would reasonably and ordinarily be expected from a skilled and internationally experienced developer, contractor, owner or operator complying with all Laws, engaged in the same or a similar type of undertaking, in the same or similar circumstances and conditions, any references herein to the "standards of a Reasonable and Prudent Operator" shall be construed accordingly;
1.1.73.	<b>"SAPP"</b>	means the Southern African Power Pool;
1.1.74.	<b>"SAPP Governing Documents"</b>	means the last approved revisions of the following agreements, the Inter-Utility Memorandum of Understanding ("IUMOU"), the Agreement between Operating Members ("ABOM"), the SAPP Market Book of Rules, the SAPP Operating Guidelines and any other document that governs trading within SAPP as approved from time to time;

1.1.75.	<b>“SAPP Transmission Capacity Allocation Criteria”</b>	means the criteria set by SAPP for the allocation of wheeling on interconnectors where there is more than one transaction, as developed and agreed by SAPP from time to time.
1.1.76.	<b>“Schedule Unit”</b>	has the meaning given to it in the Market Rules;
1.1.77.	<b>“Scheduled Transmission System Outage”</b>	means pre-arranged outages between the Network Operator and the Eligible Seller on the Transmission System;
1.1.78.	<b>“Shallow Connection Capacity Charge”</b>	means the charge payable by an Eligible Seller for the reservation of capacity at the Point of Connection;
1.1.79.	<b>“Signature Date”</b>	means the date this TUOSA is duly signed and dated by the last Party signing it;
1.1.80.	<b>“Supply Point”</b>	has the meaning given to it in the Market Rules;
1.1.81.	<b>“System Operator”</b>	has the meaning given to it in the Market Rules;
1.1.82.	<b>“Terminated Trading Status”</b>	has the meaning given to it in the Market Participation Agreement;
1.1.83.	<b>“Termination Date”</b>	means the date of termination of this TUOSA;
1.1.84.	<b>“Trader”</b>	has the meaning given to it in the Market Rules;
1.1.85.	<b>“Transmission Connection Agreement”</b>	means the agreement for the physical connection of the Generation Facility to the Transmission System, entered into between the Eligible Seller and the Network Operator;
1.1.86.	<b>“Transmission Export Wheeling Charge”</b>	means the charge payable by an Eligible Seller for the securing and using of a wheeling path from the Delivery Point to respective Point(s) of Delivery;
1.1.87.	<b>“Transmission Licence”</b>	means the transmission licence issued by the Ministry of Mines and Energy on recommendation of the Electricity Control Board, 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;
1.1.88.	<b>“Transmission System Outage”</b>	means a disruption or failure of the Transmission System;
1.1.89.	<b>“Transmission System”</b>	means the electricity transmission infrastructure in Namibia owned and operated by NamPower;
1.1.90.	<b>“Transmission Use of System Charge” or “Transmission Use of System Charges”</b>	means in relation to any Year, the total charges payable by the Eligible Seller for the shared use of the Transmission System set out in clause 9.1 and Annexure C as approved by the ECB for the applicable Year, including any adjustments thereto from time to time, but excluding any Connection Charges.
1.1.91.	<b>“Transmission Use of System Security”</b>	means a bank guarantee in favour of NamPower;
1.1.92.	<b>“Unscheduled Transmission System Outage”</b>	means a Transmission System Outage which occurs unplanned and without prior notification from the Network Operator;
1.1.93.	<b>“Week”</b>	means the period between 00:00 hours on a Monday and 24:00 hours on the following Sunday;
1.1.94.	<b>“Year”</b>	means the period starting 01 July and ending 30 June annually.

## 2. INTERPRETATION

- 2.1. In this TUOSA, 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 TUOSA;
  - 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 TUOSA;
  - 2.1.4. References to legislation (including subordinate legislation) and regulations made or licences issued there under are references to such legislation, regulations and licences as they may be amended from time to time;
  - 2.1.5. References to other agreements or documents, including this TUOSA and the Market Rules or a provision of this TUOSA or the Market Rules, are, unless the context otherwise requires or states, references to those agreements or documents at the Signature Date and as amended and/or re-enacted and/or consolidated and/or replaced from time to time;
  - 2.1.6. A gender shall include the other gender;
  - 2.1.7. A natural person shall include a juristic person, and vice versa;
  - 2.1.8. All provisions contained in this TUOSA 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 TUOSA;
  - 2.1.9. This TUOSA 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 TUOSA 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 TUOSA 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 TUOSA 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 TOUSA 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 TUOSA shall be interpreted against the Party responsible for the drafting or preparation of this TUOSA shall not apply.

## **2.4. Annexures**

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

## **3. COMMENCEMENT AND TERM**

### **3.1. Term**

3.1.1. This TUOSA 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 remain in force and effect until terminated in accordance with clause 15.

## **4. RELEVANT LEGISLATION AND MARKET RULES**

### **4.1. Conflicts**

4.1.1. The Parties acknowledge that this TUOSA 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).

4.1.2. In the event of any inconsistency between the provisions of this TUOSA and any of the following:

4.1.2.1. The Electricity Act;

4.1.2.2. The Market Rules;

4.1.2.3. The Grid Code;

4.1.2.4. The conditions contained in the Eligible Seller's Licence;

4.1.2.5. The Market Participation Agreement;

4.1.3. then the documents as set out in the order hereto above, shall prevail to the extent of such inconsistency.

4.1.4. To the extent that this TUOSA (including any obligation herein for either Party to comply with the standards of a Reasonable and Prudent Operator) conflicts with:

- 4.1.4.1. 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 TUOSA 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);
- 4.1.4.2. 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.

## **5. CONDITIONS PRECEDENT**

### **5.1. On Signature Date**

- 5.1.1. The rights and obligations of the Parties under this TUOSA set out in clause 2 (Interpretation), clause 4 (Related Legislation and Market Rules), clause 5 (Conditions Precedent), clause 7 (Customer Responsibilities and Use of System Services), clause 13 (Force Majeure), clause 15 (Termination), clause 16 (Dispute Resolution), clause 17 (Liability for Damages or Losses), clause 18 (Cession and Assignment), clause 19 (Confidentiality), clause 20 (Survival), clause 21 (Notices and Domicilium), clause 22 (Applicable Law and Jurisdiction) and clause 23 (General and Miscellaneous) shall come into force and effect on and from the Signature Date.

### **5.2. On Effectiveness Date**

- 5.2.1. The remainder of this TUOSA shall only become fully effective following the satisfaction by the Eligible Seller, or the waiver by the NamPower in writing, of the following conditions precedent:
  - 5.2.1.1. Any and all Charges or monies payable by the Eligible Seller on execution of this TUOSA having been paid and up to date;
  - 5.2.1.2. The Transmission Use of System Security requirements in clause 10 required by NamPower to be provided by the Eligible Seller having been provided to NamPower in form and substance satisfactory to NamPower; and

5.2.1.3. The Parties achieving the Connection Date under the Transmission Connection Agreement.

**6. POINT OF CONNECTION, DELIVEY POINT AND POINT OF DELIVERY**

**6.1. Point of Connection**

6.1.1. The Point of Connection 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. Delivery Point**

6.2.1. The Delivery Point shall be located at the area generally described as:

6.2.1.1. **Site:** [●]

6.2.1.2. **Meter ID:** [●]

6.2.1.3. **GPS Coordinates:**

Lat	Long	Name

### **6.3. Point of Delivery**

- 6.3.1. Subject to the transmission application process, the Eligible Seller may use the Transmission System to convey electricity injected at the Delivery Point to its customer(s), referred to as a Contestable Customer(s), and/or at the respective Point(s) of Delivery as maintained in Annexure B of this TUOSA.

