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# **THE LESOTHO ELECTRICITY AND WATER AUTHORITY**

## **STANDARDIZED POWER PURCHASE AGREEMENT FOR RENEWABLE ELECTRICITY**

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EFFECTIVE DATE: 01 MAY, 2016



## STANDARDIZED POWER PURCHASE AGREEMENT FOR RENEWABLE ELECTRICITY

**THIS AGREEMENT** is made on [●] between:

- (A) Lesotho Electricity Company,[●] a [●] incorporated in the Kingdom of Lesotho with its registered address at [●] and registration number [●] (the Buyer); and
- (B) [●], a [●] incorporated in [●], with its registered address at [●] and registration number [●] (the Seller).

### **WHEREAS:**

- (A) The Government of Lesotho encourages the development of renewable energy projects and production of power for sale;
- (B) The Buyer is obliged to purchase all power generated from renewable sources and the generator of power from renewable sources is entitled to priority of despatch;
- (C) The Seller proposes to design, construct and operate a facility for generating electricity from renewable energy sources;
- (D) This Agreement sets out the terms and conditions on which the Buyer will purchase, and the Seller will sell, electricity generated by the Seller from renewable sources as further set out below.

### **IT IS AGREED:**

#### **1. INTERPRETATION**

##### **1.1 Definitions**

**Affiliate** means any entity that is directly or indirectly, in control of, controlled by, or under common control by another entity;

**Applicable Requirements** means:

- a) Law;
- b) Licence;
- c) Grid Code;
- d) any conditions or requirements included in any Permit;
- e) the obligations of the Seller under the Connection Agreement; and
- f) Good Industry Practice.

**‘Business Day’** means any day on which banks are generally open for business in the Kingdom of Lesotho;

**‘Buyer Event of Default’** has the meaning given in Clause 11.2;

**‘Change of Law’** has the meaning given in Clause 8.1 d);

**‘Commissioned’** means, in relation to the Facility, that it has:

- a) been substantially completed and is ready for operations in accordance with this Agreement;
- b) met all the requirements for synchronisation and delivery of electricity to the Grid set out in the Grid Code; and
- c) received the required Permits from the Buyer and any relevant Government Authority to allow it to commence generation and delivery of electricity to the Grid.

**‘Commissioning Date’** means the date on which the Facility has been Commissioned or deemed to have been Commissioned in accordance with Clause 4.4;

**‘Commissioning Tests’** means the tests carried out by the Seller and the Buyer to verify that the Facility has been Commissioned;

**‘Connection Agreement’** means the agreement between the Seller and the Buyer regulating the terms on which the Facility is connected to the Grid;

**‘Deemed Delivered Electricity’** has the meaning given in Clause 7.1 a);

**‘Delivered Electricity’** means active electrical energy, measured in kWh that:

- a) is generated by the Facility;
- b) meets the requirements of the Lesotho Grid Code; and
- c) is delivered to the Delivery Point.

**‘Delivery Point’** means the high voltage bushing of the step-up transformer for the Facility, being the point at which the Facility connects to the Grid;

**‘Energy Output’** means the energy generated by the Renewable Electricity facility and injected into the grid in kWh;

**‘Facility’** means the electricity generating plant and equipment located at the Site, comprising generating equipment, substation and all protective, connecting, associated or ancillary plant, equipment or buildings, with the specifications set out in Schedule 1 of this Agreement;

**'Finance Agreement'** means each agreement between the Seller and the Lenders related to the financing of the Project;

**'Force Majeure'** has the meaning given in Clause 8;

**'Good Industry Practice'** means the standards, procedures and practices that are generally accepted as good and prudent international practice for the construction and operation of power generation and grid facilities taking into account the specific circumstances of the Facility and the Site;

**'Governmental Authority'** means any local or national authority, agency, inspectorate, Ministry, administrative or regulatory body, in each case of the Kingdom of Lesotho;

**'Grid'** means the high voltage electricity transmission network of the Kingdom of Lesotho;

**'Grid Code'** means the Code regulating the operation of the Grid;

**'Initial Shareholder'** means the direct and indirect shareholders of the Seller as at the date of this Agreement, as detailed in Part 4 – Initial Shareholders Schedule 1;

**'Interconnection Facilities'** means all the plant and equipment required to connect the Facility from the Delivery Point to the Grid and to evacuate all Delivered Electricity from the Facility, including the facilities described in part 3 – Site details, Part 2 – Interconnection Facilities of Schedule 1 –Project – specific Information;

**'LSL'** means Lesotho Loti;

**'Law'** means any law, regulation, rule, order, decree, code, directive or secondary legislation of or made by any Governmental Authority, including any judicial or administrative order or judgment;

**'Lender'** means each lender, guarantor, credit provider, multilateral agency, export credit agency or other financial institutions or insurers providing the financing or refinancing arrangements for the Project (including through the provision of hedging, agency or account bank facilities), but not including any Shareholder and any Affiliate of any Shareholder;

**'Lenders' Direct Agreement'** has the meaning given in Clause 14.4 b);

**'Must-run facility'** means the Seller has operating control over the amount and timing of electrical energy to be generated by the Facility, subject only to Emergencies and such directions as may be issued by the Buyer for the protection of its electrical system;

**'Natural Force Majeure'** has the meaning given in Clause 8.1 c);

**'Operating Day'** means each day in the Operating Period, beginning at 00.00 and ending 24 hours later;

**‘Operating Month’** means each calendar month in each Operating Year provided that:

- a) the first Operating Month shall begin on the Commissioning Date and end on the last day of the calendar month in which the Commissioning Date falls; and
- b) the last Operating Month shall begin on the first day of the month in which the Term ends and end on the last day of the Term.

**‘Operating Year’** means:

- a) the period beginning on the Commissioning Date and ending on the next 31<sup>st</sup> March;
- b) each subsequent period in the Term beginning on 1<sup>st</sup> April and ending on the next 31<sup>st</sup> March; and
- c) the period beginning on the last 1 April in the Term and ending on the last day of the Term.

**‘Operations Period’** means the period beginning on the Commissioning Date and ending on the last day of the Term;

**‘Party’** means the Buyer and the Seller;

**‘Permit’** means each permit, licence or authorisation issued to the Seller in connection with the Project;

**‘Political Force Majeure’** has the meaning given in Clause 8;

**‘Project’** means the design, financing, construction, commissioning, insurance, operation, maintenance and repair of the Facility and the performance of this Agreement;

**‘Purchase Price’** means the price agreed between the Buyer and the Seller to be paid for Delivered Electricity that is specified in Schedule 2 of this Agreement;

**‘Renewable Energy’** means Renewable non-fossil energy sources, those which are continually renewed through on-going natural processes, such as solar, wind, hydropower energy, geothermal energy, biomass, bio-gas and other organic waste fuel, which is used for electricity and (or) heat power generation;

**‘Scheduled Commissioning Date’** means the date specified as such in Part 1 – Facility Description of Schedule 1;

**‘Security’** means the security interests over the Site, the Facility, the Seller's other assets and the direct and indirect shareholdings in the Seller created under the Financing documents for the benefit of the Lenders;

**‘Seller Event of Default’** has the meaning given in Clause 11.1;

**'Shareholder'** means each Initial Shareholder and thereafter any transferee of a direct or indirect interest in the Seller;

**'System Operator'** means Lesotho Electricity Company as operator of the Grid or any successor as the operator of the Grid. In this case the Buyer has the role of System Operator;

**'Site'** means the location detailed in Part 3-Site Details of Schedule 1;

**'Term'** has the meaning given in Clause 3.1 d);

**'Termination Payment'** has the meaning given in Clause 11.6 3); and

**'Total Delivered Electricity'** has the meaning given in Clause 7.2 b).

## **Interpretation**

**1.2** Any reference in this Agreement to:

- a) a person includes a body corporate, unincorporated association of persons, government, state, agency, organisation, an individual and any other entity whether or not having separate legal personality;
- b) a Party includes the successors and permitted assigns (immediate or otherwise) of that Party;
- c) a time of day, is to Lesotho time and to the 24-hour clock;
- d) a document is to that document as amended, varied or novated from time to time otherwise than in breach of this Agreement or that document;
- e) a Clause, Subclause or Schedule is to a clause, subclause or schedule of or to this Agreement; or
- f) a Law includes that Law as replaced, amended, extended or applied by or under any other Law, and to any subordinate legislation made under that Law.