## **7. CUSTOMER RESPONSIBILITY AND USE OF SYSTEM SERVICES**

### **7.1. Use of System Services**

- 7.1.1. Under no circumstances shall the Eligible Seller be entitled to Energise or the Generation Facility or export any electricity to the Transmission System prior to achieving the Connection Date.
- 7.1.2. Subject to and in accordance with the terms and conditions of the Market Participation Agreement and the Market Rules, the Eligible Seller, with effect from 00h00 on the first day following the successful achievement of the conditions precedent as per clause 5.2, be entitled to import up to the Maximum Import Capacity or export active and reactive electrical energy generated from the Generation Facility, up to the Maximum Export Capacity, to the Transmission System at the Point of Connection for wheeling over the Transmission System.
- 7.1.3. Save as permitted or required by NamPower, the Eligible Seller shall not exceed the Maximum Export Capacity when transmitting electrical energy between the Generation Facility and the Transmission System.
- 7.1.4. In respect of electrical energy at the Delivery Point, the Eligible Seller shall ensure that the amount of electrical energy taken shall not exceed the Maximum Import Capacity and that the Eligible Seller complied at all times with the NamPower Technical Specifications and Requirements and the Grid Code. In addition to the foregoing, it is an express condition of the agreement that the amount of electrical energy taken shall be limited to Auxiliary Power requirements only.
- 7.1.5. NamPower shall permit the Eligible Seller to use the Transmission System to convey electricity injected by the Eligible Seller at its Delivery Point, to its Point(s) of Delivery, which if in Namibia, is referred to as a Contestable

Supply Point(s), or alternatively for export purposes to the Point of Delivery.

## **7.2. Grid Code Compliance**

- 7.2.1. The Eligible Seller shall be responsible for the design, engineering, procurement, supply, delivery, construction, installation, expansion, refurbishment, upgrading, improvement, testing, commissioning and maintenance of its Generation Facility in accordance with the Grid Code.
- 7.2.2. The Eligible Seller shall ensure that its Generation Facility is compliant with the Grid Code requirements for connection to the Transmission System and ensure it obtains and maintains all Eligible Seller approvals or cause all approvals to be maintained in connection with the design, engineering, procurement, supply, erection, delivery, construction, installation, expansion, refurbishment, refurbishment, upgrading, improvement, testing, commissioning, operation and maintenance of the Generation Facility and the injection and export of the electrical energy into the Transmission System at the Point of Connection.
- 7.2.3. The Eligible Seller acknowledges and agrees that the NamPower Technical Specifications and Requirements and/or the Grid Code may be amended from time to time, and that the Eligible Seller is responsible for any reasonable costs and expenses that may be incurred arising from such amendments and the obligations to comply with them.

## **7.3. Initial Energisation and Synchronisation**

- 7.3.1. Subject to the terms and conditions of this Agreement, the Eligible Seller shall act in accordance with the standards of a Reasonable and Prudent Operator, in relation to the commissioning of the Generation Facility and shall:
  - 7.3.1.1. Not Energise the Generation Facility to the Transmission System without:
    - 7.3.1.1.1. first notifying the Market Operator in writing not less than 30 (thirty) days prior to Energising or the Generation Facility; and



- 7.3.1.1.2. in the case such first Energisation is deferred until at a later date, again notify the Market Operator no less than 5 (five) days prior thereto; and
- 7.3.1.1.3. complying with Clause 7.4 (Electrical Protection System to be provided by the Eligible Seller); and
- 7.3.1.1.4. any other conditions for the maintenance of the safety, security and reliability of the integrated Transmission System, as may be imposed by the Network Operator (in accordance with the Grid Code) on prior written notice by the Eligible Seller, when Energising such Generation Facility on such date or the deferred date, as the case may be.

7.3.1.2. Notify the Market Operator of the Generation Facility's dispatch regime in accordance with the Market Participation Agreement and Market Rules.

#### **7.4. Electrical Protection to be provided by the Eligible Seller**

- 7.4.1. The Eligible Seller shall, at its own cost and acting in accordance with the standards of a Reasonable and Prudent Operator, NamPower Technical Specifications and Requirements; and the Grid Code, construct, procure, deliver, erect, connect, test, operate and maintain a protection system of the Generation Facility and the interface between the Generation Facility and the Transmission System and as more fully set out in the Transmission Connection Agreement.
- 7.4.2. Without limiting the foregoing, the Eligible Seller shall ensure that the protection system shall meet all the requirements set forth in the Grid Code the NamPower Technical Specifications and Requirements.
- 7.4.3. Without limiting the foregoing, the Eligible Seller shall be solely responsible for the protection of the Generation Facility against lightning or any fault or adverse condition of the Transmission System (including any plant or equipment of any Other Customer) and to disconnect the

Generation Facility or a Schedule Unit(s), if any such fault or condition could adversely affect the Generation Facility or the Schedule Unit(s).

7.4.4. The Eligible Seller shall adhere to any and all rules NamPower puts in place from time to time, for the protection of health, safety, and security at the Point of Connection and generally within the Transmission Substation across the Transmission System, at the Point of Connection.

7.4.5. At intervals agreed to by the Parties or failing agreement as suggested by the standards of a Reasonable and Prudent Operator and following any apparent malfunction of the protection equipment described in the Transmission Connection Agreement, the Eligible Seller shall perform both calibration and functional trip tests of such equipment. These tests shall not entail the tripping of any in-service Schedule Unit(s) but shall entail that all protective relays and lockout contracts be activated.

**7.5. Shallow Connection Capacity, Available Network Capacity and Wheeling of Energy**

7.5.1. The network capacity allocated to the Eligible Seller at the Point of Connection is [●]MW.

7.5.2. In exchange for the reservation of capacity at the Point of Connection, the Eligible Seller shall pay a monthly Shallow Connection Capacity Charge as follows;

7.5.2.1. In the event all the electricity generated from the Eligible Seller's Generation Facility is wheeled to supply Contestable Quantity(ies) which are local customers or end consumers within the borders of Namibia, the Shallow Connection Capacity Charge will not apply; or

7.5.2.2. For any contemplated transactions which is for the purposes of exporting electricity generated from the Eligible Sellers Generation Facility for purposes of export, whereby such reservation of capacity at the Point of Connection is required, whether it is used or not, the monthly Shallow Connection Capacity Charge will apply and be payable by the Eligible Seller.

- 7.5.3. Once the Market Operator confirms the contemplated transactions in accordance with the procedure as set out in Clause 11 of the Market Rules, NamPower in its capacity as Network Operator, shall deliver the energy as scheduled on a best effort basis, save for in instances of system interruptions or curtailments arising from events of Force Majeure, network congestion or unscheduled maintenance as more clearly set out in the Market Rules.
- 7.5.4. The curtailment shall take place in accordance with the curtailment procedure developed under Rule 11(2) of the Market Rules.
- 7.5.5. Once the Market Operator confirms the transactions in accordance with the procedure as set out in Clause 7.5.4 , every hour transaction shall be regarded as a contract between the Eligible Seller and the Market Operator and shall be financially settled in accordance with the Market Participation Agreement. NamPower shall determine the actual flows (at the Delivery Point and Point(s) of Delivery) in accordance with the Market Rules, Market Participation Agreement, Balancing Framework and/or the SAPP Market Book of Rules, as applicable.
- 7.5.6. The allocation of the Available Network Capacity for wheeling purposes shall be done in accordance with the Market Rules and/or for purposes of export, the SAPP Market Book of Rules and the SAPP Transmission Capacity Allocation Criteria, as applicable.

## **7.6. Maintenance and Outage Coordination**

- 7.6.1. NamPower shall make the Point of Connection available in accordance with Prudent Industry Practice for the maintenance of the Transmission System and equipment.
- 7.6.2. The Eligible Seller shall maintain the Eligible Seller's Generation Facility and the Eligible Seller's Connection Equipment in accordance with Prudent Electricity Practice for the maintenance of the Generation Facility and the Eligible Seller's Connection Equipment connected at the Point of Connection throughout the term of this TUOSA to the reasonable satisfaction of NamPower. The Eligible Seller shall provide such evidence as NamPower may reasonably require to satisfy that it is conducting its maintenance in accordance with a Reasonable and Prudent Operator.

- 7.6.3. The Eligible Seller and NamPower shall as far as practically possibly coordinate timing for Delivery Point Outages and Scheduled Transmission System Outages and any scheduled Generation Facility outages.
- 7.6.4. The Eligible Seller and NamPower shall not less than thirty (30) days prior to the Connection Date and on an annual basis for the remainder of the term of this TUOSA, at least one (1) month prior to the anniversary of the Connection Date, provide its proposal for its scheduled Generation Facility outages, Delivery Point Outages and Scheduled Transmission System Outages. Such schedules shall include:
- 7.6.4.1. the number of expected scheduled outages; and
- 7.6.4.2. the estimated dates and duration of each scheduled outage.
- 7.6.5. NamPower shall be responsible for all costs incurred by it or in connection with or arising from the maintenance carried out by it or on its behalf on the Transmission System.
- 7.6.6. If there is a requirement to change the dates of any scheduled outage contemplated above, the Party shall provide the other Party with written notice at least twenty-eight (28) days in advance of the relevant scheduled outage which, unless there is compelling reason not to do so (and such request not unreasonably refused) approve within five (5) days of such request.
- 7.6.7. Subject to having complied with the foregoing provisions of clause 7.6.6, NamPower shall be entitled to shut down the Point of Connection and/ or Delivery Point and/or Point of Delivery from service at the agreed date and time.
- 7.6.8. NamPower shall notify the Eligible Seller promptly:
- 7.6.8.1. Upon the occurrence of any event resulting in the Transmission System being unable to operate or events affecting the Transmission System stability; and/or
- 7.6.8.2. Unscheduled Transmission System Outage directly impacting the Eligible Seller; and/or

7.6.8.3. If NamPower determines that the maintenance of the Point of Connection is required prior to the next scheduled outage pursuant to clause 7.6.4 and 7.6.6.

7.6.9. In each case NamPower shall:

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

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

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

## **7.7. Inspection Rights**

7.7.1. 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 TOUSA, 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.

## **8. DE-ENERGISATION AND RE-ENERGISATION**

### **8.1. Circumstances of De-Energisation**

8.1.1. The Point of Connection may be De-Energised:

8.1.1.1. at the request of the Eligible Seller;

- 8.1.1.2. subject to clause 7.6 (Maintenance and Outage Coordination) when NamPower believes there is an emergency which requires it to De-Energise the Point of Connection to connect new plant or equipment or to carry out maintenance of the Transmission System;
- 8.1.1.3. if NamPower considers it necessary to prevent loss of life or damage to property or if there is reason to believe that the condition of the Point of Connection poses an immediate threat of injury or death to any person;
- 8.1.1.4. if NamPower believes there is an emergency that requires the Point of Connection to be De-energised to maintain the safe operation of the Transmission System;
- 8.1.1.5. in the event of an Eligible Seller's Event of Default;
- 8.1.1.6. in the event of a Force Majeure Event;
- 8.1.1.7. if the Eligible Seller is in any other trading status than the Active Trading Status, as defined in the Market Participation Agreement; or
- 8.1.1.8. on the termination of this TUOSA.

## **8.2. Energisation following De-Energisation**

- 8.2.1. If the Point of Connection has been De-Energised it shall be energised as soon as practicable, following:
  - 8.2.1.1. a request from the Eligible Seller that it be energised, if the Point of Connection was initially De-Energised at the Eligible Seller's request;
  - 8.2.1.2. the completion of maintenance, if the Point of Connection was De-Energised by NamPower to carry out maintenance of the Transmission System;
  - 8.2.1.3. the remedying of a situation causing danger to persons or property if the Point of Connection was De-Energised by NamPower to prevent damage or loss to persons or property;

- 8.2.1.4. the remedying of an emergency situation on the Transmission System, if the Point of Connection was De-Energised by NamPower to maintain the safe operation of the Transmission System;
- 8.2.1.5. payment of any amounts due, if the Point of Connection was De-Energised by NamPower because of default of payment of an amount owed by the Eligible Seller to NamPower, or if the Transmission Use of System Security was duly replaced;
- 8.2.1.6. the Eligible Seller's remedying of the breach, if the Point of Connection was De-Energised by NamPower because of the Eligible Seller's breach of the NamPower Technical Specifications and Requirements of the Grid Code or any other relevant safety regulation or other requirements in force at the time; or
- 8.2.1.7. the Eligible Seller have returned to an Active Trading Status.

### **8.3. Costs of De-Energisation and Energisation**

- 8.3.1. The cost of De-energisation and Energisation shall be borne by the Eligible Seller:
  - 8.3.1.1. if the Point of Connection was De-Energised and energised at the request of the Eligible Seller; or
  - 8.3.1.2. if the Point of Connection was De-Energised by NamPower because the Eligible Seller was in material breach of the NamPower Technical Specifications and Requirements, the Grid Code or any relevant safety regulation or other requirement in force at the time; or
  - 8.3.1.3. in the event of a default of payment of any amount owed by the Eligible Seller to NamPower under this TUOSA; or
  - 8.3.1.4. in the event the Eligible Seller failed to maintain an Active Trading Status; or
  - 8.3.1.5. on termination of this Agreement due to the Eligible Seller Event of Default.