**1.3** In this Agreement, the words 'including' and 'include' mean 'including' without limitation and 'include' without limitation, respectively.

**1.4** In this agreement, person A "controls" person B if:

- a) person A owns, directly or indirectly, more than 50% of the issued share capital of person B; or
- b) person A has the power to direct the day-to-day operations of person B.

**1.5** The Schedules form part of this Agreement.

**1.6** The headings do not affect the interpretation of this Agreement;

## **2. SALE AND PURCHASE**

- (a) The Buyer agrees to buy all Delivered Electricity at the Purchase Price set out in Schedule 2 of this Agreement.
- (b) The Seller agrees to sell all Delivered Electricity to the Buyer.
- (c) Risk and title in all Delivered Electricity pass to the Buyer at the Delivery Point.

### **3. EFFECTIVENESS AND TERM**

#### **3.1 Effectiveness and Term**

- a) Clauses 1, 3, 10, 12, 13, 14, 15, 16 and 17 take effect on the date of this Agreement.
- b) The Effective Date of all other clauses take effect on the date on which:
  - i. all the conditions set out in Clause 3.2 are either satisfied or waived by the Seller; and
  - ii. all the conditions set out in Clause 3.3 are either satisfied or waived by the Buyer.
- c) Each Party shall use its reasonable efforts to satisfy the conditions precedent applicable to it.
- d) The Term of this Agreement begins on the date of this Agreement and ends on the date falling [...] years after the Commissioning Date, unless terminated earlier or extended in accordance with this Agreement.

#### **3.2 Buyer Conditions Precedent**

- (a) The Buyer has provided to the Seller a copy of its constitutional documents and evidence that it both has the capacity and authority to enter into this Agreement and had validly entered into it.
- (b) No Buyer Event of Default is outstanding.

#### **3.3 Seller Conditions Precedent**

- (a) The Seller has provided to the Buyer a copy of its constitutional documents and evidence that it both has the capacity and authority to enter into this Agreement and had validly entered into it.
- (b) No Seller Event of Default is outstanding.
- (c) The Seller has entered into the Connection Agreement.
- (d) The Seller has sufficient legal title to the site to perform this Agreement.
- (e) The Seller has constructed and operates a renewable energy sources powered electric generating plant.
- (f) The Seller has acquired all material permits required to allow it to commence construction of the Facility.

#### **3.4 Failure to satisfy Conditions Precedent**

- (a) If the Effective Date does not occur on or before the date falling 12 months after the date of this Agreement either Party may terminate this Agreement by giving at least 30 days written notice to the other.



- (b) Upon termination in accordance with paragraph a) of this Clause, Parties will have no further rights or obligations under this Agreement except to the extent that any liabilities have accrued prior to that termination.

#### **4. CONSTRUCTION OBLIGATIONS**

##### **4.1 Construction of the Facility**

The Seller shall construct and commission the Facility in accordance with the Applicable Requirements.

##### **4.2 Construction of the Interconnection Facilities**

- (a) The Seller at its sole expense shall design, purchase, construct, operate and maintain Seller-owned connection facilities to connect the Facility to the Buyer, in compliance with the Grid Code and applicable regulations.
- (b) Remote Terminal Unit (RTU) for the interconnection with the National Control Centre will be provided by the Buyer. The costs of such equipment shall be borne by the Seller.
- (c) The Buyer shall ensure that the Seller completes the Interconnection Facilities by the date falling within 45 days before the Scheduled Commissioning Date.

##### **4.3 Commissioning**

- a) The Seller shall notify the Buyer at least 10 days in advance of its intention to carry out any Commissioning Tests.
- b) The Buyer shall have the right to attend any Commissioning Tests.
- c) The Buyer shall and would ensure that any relevant Governmental Authority cooperates with the Seller in relation to the conduct of any Commissioning Tests, including by:
  - i. providing back feed power at the then applicable wholesale electricity tariff; and
  - ii. participating in Commissioning Tests on five Business Days' notice.

##### **4.4 Deemed Commissioning**

- a) If the Seller would have been able to achieve the Commissioning Date but for reasons of Force Majeure, failure of the Buyer or any Governmental Authority to:
  - i. complete and commission the Interconnection Facilities as required under Clause 4.2; or
  - ii. cooperate in the conduct of the Commissioning Tests as required under Clause 4.3(c),

the Facility will be deemed to have:

- i. been Commissioned on the date it would have been but for such circumstances; and
- ii. generated from that date until the date it is actually Commissioned.