8.3.2. The cost of De-energisation and Energisation shall be borne by NamPower if the Point of Connection is De-Energised due to:

8.3.2.1. a reason other than those set out in clause 8.3.1; or

8.3.2.2. NamPower's failure to operate the Transmission System according to Prudent Electricity Practice; or

8.3.2.3. NamPower's negligence.

8.3.3. Except in the instances of gross negligence, in the event the Eligible Seller suffers any loss or damage as a result of any of De-Energisation and Energisation under clause 8.3 NamPower shall not be liable to compensate the Eligible Seller.

## 9. **CHARGES**

### 9.1. **Connection Charges**

9.1.1. As there may be an overlap between a Transmission Connection Agreement and this TUOSA, the applicable Connection Charges will be levied and payable in accordance with the Transmission Connection Agreement, or any new Transmission Connection Agreement as a result of any changes or upgrades to the Connection Facility, as the case may be.

### 9.2. **Transmission Use of System Charges**

9.2.1. The Eligible Seller shall pay to NamPower the Transmission Use of System Charges for the use of the Transmission System, and all transmission services inclusive of wheeling, which NamPower shall render in connection with such use. The Charges shall be set out and maintained in Annexure C and includes the following:

9.2.1.1. Shallow Connection Capacity Charge – levied for the reservation of capacity at the Point of Connection.

9.2.1.2. Reliability Service Charge.

9.2.1.3. Monthly Extension Charge.



- 9.2.1.4. Incremental Network Losses Charge – levied on the Generator to reflect their impact (an increase or decrease) in system losses.
- 9.2.1.5. Transmission Export Wheeling Charge – levied for the use of the Namibian Transmission System for export purposes.
- 9.2.1.6. Other Charges as more specifically set out in the Transmission Connection Offer Letter.

### **9.3. Amendment of the initial Transmission Use of System Charges**

- 9.3.1. NamPower may annually amend or substitute the Transmission Use of System Charges as approved by the Electricity Control Board in accordance with the Transmission Tariff Methodology, from time to time.

## **10. TRANSMISSION USE OF SYSTEM SECURITY**

### **10.1. Transmission Use of System Security Requirements**

- 10.1.1. The Eligible Seller shall submit the following as Transmission Use of System Security guaranteeing its payment obligations as an Eligible Seller for its Transmission Use of System Charges that are or may become payable, as set out in Annexure C, in accordance with this TUOSA as follows:
  - 10.1.1.1. a valid bank guarantee from an Approved Provider in its substantial form as set out and attached as Annexure A;
- 10.1.2. The Transmission Use of System Security amount which must be maintained at all times shall be equivalent to:
  - 10.1.2.1. Three (3) months estimated Transmission Use of System Charges (“Minimum Value”); or
  - 10.1.2.2. if the requirements have exceeded this estimated value, the actual average of the three (3) previous months Transmission Use of System Charges.

### **10.2. Management of the Transmission Use of System Security**

- 10.2.1. NamPower shall periodically monitor the related Transmission Use of System Security requirements and promptly notify the Eligible Seller of

any adjustment requirements related to the Minimum Value of the Transmission Use of System Security. Such updated Transmission Use of System Security should be provided within thirty (30) days from the respective date of notice to increase the Transmission Use of System Security.

## **11. INVOICING AND PAYMENT**

### **11.1. Invoicing Frequency**

11.1.1. NamPower shall invoice the Eligible Seller for the Transmission Use of System Charges monthly.

### **11.2. Payments Free from Tax**

11.2.1. All sums payable by either Party under this TUOSA shall be paid:

11.2.1.1. free of any restriction or condition; and

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

### **11.3. Deductions Made Whole**

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

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

### **11.4. Invoicing and Payment Procedure**

- 11.4.1. Invoices for all payments due under this TUOSA shall be consolidated and submitted by NamPower to the Eligible Seller by the seventh (7th) day (or, if such day is not a Business Day, the immediately following Business Day) of each month following that in respect of which they are payable.
- 11.4.2. Each invoice shall be due and payable on or before the Due Date (or, if such day is not a Business Day, the immediately following Business Day) of each month following that in respect of which they are payable.
- 11.4.3. Any amounts properly due from one Party to the other Party pursuant to this TUOSA and remaining unpaid after the Due Date shall bear interest from the date when payment was due, such interest to accrue daily and be compounded monthly at a rate equal to the Agreed Interest Rate from the date when payment was due until the amount due is actually received by the payee. Any overpayments by either Party resulting from an invoicing error or an error in payment shall be refunded by the other Party, together with interest at the Agreed Interest Rate and thereafter a new invoice shall be issued.
- 11.4.4. If the Eligible Seller believes the invoice to be in error, it shall notify NamPower forthwith and:
- 11.4.4.1. if the invoice is in error NamPower shall send the Eligible Seller a revised invoice and adjust the Due Date accordingly;
- 11.4.4.2. if the invoice is not in error, NamPower shall advise the Eligible Seller forthwith of the same and the Due Date shall remain unchanged.
- 11.4.5. 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.

- 11.4.6. In case of a manifest error on an invoice, the invoiced Party shall immediately notify the invoicing Party, and the invoicing Party shall issue a corrected invoice.
- 11.4.7. Should an invoice be in error as a result of a metering or reconciliation error in settlement, the payments shall be recalculated as soon as practicable following the correction of the metering error and any over-payment or under-payment corrected in the invoice for the month following the receipt of the correct metered data.
- 11.4.8. NamPower shall notify the Eligible Seller of its bank account details for payment of any payments due.
- 11.4.9. All payments shall be in Namibia Dollars.
- 11.4.10. No Party shall be entitled to offset any amounts payable to the other Party under or in relation to this unless it is agreed in writing amongst the Parties.
- 11.4.11. NamPower may at any time invoke its rights under the Transmission Use of System Security to recover any payments owed to it by the Eligible Seller in the event the Eligible Seller fails to adhere to its payment obligations in this TUOSA.

## 12. **METERING**

### 12.1. **Metering Installations**

- 12.1.1. NamPower reserves the right to introduce prepayment metering at any time during the contract period on the Maximum Import Capacity as Auxiliary Power.
- 12.1.2. The Parties acknowledge and agree that the ownership and responsibility of Metering Equipment for billing purposes at the Delivery Point and/or Point of Delivery shall remain with NamPower.
- 12.1.3. All Metering Equipment shall be according to the Grid Code 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.

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

## **12.2. Meter Reading**

- 12.2.1. The Main Meter shall be on automatic reset on the first (1<sup>st</sup>) day of each calendar month for the purpose of meter reading and billing.
- 12.2.2. In the event of a Main Meter fault at the Delivery Point and/or Point of Delivery, NamPower shall use the readings from Check Meter upon agreement by both Parties that the Main Meter have failed.
- 12.2.3. In the event that both meters (of any Metering Equipment) are faulty, the Parties may agree to:
  - 12.2.3.1. reconcile with the Eligible Seller's check metering or Generation Facility controllers; or
  - 12.2.3.2. NamPower may estimate the generation or consumption for the month by reference to the average amounts consumed or generated in the previous three months, in the case continues operation.
- 12.2.4. Provided that an invoice is based on estimated readings as per clause 12.2.3, such readings shall be clearly marked as "estimate" and no such estimate readings shall be made for two consecutive months. There shall not be more than four (4) estimations as envisaged in Clause 12.2.3 in any given consecutive twelve (12) months.
- 12.2.5. In the case that the meters are faulty as per clause 12.2.3, and the Parties does not have any viable alternative solution and it has the effect of it impacting the operation or reconciliation process of the Eligible Seller under the Market Rules, the transactions may be suspended until a suitable solution has been implemented.

## **12.3. Meter Testing**

- 12.3.1. All Metering Equipment shall be tested as follows:

- 12.3.1.1. In accordance with the Grid Code;
  - 12.3.1.2. When the Market Operator or Market Participant reasonably so require (and, in the absence of evidence of malfunction, annual testing shall be deemed reasonable for these purposes);
  - 12.3.1.3. When the advance on the "Check Meter" differs by more than 1.5% (one-and-a half percent) from that on the "Main Meter";
  - 12.3.1.4. When newly installed or following any repair, modification or alteration of the Meter Equipment;
  - 12.3.1.5. At least once in two (2) years when the Metering Equipment shall be checked and calibrated; or
- 12.3.2. The cost of testing a meter shall be borne by the Party requesting the test except when the Eligible Seller requests a test and the test demonstrates that the meter was more than 1.5% (one-and-a half percent) inaccurate in which case NamPower shall bear the cost, including the cost for repairing, maintaining, and replacing the relevant meter.

#### **12.4. Recalculations**

- 12.4.1. In the event of any meter which has been used for the purposes of billing being found, pursuant to any test, to be outside the allowed accuracy range of  $\pm 1.5\%$  (one-and-a half percent) or where evidence exists of meter tampering or other interference all previous invoices relating to deliveries of electrical power since the most recent testing or calibration of the faulty meter and based on the data from the faulty meter and all future invoices until such time as the faulty meter is replaced or recalibrated in accordance with this TUOSA shall be recalculated or calculated (as appropriate) on the following basis:
- 12.4.1.1. if the Main Meter is faulty, readings from the Check Meter shall be used upon agreement by both Parties.
  - 12.4.1.2. If the Check Meter is also faulty, the inaccuracy identified in the testing of the Main Meter shall be assumed to have been affecting the readings for either,

- 12.4.1.3. Amounts payable or repayable as a result of any recalculation of any previous invoice shall be included as a debit or credit, as appropriate, in the next invoice.

## **12.5. Maintenance, Repair And Replacement Of Meters**

### 12.5.1. Metering Equipment:

- 12.5.1.1. NamPower shall be responsible for the installation, repair, maintenance, replacement, and testing of the Metering Equipment at the Delivery Point, which shall be undertaken at own expense.

- 12.5.1.2. NamPower shall give the Eligible Seller seven (7) day notice before any repair and replacements or testing of meters is carried out and shall provide relevant test reports thereof.

### 12.5.2. Eligible Seller check metering:

- 12.5.2.1. The Eligible Seller shall be responsible for the installation, repair, maintenance, replacement, and testing of any self-owned check metering facility, which shall be undertaken at own expense. The Eligible Seller shall give NamPower fourteen (14) day notice before any repair and replacements or testing of meters is carried out and shall provide relevant test reports thereof.

## **12.6. Meter Sealing**

- 12.6.1. The relevant meters as part of the Meter Equipment shall be sealed. Meter seals shall only be broken as required for meter repair, maintenance, replacement, and testing.

- 12.6.2. Any Party intending to break any meter seals to conduct testing or calibration of any meter under shall provide the other Party with not less than 48-hour notice and shall break such meter seals or conduct testing or calibration only in the presence of an authorized representative of the other Party. If the authorized representative of the other Party does not attend after being given such notice, then the attending Party may continue to undertake the procedures referred to in clause 12.6.1.

## **12.7. Metering Data and reconciliations**

- 12.7.1. The reconciling of energy trades shall be in accordance with the Market Rules, Balancing Framework and Wheeling Framework of the MSB.
- 12.7.2. Upon the written request of the Eligible Seller, NamPower shall make available to the Eligible Seller any and all metered data recorded by meters owned by NamPower at the Delivery Point for the purpose of measuring the electrical power injected into the Transmission System and any Point of Delivery for the purpose of measuring the electrical power delivered relevant to any transaction contemplated in this TUOSA. NamPower shall use all reasonable endeavours to provide the requested metered data within a reasonable time, but in any event within thirty (30) days from receiving the request.

### 13. **FORCE MAJEURE**

#### 13.1. **Definition of Force Majeure Event**

- 13.1.1. A "**Force Majeure Event**" means any event or circumstance which:
  - 13.1.1.1. is beyond the reasonable control of the Party affected by the Force Majeure (the "**Affected Party**") or its Contractors;
  - 13.1.1.2. 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 TUOSA), Consents or applicable Law;
  - 13.1.1.3. 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
  - 13.1.1.4. prevents, hinders or delays the Affected Party in its performance of any of its obligations under this TUOSA.
- 13.1.2. 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 13.1.1 above, that



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

13.1.3. 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 13.1.1 above:

13.1.3.1. 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

13.1.3.2. 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

13.1.3.3. pandemic, epidemic, famine or plague; or

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

13.1.3.5. 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

13.1.3.6. radioactive contamination or ionising radiation; or

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

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

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

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

- 13.1.4.3. a delay or failure by a third party which prevents, hinders or delays the Affected Party in the performance of its obligations under this MPA, save where the cause of such delay or failure by the third party would constitute a Force Majeure Event pursuant to this MPA;
- 13.1.4.4. 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;
- 13.1.4.5. wear and tear, flaws, breakdown in or degradation of any equipment or machinery; or
- 13.1.4.6. intentional acts, errors or omissions of the Affected Party or its Contractors.

## **13.2. Procedure**

- 13.2.1. 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.
- 13.2.2. 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 TUOSA and shall consult to develop and implement a remedial plan to minimise each Party's losses.
- 13.2.3. The Affected Party shall promptly provide notice to the other Party of:
  - 13.2.3.1. the cessation of the Force Majeure Event; and

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

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

### **13.3. Consequences of a Force Majeure Event**

13.3.1. Notwithstanding any other provisions of this TUOSA, to the extent the Affected Party hereto is unable to perform any of its obligations under this TUOSA 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 13.4, and shall be entitled to suspend performance of such obligations in accordance with and subject to clause 13.3 (Consequences of a Force Majeure Event).

13.3.2. 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 13.2 (Procedure), not be liable for any failure to perform an obligation under this TUOSA as a consequence of such Force Majeure Event, to the extent only that:

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

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

### **13.4. Payment of Charges**

13.4.1. 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 TUOSA.