## **5. OPERATIONAL PROCEDURES**

### **5.1 General**

- (a) The Seller shall maintain and operate the Facility throughout the Operational Period in accordance with the Applicable Requirements.
- (b) The Buyer acknowledges that the Facility uses an intermittent renewable source to generate electricity, is a Must run facility and will not be liable for generating more or less than any forecast or anticipated volume of Delivered Electricity. The Seller is entitled to be paid for the Total Delivered Electricity for any period during the Operational Period.

### **5.2 Insurance**

The Seller shall maintain insurance against property damage, employer's liability and third party liability in amounts, on terms and with insurers consistent with Good Industry Practice.

### **5.3 Scheduling**

- (a) Not later than 30 days before each Operating Year, the Seller shall provide to the Buyer its forecast of the Facility's availability and generation for each Operating Month in that Operating Year, together with its planned maintenance schedule for that period.
- (b) Not later than five Business Days before each Operating Month, the Seller shall provide to the Buyer its forecast of the Facility's availability and generation for each Operating Day in that Operating Month, together with its planned maintenance schedule for that period.
- (c) Not later than 10.00 a.m. on the day before each Operating Day, the Seller shall provide to the Buyer its forecast of the Facility's availability and generation for each hour in that Operating Day.
- (d) The forecasts provided under Clause 5.3 shall be made in good faith taking into account the condition of the Facility, scheduled and unscheduled maintenance and forecast meteorological conditions. However, the Seller shall have no liability whatsoever for any discrepancy between forecast and actual availability and generation.
- (e) The Seller shall, in accordance with the Grid Code, promptly notify the Buyer of any unplanned outage, its cause and likely duration.

## **5.4 Maintenance**

- (a) The Buyer shall ensure that, not later than:
- i. 60 days before each Operating Year; and
  - ii. 10 days before each Operating Month,

The seller is provided with forecast of the maintenance to the Grid that may reduce the availability of the Grid and its ability to accept Delivered Electricity in that period.

- (b) The Seller shall use reasonable efforts to coordinate its own maintenance schedule with the Buyer's forecast. This paragraph does not oblige the Seller to incur additional costs or compromise its operational procedures.

## **5.5 Curtailment and deemed generation**

- (a) The Buyer shall ensure that during the Operational Period, it:
- i. does not curtail or limit the delivery of Delivered Electricity to the Grid; and
  - ii. despatches the Facility at all times,

except where it is necessary to do otherwise in order to carry out essential maintenance or upgrades, to ensure the stability of the Grid or to avoid personal injury or damage to property.

- (b) If, during the Operational Period, the Seller would have been able to deliver electricity to the Grid but did not because:

- i. the Grid was unavailable; or
- ii. the Buyer did not despatch the Facility,

then the Seller shall be deemed to have generated during the period in which those circumstances persisted.

## **6. METERING**

### **6.1 Metering Equipment<sup>1</sup>**

- (a) The Buyer shall install, own and maintain at its expense, appropriate main metering equipment.
- (b) The Seller may install, own and maintain, at its expense a back-up metering equipment in addition to the main metering equipment.
- (c) Metering equipment shall:

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<sup>1</sup> In the analysis of the Grid code, a number of inconsistencies related to the Responsibility For Metering Installations (6.7 in the draft transmission grid as July 2013) have been found. A review of this heading is recommended.

- i. be capable of measuring and recording the import and export of active and reactive energy at the Delivery Point, recording in kiloWatt (kW), kiloVolt Ampere Reactive (kVAr), kiloWatt hour (kWh) and kiloVolt Ampere Reactive hour( kVArh);
- ii. be capable of recording and storing data and transmitting it to the Buyer;
- iii. be tested and calibrated by a qualified independent third party prior to the Commissioning Date;
- iv. be sealable and be sealed, by Buyer and Network Organization allowed to witness this process, immediately after the independent testing and calibration described above; and
- v. comply with the Lesotho Grid Code and all relevant international standards.

## **6.2 Testing and calibration**

- (a) The Seller shall ensure that the metering equipment is tested and calibrated by a qualified independent third party in the first Operating Month of the second and each subsequent Operating Year. The Seller shall give the Buyer at least 10 days' written notice of such testing and calibration, which both Parties may attend and witness. The metering equipment shall be resealed immediately afterwards.
- (b) Either Party may, by 10 days' written notice to the other Party, require the metering equipment to be tested and calibrated by a qualified independent third party, which both Parties may attend and witness. The metering equipment shall be resealed immediately afterwards. If the metering equipment fails the test, Transmission System Operator shall pay for the cost of the test. If the metering equipment passes the test, the Party who requested the test shall pay for the test cost.

## **6.3 Reading**

- (a) The Buyer shall collect on a monthly basis meter reading information. The Seller shall provide to the Buyer access to the Facility at all reasonable times upon reasonable prior notice for the purpose of reading or inspecting meters, examining the operation of the Facility or other purposes reasonably related to performance under the terms of this agreement. Such access shall not interfere with Seller's normal business operations. All Buyer's personnel shall comply with all Facility safety and procedural rules while on the Facility premises. The Buyer shall read the metering equipment on or about 10.00 on the first Business Day of each Operating Month.
- (b) The Buyer may read the metering equipment at any time on reasonable notice to the Seller.

## **6.4 Inaccuracy**

- (a) If any testing of the metering equipment shows that it has an inaccuracy of more than 0.2% or is otherwise faulty, the metering equipment shall be made accurate or replaced as soon as possible.

(b) Seller and Buyer shall cooperate to determine the actual volume of Delivered Electricity during the period (the Adjustment Period) ending on the date of the testing and beginning on the later of:

- i. the most recent date on which the metering equipment was tested and confirmed to be accurate; and
- ii. the date falling three months before the date of testing,

by reference to the Buyer's records, the fault or inaccuracy identified, the Facility's records and such other information as may be available.

(c) Any variation between Delivered Electricity included in an invoice for part or all of the Adjustment Period and that determined in accordance with paragraph a) above shall be corrected in the next invoice with a corresponding payment made to or from the Seller.

## **7. INVOICING AND PAYMENT**

### **7.1 Deemed Delivered Electricity**

(a) If the Facility is deemed to have generated under:

- i. Clause 4.4;
- ii. Clause 5.5(2); or
- iii. Clause 8.3,

the Deemed Delivered Electricity for each hour of such deemed generation shall be calculated as follows:

The average monthly data for the Facility from the same month in the prior Contract Year, if available, as reasonably adjusted for the particular billing period by any relevant available data affecting Facility generation regarding rainfall, stream flow, actual Facility fuel consumption, average heat rate, hours of operation, time of operation of generators, and/or native self-use of power output (collectively "operating variations") during the period of curtailment, shall be employed, if applicable, to estimate the amount of electric energy delivered and accepted. Where such data are not reliably available, the average monthly Facility electric energy delivered and accepted during the previous six (6) billing periods prior to curtailment (or fewer months if the Facility is less than six months from the commercial operations Date), as adjusted or normalized for outages or operating variations, shall be used to estimate energy delivered by the Facility for the billing period.

### **7.2 Electricity Statement**

(a) The Buyer, within ten days of the end of each Operating Month, shall produce a statement setting out the energy output delivered during that Operating Month.

- (b) The Seller shall calculate and send to the Buyer within ten days of the end of each Operating Month a statement setting out the Deemed Delivered Electricity as given in Clause 7.1 for that Operating month.

### **7.3 Invoicing**

(a) The Seller shall calculate and send to the Buyer within ten days of the end of each Operating Month an invoice setting out, as a net sum:

- i. the electricity payment due for that Operating Month, calculated as the Energy output plus deemed delivered electricity multiplied by Purchase Price set out in Schedule 2 of the Agreement;
- ii. any other amounts due under this Agreement from the Buyer to the Seller; and
- iii. any other amounts due under this Agreement from the Seller to the Buyer, expressed as negative amounts.

### **7.4 Payment**

- (a) The Buyer shall pay to the Seller the amount shown in each invoice delivered under Clause 7.3 within 30 days of the date of the invoice.
- (b) If the Buyer disputes any portion of the amount invoiced to it then it shall pay the undisputed portion in accordance with this Agreement and promptly notify the Seller of the disputed portion.