## **14. BREACH AND EVENTS OF DEFAULT**

### **14.1. Breach Notification and Remedy Procedure**

- 14.1.1. If either Party becomes aware that it is or could be in breach of any of the provisions of this TUOSA (other than a breach of any of its payment obligations under this TUOSA), 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.
- 14.1.2. 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 TUOSA (other than a breach of any of its payment obligations under this TUOSA) 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.
- 14.1.3. If either Party has determined that the other Party is in breach of this TUOSA (other than a breach of any of its payment obligations under this TUOSA) 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.
- 14.1.4. 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.

#### **14.2. NamPower Transmission Event of Default**

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

14.2.1.1. Any event, to the extent caused by NamPower, which prevents the Eligible Seller from exporting power from the Delivery Point or prevents the use of the Transmission System;

14.2.1.2. The material failure of NamPower to maintain the Transmission System or Point of Connection in accordance with Prudent Industry Practice;

14.2.1.3. If NamPower fails to maintain its Transmission Licence required to transmit and supply electricity in Namibia; or

14.2.1.4. If NamPower is in breach of any of its obligations pursuant to clause 14.1, 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 TUOSA.

#### **14.3. Eligible Seller Event of Default**

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

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

- 14.3.1.2. If NamPower has called on the Transmission Use of System Security and its failure to reinstate the Transmission Use of System Security;
- 14.3.1.3. The material failure of the Eligible Seller to maintain the Generation Facility in accordance with Prudent Industry Practice;
- 14.3.1.4. If the Eligible Seller has failed to obtain or maintain any licences, authorisations other approvals required to generate, supply, import or export (as the case may be) electricity in Namibia;
- 14.3.1.5. 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
- 14.3.1.6. If the Eligible Seller is in breach of any of its obligations pursuant to clause 14.1, 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 TUOSA.

## 15. **TERMINATION**

### 15.1. **Right to Terminate**

- 15.1.1. Either Party have the right to terminate this TUOSA 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 TUOSA, that Party may upon not less than thirty (30) days' notice terminate this TUOSA.

- 15.1.2. Either Party have the right to terminate this TUOSA on account of a failure to remedy a breach as provided for in clause 14.1:
  - 15.1.2.1. If the breach is capable of remedy but is not remedied before the end of the Remedy Period; or
  - 15.1.2.2. If the breach is incapable of remedy; or
  - 15.1.2.3. 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 TUOSA 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;
- 15.1.3. The Eligible Seller may upon not less than thirty (30) days' notice terminate this TUOSA on the occurrence and continuation of any NamPower Transmission Event of Default.
- 15.1.4. NamPower may upon not less than thirty (30) days' notice terminate this TUOSA on the occurrence and continuation of any Eligible Seller Event of Default.

## **15.2. Circumstances of Early Termination**

- 15.2.1. This TUOSA shall terminate on the earliest occurrence of the following:
  - 15.2.1.1. If the conditions precedent are not met for this TUOSA to become fully effective within sixty (60) days after reaching the Connection Date;
  - 15.2.1.2. On the early termination of the Transmission Connection Agreement;
  - 15.2.1.3. On either Party exercising its right to termination as provided for in this TUOSA; or
  - 15.2.1.4. On the termination of the Market Participation Agreement.

### **15.3. Consequences of Termination**

- 15.3.1. Upon termination of this TUOSA, both Parties shall be excused and relieved of all obligations and liabilities under this TUOSA, 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.
- 15.3.2. It is expressly recorded that the termination of this TOUSA shall result in the Eligible Seller irrevocably forfeiting any and all rights to its reserved capacity at the Point of Connection and on the Transmission System.
- 15.3.3. NamPower shall be entitled to disconnect the Generation Facility from the Transmission System following the termination of this TUOSA.

## **16. DISPUTE RESOLUTION**

### **16.1. Procedure**

- 16.1.1. If any dispute arises relating to this TUOSA 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.
- 16.1.2. Should the Parties fail to resolve such dispute in accordance with clause 16.1.1 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.
- 16.1.3. Should the chief executives (or equivalent) of the Parties fail to resolve such dispute in accordance with clause 16.1.2 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 16.3) to arbitration to be undertaken by three (3) arbitrators agreed to by the Parties in accordance with clause 16.4 (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.

## **16.2. Obligations during Disputes**

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

## **16.3. Reference to an Independent Engineer**

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

16.3.2. 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 TUOSA 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.

16.3.3. 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.

16.3.4. 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.

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

16.3.6. Should the Independent Engineer fail to resolve such dispute in accordance with this clause 16.3 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 16.1.

#### **16.4. Arbitration**

16.4.1. 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 TUOSA, 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 16.4 being an arbitration agreement within the meaning of the aforementioned rules.

16.4.2. If any Dispute is submitted to arbitration in accordance with clause 16.4.1, 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.

16.4.3. 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.

16.4.4. The decision in clause 16.4.3 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.

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

16.4.6. 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.

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

16.4.8. 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 16.4 (Arbitration).

#### **16.5. Obligations during Disputes**

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

16.5.2. 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.

#### **16.6. Proceedings in Confidence**

16.6.1. 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 TUOSA, shall not be open to third parties, it being agreed that for the purposes of this TUOSA 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 19 (Confidentiality).

#### **16.7. Related Disputes**

16.7.1. The Parties agree that where a dispute under this TUOSA 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 TUOSA 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.

16.7.2. Subject to the agreement of the Other Entities in respect to which a Related Dispute relates, either Party to this TUOSA 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 TUOSA, on the ground that:

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

16.7.2.2. the rights to relief claimed in those arbitral proceedings are in respect of, or arise out of the transaction contemplated herein or

16.7.2.3. for some other reason specified in the application, it is desirable that the arbitral proceedings be consolidated.

16.7.3. Subject to the agreement of the Other Entities in respect to which a Related Dispute relates, the arbitrator shall have the power to make the following orders in relation to an application made under clause 16.7.2:

16.7.3.1. The arbitral proceedings be consolidated on terms specified in the order; or

16.7.3.2. The arbitral proceedings be heard at the same time or in a sequence specified in the order; or

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

16.7.4. Where an application has been made under clause 16.7.3 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:

- 16.7.4.1. 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.
  
- 16.7.4.2. If two or more arbitrators are hearing the Related Proceedings:
  - 16.7.4.2.1. the arbitrator that received the application will communicate the substance of the application to the other arbitrators concerned; and
  - 16.7.4.2.2. the arbitrators will, as soon as practicable, deliberate jointly on the application.
  
- 16.7.4.3. Where the arbitrators agree, after deliberation on the application, that a particular order should be made in relation to the Related Proceedings:
  - 16.7.4.3.1. the arbitrators must jointly make the order and such order as to costs or wasted costs as may be appropriate;
  - 16.7.4.3.2. the Related Proceedings must be dealt with in accordance with the order;
  - 16.7.4.3.3. 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

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

## 17. LIABILITY FOR DAMAGE OR LOSSES

### 17.1. Indemnity

17.1.1. 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:

17.1.1.1. the death or personal injury of any individual or

17.1.1.2. damage to property or

17.1.1.3. any third-party liabilities and damages, arising out of the indemnifying Party's default under this TUOSA, save where that default is excused in terms of clause 13 (Force Majeure) of this TUOSA, except to the extent that the Party seeking to be indemnified is at fault or is negligent.