### **7.5 Delivered Electricity prior to the Operational Period**

- (c) The Buyer shall pay for any Delivered Electricity that is generated prior to the Commissioning Date at the then applicable wholesale tariff for electricity.
- (d) The Seller shall invoice the Buyer for such Delivered Electricity monthly. The Buyer shall pay the invoiced sum within 30 days of the date of the invoice.

## **8. FORCE MAJEURE**

### **8.1 Force Majeure**

In this Agreement:

- a) Force Majeure means any event affecting the ability of a Party lawfully to perform its obligations under this Agreement that:
  - i. is beyond the reasonable control of the Party claiming Force Majeure;
  - ii. could not have been avoided by the reasonable and prudent actions of the Party claiming Force Majeure; and
  - iii. does not arise from a breach by the Party claiming Force Majeure of this Agreement, the Connection Agreement or any Law.

**b) Political Force Majeure** means:

- i. any Change of Law;
- ii. any act of war (whether declared or not), invasion, armed conflict, act of foreign enemy, blockade or embargo, in each case occurring within or affecting the Kingdom of Lesotho;
- iii. any acts of rebellion, terrorism, revolution, riot, civil commotion or sabotage of a political nature, in each case occurring within or affecting the Kingdom of Lesotho;
- iv. strike or labour disruption, excluding that confined to the workforce of a Party or the Buyer;
- v. expropriation, nationalisation, confiscation or other similar acts of a Governmental Authority affecting the Buyer or any Shareholder;
- vi. any Permit required for the Project ceases to remain in full force and effect or is not issued or renewed upon application having been properly made by the Buyer; and
- vii. any act or failure by a Governmental Authority that impairs the performance or enjoyment of rights under this Agreement or the Project (other than, in each case, a legal and proportionate response to a breach of Law by the Seller).

c) **Natural Force Majeure** means any Force Majeure which is not a Political Force Majeure, including fire, flood, explosion, civil commotion, adverse weather or disease.

**d) Change of Law** means:

- i. the coming into force of any new Law, including by way of amendment to an existing Law or adoption of secondary legislation under an existing Law; or
- ii. the adoption of a new interpretation or application of any Law,
- iii. in each case after the date of this Agreement.
- iv. Notwithstanding anything to the contrary in no circumstances shall shortage of funds constitute Force Majeure.

## **8.2 Notification, mitigation and consequences**

a) Any Party affected by Force Majeure and wishing to claim relief on this basis must:

- i. promptly notify the other Party of the occurrence of Force Majeure, its efforts under paragraph b) below, and the end of the Force Majeure; and
- ii. use reasonable efforts to mitigate, avoid and remedy the effects of any Force Majeure.

b) Provided the Affected Party has complied with paragraph a) of this Clause:

- i. the affected Party shall be relieved from its obligations under this Agreement without liability to the extent that it is prevented from performing them by the Force Majeure for the duration of the Force Majeure and the time reasonably required to remedy or recover from the Force Majeure; and
- ii. the Term and the deadline for achieving the Commissioning Date under Clause 11.1 c) shall be extended by one day for each day in the Force Majeure Period.

### **8.3 Further consequences of Political Force Majeure**

The Seller shall be deemed to have generated for the duration of any Force Majeure Period arising from a Political Force Majeure that affects the Seller's ability to generate and Deliver Electricity to the Delivery Point.

## **9. CHANGE OF LAW**

### **9.1 Specific Change of Law**

a) In this Agreement **Specific Change of Law** means a change of law which applies to

- i. the Project and not to similar projects;
- ii. the Seller and not to other persons;
- iii. the Shareholders and not to other persons; or
- iv. persons involved in, or having direct or indirect ownership interests in, similar projects to the Project and not to other persons.

### **9.2 Consequences of Specific Change of Law**

a) If a Change of Law occurs which:

- i. causes the Seller to incur additional costs;
- ii. reduces the Seller's revenues;
- iii. adversely affects the risk profile of the Project; or
- iv. adversely affects the Shareholders' economic returns from the Project,

the Buyer shall make such payments to the Seller as are necessary to restore the economic return (taking into account any additional risks) of the Project, the Seller and the Shareholders to the level it would have been but for that Change of Law.

b) The Seller shall make such compensation payments either on a one-off or a recurring basis dependent on the nature of the Change of Law so that the Seller shall not be subject to any funding shortfall.

## **10. REPRESENTATIONS AND WARRANTIES**

a) Each Party represents and warrants:



- i. it is a company duly incorporated under the laws of the jurisdiction of its incorporation referred to in this Agreement, validly existing and in material compliance with all laws;
- ii. it has the power and authority to execute and perform this Agreement;
- iii. all necessary legislative, administrative and corporate actions have been taken to authorise its execution and performance of this Agreement;
- iv. its execution and performance of this Agreement will not give rise to any breach of, or default under, its constitutional documents, Law or any agreement binding on it;
- v. this Agreement constitutes its legal, valid and binding obligation, enforceable in accordance with its terms; and
- vi. it is not subject to any insolvency or similar proceeding.

## **11. DEFAULT AND TERMINATION**

### **11.1 Seller Events of Default**

- 1) Each of the following events shall be a Seller Event of Default:
  - a) The Seller fails to comply with any obligation under this Agreement and such failure is not remedied within 60 days of notice of the default from the Buyer.
  - b) Any representation made by the Seller under Clause 10 is materially inaccurate when made and the circumstances giving rise to such misrepresentation are not remedied within 60 days of notice of the misrepresentation from the Buyer.
  - c) The Commissioning Date does not occur on or before the date falling 12 months after the Scheduled Commissioning Date, provided that this date shall be extended in accordance with Clause 8.2 paragraph 2).
  - d) Any resolution is passed, or order issued, for the liquidation or dissolution of the Seller; the Seller is declared insolvent or the Seller undergoes an amalgamation or insolvent restructuring, and in each case the situation is not remedied within 30 days of notice from the Buyer.
  - e) The Seller ceases to have good title to the Facility and the Site, and the situation is not remedied within 30 days of notice from the Buyer, provided that:
    - i. customary retention of title arrangements; and
    - ii. the granting or enforcement of the Security in accordance with the Lenders' Direct Agreement,will not give rise to any Seller Event of Default under paragraph 1) of this Clause.
  - f) The Seller abandons implementation of the Project for 60 days, other than by reason of Force Majeure, and this situation is not remedied within 30 days' written notice from the Buyer.

## **11.2 Buyer Events of Default**

- a) Each of the following events shall be a Buyer Event of Default:
  - a) The Buyer fails to pay any amount due under this Agreement and such payment remains outstanding 10 days after notice from the Seller.
  - b) The Buyer fails to comply with any obligation under this Agreement and such failure is not remedied within 60 days' written notice of the default from the Seller.
  - c) Any representation made by the Buyer under Clause 10 is materially inaccurate when made and the circumstances giving rise to such misrepresentation are not remedied within 60 days' written notice of the misrepresentation from the Seller.
  - d) Any resolution is passed, or order issued, for the liquidation or dissolution of the Buyer; the Buyer is declared insolvent or the Buyer undergoes an amalgamation or insolvent restructuring, and in each case the situation is not remedied within 30 days' written notice from the Seller.
  - e) The Buyer ceases to be controlled and majority owned by the Government of the Kingdom of Lesotho.

## **11.3 Termination for Seller Event of Default**

If a Seller Event of Default is outstanding, the Buyer may, subject to the terms of the Lenders' Direct Agreement, give 45 days' written notice to the Seller of its intention to terminate this Agreement. If the Seller Event of Default remains outstanding at the expiry of that period, the Buyer may terminate this Agreement immediately by written notice to the Seller.

## **11.4 Termination for Buyer Event of Default**

- (a) If a Buyer Event of Default is outstanding, the Seller may give 45 days' written notice to the Buyer of its intention to terminate this Agreement. If the Buyer Event of Default remains outstanding at the expiry of that period, the Seller may terminate this Agreement immediately by written notice to the Buyer.
- (b) Upon termination in accordance with paragraph (a) above the Buyer shall purchase the Facility from the Seller in accordance with Clause 11.6.