### 17.2. Liability/ Damages

17.2.1. Save to the extent expressly provided in this TUOSA, neither Party shall be liable to the other Party under this TUOSA 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.

17.2.2. 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.

17.2.3. 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 TUOSA.

17.2.4. If either Party is liable for damages caused to the other Party in terms of clause 17.2.1, such liability shall be limited to direct damages and will exclude consequential damages, and will be dealt with in accordance with the liability limitation provisions provided for in the Market Participation Agreement.

## 18. **CESSION AND ASSIGNMENT**

### 18.1. **Prior Consent**

18.1.1. The Parties shall not be entitled to cede or assign this TUOSA or any of its rights and obligations without the prior written consent of the other Party except as provided in clause 18.4 (Restructuring) hereto. Such consent shall not be unreasonably withheld.

### 18.2. **No Relief from Liability**

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

### 18.3. **Deemed Assignment**

18.3.1. 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.

### 18.4. **Restructuring**

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

18.4.1.1. the dissolution of NamPower;

- 18.4.1.2. the restructuring, amalgamation, reorganisation or analogous event of NamPower; or
- 18.4.1.3. 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.

## 19. **CONFIDENTIALITY**

### 19.1. **Confidential Information**

- 19.1.1. 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 TUOSA.

### 19.2. **Duty to Maintain Confidentiality**

- 19.2.1. 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 19.1 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.

### 19.3. **Exclusions**

- 19.3.1. These provisions shall not apply to information which is:
  - 19.3.1.1. publicly known or has become publicly known through no unauthorised act of the recipient Party;
  - 19.3.1.2. rightfully received by the recipient Party from a third party;
  - 19.3.1.3. independently developed by the recipient Party without use of the other Party's information;



- 19.3.1.4. disclosed by the other Party to a third party without similar restrictions;
- 19.3.1.5. 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
- 19.3.1.6. publicly disclosed with the other Party's written consent.

#### **19.4. Disclosure**

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

#### **20. SURVIVAL**

- 20.1. Termination of this TUOSA shall not affect the accrued rights and liabilities of the Parties hereto and the provisions of clause 22 (Applicable Law and Jurisdiction), clause 16 (Dispute Resolution) clause 15 (Termination), and clause 19 (Confidentiality), and any other provision of this TUOSA 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 TUOSA.

#### **21. NOTICES, DOMICILIUM AND ELIGIBLE SELLER GENERAL DATA**

##### **21.1. Domicilia Citandi et Executandi**

- 21.1.1. The Parties choose as their *domicilia citandi et executandi* their respective addresses specified in clause 21.2 (Addresses) hereof, for all purposes arising out of or in connection with this TUOSA, at which addresses all

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

## 21.2. Addresses

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

21.2.1.1. 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]

21.2.1.2. 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](mailto:Legal@nampower.com.na)

21.2.1.3. 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.

## 21.3. Delivery of Notices

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

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

21.3.1.2. 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

21.3.1.3. 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.)

#### **21.4. Written Notice**

21.4.1. Notwithstanding anything to the contrary contained in this TUOSA, 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.

### **22. APPLICABLE LAW AND JURISDICTION**

22.1. This TUOSA 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 16 (Dispute Resolution). Subject to the provisions of clause 16 (Dispute Resolution), the Parties agree that a judgment in any proceedings in connection with this TUOSA by the Namibian courts shall be binding upon them and may be enforced against them in any other jurisdiction.

### **23. GENERAL AND MISCELLANEOUS**

#### **23.1. Entire Agreement**

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

## **23.2. Amendments**

23.2.1. This TUOSA 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 TUOSA. No provision of this TUOSA 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 TUOSA, nor shall any course of conduct, that is a breach of this TUOSA, operate or be construed as a waiver of any subsequent breach of this TUOSA, whether of a similar or dissimilar nature.

23.2.2. Notwithstanding clause 23.2.1, NamPower reserves the right to impose amendments this TUOSA on the following conditions:

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

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

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

## **23.3. No Waiver of Rights**

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

23.3.2. 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.

#### **23.4. No Third Party Rights**

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

#### **23.5. No Partnerships**

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

#### **23.6. Approvals and Consents**

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

#### **23.7. Waiver Of Sovereign Immunity**

23.7.1. 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.

### **23.8. Severability**

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

### **23.9. Anti-Corruption Measures**

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

### **23.10. Change in Law**

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

### **23.11. Counterparts**

- 23.11.1. This TUOSA 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 TUOSA 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

**BRAAM VERMEULEN  
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 FORM OF TRANSMISSION USE OF SYSTEM 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:** : [●]

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**PAYMENT GUARANTEE**

**TRANSMISSION USE OF SYSTEM 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 imbalanced energy under the Transmission Use of System Agreement (TUOSA) 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 Use of System Agreement (TUOSA), whichever is the later and when the original of the Payment Guarantee is returned to the Bank.

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

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

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

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

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



**Annexure B POINT OF DELIVERY**

**B.1 POINT OF DELIVERY**

B.1.1 The Point of Delivery (Contestable Supply Point) shall be located at the area generally described as:

B.1.1.1 **Site:** [●]

B.1.1.2 **Meter ID:** [●]

B.1.1.3 **Town:** [●]

B.1.1.4 **Location/ District:** [●]

B.1.1.5 **GPS Coordinates:**

Lat	Long	Name

## Annexure C TRANSMISSION USE OF SYSTEM CHARGES

### C.1 TRANSMISSION CHARGES

- C.1.1 These charges are calculated in accordance with the respective Connection Offer Letter, Transmission Connection Agreement and the Transmission Tariff Methodology. These charges do not include VAT and shall be payable inclusive of VAT.
- C.1.2 The Connection Charge referred to in clause C.2 below is payable at the time indicated in the schedule given in the Connection Offer Letter.
- C.1.3 The Monthly Extension Charge (clause C.2.2), Eligible Seller Service Charge (clause C.3), Point of Supply Charge (clause C.4), and Network Access Charge (clause C.5) are payable for the duration of the Transmission Connection Agreement and Transmission Use Of System Agreement, commencing from the Connection Date provided NamPower has tested and commissioned the NamPower portion of the works related to the Connection Facility, irrespective of whether the Generation Facility is ready or not. This clause shall not apply in the event the Generation Facility is not ready, as a result of action that cannot be imputed to the fault of the Eligible Seller, e.g. Force Majeure Event.

### C.2 CONNECTION CHARGE

#### C.2.1 "Deep, Special Deep and Shallow" Connection Charge

- C.2.1.1 The Eligible Seller shall pay an amount (excluding VAT) of **NAD [●]** ([●] Namibia Dollars) in accordance with the Transmission Connection Agreement (the "**Final Costs**"); and

#### C.2.2 Monthly Extension Charge

- C.2.2.1 An **estimated** monthly extension charge (VAT excluded) of **NAD [●]** ([●] Namibia Dollars) (the "**Monthly Extension Charge**") shall be paid to NamPower. The Monthly Extension Charge is based on the following formula: Total Shallow Project Cost multiplied by 5% or 6%, divided by 12 months (i.e. [Total Shallow Project Cost x 0.05 or 0.06]/12).
- C.2.2.2 The monthly extension charge is payable from the date on which NamPower commission the Eligible Seller feeder at Point of Connection.

### C.3 ELIGIBLE SELLER SERVICE CHARGE

C.3.1 A monthly Service Charge (VAT excluded) of **NAD [●]** ([●] Namibia Dollars) shall be paid to NamPower and shall be reviewed annually in accordance with the Electricity Control Board of Namibia (ECB) approval (the "**Eligible Seller Service Charge**")

#### **C.4 POINT OF SUPPLY CHARGE**

C.4.1 A monthly point of supply charge (VAT excluded) of **NAD [●]** ([●] Namibia Dollars) per feeder shall be paid to NamPower and shall be reviewed annually in accordance with the Electricity Control Board of Namibia (ECB) approval (the "**Point of Supply Charge**").

#### **C.5 NETWORK ACCESS CHARGE (APPLICABLE TO IMPORT CAPACITY FROM NAMPOWER)**

C.5.1 The Eligible Seller shall pay to NamPower a network access charge (VAT excluded) of **NAD [●] kW/month** (the "**Network Access Charge**"). The Network Access Charge will apply to all periods of the day when power is imported from Transmission System. The Network Access Charge shall be reviewed annually in accordance with the Electricity Control Board of Namibia (ECB) approval.

C.5.2 The Network Access Charge, which is set in Namibia Dollars (NAD) per kW (half hourly integrated) of the highest of:

C.5.2.1 The **Notified** Maximum Demand (NMD); and

C.5.2.2 The **highest** demand incurred during the month.

#### **C.6 ENERGY CHARGE (APPLICABLE TO IMPORT ENERGY FROM NAMPOWER)**

C.6.1 The Eligible Seller shall pay to NamPower energy charges, which are set in c/kWh in respect of the actual energy consumed during the billing month. As per NamPower's Transmission Time of Use tariffs, the energy rates are differentiated by different time periods of the day (the "**Energy Charges**").

C.6.2 The Energy Charge shall be reviewed annually in accordance with the Electricity Control Board of Namibia (ECB) approval.

#### **C.7 DEMAND CHARGE (APPLICABLE TO IMPORT CAPACITY FROM NAMPOWER)**

C.7.1 The Eligible Seller shall pay to NamPower a maximum demand charge (VAT excluded) of **NAD [●] /kW/month**, which is set in Namibia Dollars (NAD) per kW (half hourly integrated) of the highest maximum demand (MD) incurred every billing month (the "**Maximum Demand Charge**"). The Maximum Demand Charge shall be reviewed annually in accordance with

the Electricity Control Board of Namibia (ECB) approval.

C.7.2 The Maximum Demand Charge will be applied to demands measured during peak and standard periods, when power is imported from NamPower Transmission during the month.

**C.8 NOTIFIED MAXIMUM DEMAND (NMD) PENALTY CHARGE (APPLICABLE TO IMPORT CAPACITY FROM NAMPOWER)**

C.8.1 The Notified Maximum Demand Penalty Charge shall be 100% of the Network Access Charge and the Maximum Demand Charge on capacity (kW) utilised over and above the contractual Notified Maximum Demand (NMD), exceeding 3 (three) consecutive months, payable from month 3 (three).

C.8.2 Should the Eligible Seller's demand be reduced below the contractual Notified Maximum Demand (NMD) in one of the ensuing months, after the NMD Penalty Charge became payable, the NMD Penalty Charge shall reset to zero for that month and only become payable, exceeding for 3 (three) consecutive months.

**C.9 CALL-OUT FEE**

C.9.1 The Eligible Seller shall pay to NamPower a Call-out fee for De-energisation and Energisation costs as defined in clause 8 (De-Energisation and Energisation) of the Transmission Connection and Use Of System Agreement.

C.9.2 The Call-out fee shall be reviewed annually in accordance with the Electricity Control Board of Namibia (ECB) approval.

**C.10 SHALLOW CONNECTION CAPACITY CHARGE (APPLICABLE ON SHALLOW CONNECTION)**

C.10.1 The Eligible Seller shall pay to NamPower a Shallow Connection Capacity Charge (VAT excluded) of **NAD [●] /kVA/month** (the "**Shallow Connection Capacity Charge**"). The Shallow Connection Capacity Charge will apply to all periods of the day when power is exported to the Transmission System. The Shallow Connection Capacity Charge shall be reviewed annually in accordance with the Electricity Control Board of Namibia (ECB) approval.

**C.11 TRANSMISSION EXPORT WHEELING CHARGE**

C.11.1 The Eligible Seller shall pay to NamPower a Transmission Export Wheeling Charge, which is set in Namibian Dollars (NAD) per kWh and calculated in accordance with the Electricity Control Board of Namibia

(ECB) Transmission methodology.

C.11.2 The Transmission Export Wheeling Charge of [Nc 10.00/kWh], subject to ECB approval will be reviewed annually in accordance with the Electricity Control Board of Namibia (ECB) approval.

C.11.3 This Transmission Export Wheeling Charge is applicable to any and all energy exported and wheeled.

#### **C.12 INCREMENTAL NETWORK LOSSES CHARGE**

C.12.1 Incremental Network Losses Charge – levied on the Generator to reflect their impact (an increase or decrease) in system losses.

C.12.2 The Transmission loss factor shall be reviewed and calculated annually by NamPower Transmission.

#### **C.13 RELIABILITY SERVICE CHARGE**

C.13.1 The Eligible Seller shall pay to NamPower a Reliability Charge, which is set in Namibian Dollars (NAD) per kWh and calculated in accordance with the MSB Market Rules.

C.13.2 The Reliability Service Charge of [Nc ●/kWh], subject to ECB approval will be reviewed annually in accordance with the MSB Market Rules.

C.13.3 This Reliability Service Charge is applicable to both Auxiliary Power and all energy exported and wheeled.

#### **C.14 SECURITY DEPOSIT (APPLICABLE TO ANY AND ALL TRANSMISSION USE OF SYSTEM CHARGES)**

C.14.1 The Eligible Seller needs to furnish a **deposit** or approved **guarantee** as security for Transmission Use of System Charges for three months of **NAD [●]** ([●] Namibia Dollars). The amount of deposit may be varied at any time by NamPower to cover the estimated amount for three months.

#### **C.15 OTHER CHARGES**

C.15.1 Such other charges which may be published by NamPower from time to time relating to matters affecting the electricity industry and which NamPower is entitled to recover (in whole or in part) including, without limitation, by way of statute, statutory instrument, regulatory provision or regulatory direction (the “**Other Charges**”). The Other Charges which are payable by the Eligible Seller under this Agreement shall be notified to the Eligible Seller in writing in advance.