## **11.5 Termination for prolonged Force Majeure**

- (a) If a Force Majeure lasts for 180 days the Seller may give 45 days' written notice to the Buyer of its intention to terminate this Agreement. If the Force Majeure remains lasting at the expiry of that period the Seller may terminate this Agreement immediately by written notice to the Buyer.
- (b) Upon termination in accordance with paragraph (a) of this Clause the Buyer shall purchase the Facility from the Seller in accordance with Clause 11.6.

## 11.6 Purchase and Termination Payment

- 1) Following termination of this Agreement under Clause 11.4(a) or Clause 11.5(a):
  - a) the Buyer shall, within 10 days of the termination, pay to the Seller the Termination Payment; and
  - b) the Seller shall, as soon as reasonably possible after receipt of the Termination Payment, transfer to the Buyer all its ownership rights in the Facility and the Site.
- 2) The Seller shall transfer the Facility and the Site to the Buyer in the condition that they are in at the date of transfer. The Seller makes, and will make, no warranty whatsoever as to their condition and assumes no liability whatsoever in connection with the Site, the Facility or their transfer.
- 3) In this Agreement, '**Termination Payment**' means an amount in LSL calculated as at the date on which it is paid as the aggregate of:
  - a) all amounts outstanding to the Lenders under the Finance Agreements, including breakage costs, fees, penalties, hedging termination sums and expenses;
  - b) all amounts invested in the Seller by its direct Shareholders, whether in the form of equity or debt:
    - i. together with a return on such sums equal to an annual rate from the date of investment to the date of payment; and
    - ii. any dividends, redemption of capital, interest or repayment of debt paid by the Seller to its direct Shareholders.

## 11.7 General

- (a) Upon termination in accordance with this Clause 11, Parties will have no further rights or obligations under this Agreement except to the extent that any liabilities have accrued prior to that termination.
- (b) Neither Party shall have any right to terminate this Agreement except as expressly set out in this Agreement.

## 12. LIABILITY AND INDEMNITY

### 12.1 Limitation on liability

Except to the extent otherwise expressly provided for in this Agreement, neither Party shall in any circumstances be liable to the other Party for any indirect damages or losses of any kind whatsoever and however arising.

## **12.2 Indemnity**

Each Party shall indemnify the other Party and its directors, officers and employees against, and hold the other Party and its directors, officers and employees harmless from, all losses and expenses arising from any death, personal injury, or damage to property arising out of any breach by the indemnifying Party of this Agreement or any negligent act or omission of the indemnifying Party.

## **13. CHANGE OF CONTROL**

- 1) Subject to paragraph b) below, the Seller shall ensure that no Shareholder will dispose of any of their legal or beneficial interests in the Seller:
  - a) prior to the date falling two years after the Commissioning Date; and
  - b) thereafter, except with the written consent of the Buyer, which consent shall not be unreasonably withheld or delayed provided that:
    - i. the Seller remains controlled and majority beneficially owned by a Shareholder or group of Shareholders that have adequate technical, operational and financial resources to provide appropriate support to the Seller in operating the Facility and complying with this Agreement; and
    - ii. the transfer is permitted by Law.
- 2) Paragraph 1) of this Clause shall not prevent a transfer of an interest in the Seller:
  - a) from a Shareholder to a 100% Affiliate of that Shareholder; or
  - b) arising from the enforcement of the Security in accordance with the terms of the Lenders' Direct Agreement.

## **14. MISCELLANEOUS**

### **14.1 Access and inspection**

The Seller shall allow the Buyer, or any person appointed by the Buyer, access on reasonable notice and reasonable terms to the Site, the Facility and its books and records.

### **14.2 Capacity Attributes**

- a) In this Agreement capacity attributes means any allowance that is attributed to the capacity contribution of renewable energy sources as defined in the relevant regulation.
- b) All capacity attributes shall belong to the Buyer.

### **14.3 Assignment**

- (a) The Seller may not assign or transfer any of its rights or obligations under this Agreement.

- (b) The Buyer may not assign or transfer any of its rights or obligations under this Agreement except an assignment by way of security to the Lenders.

#### **14.4 Financing**

- a) The Buyer acknowledges that the Seller may enter into financing arrangements with the Lenders under which they are granted a security interest in the Facility, the Site, this Agreement and/or the Seller's share capital.
- b) The Buyer will on request enter into a direct agreement (the Lenders' Direct Agreement) with the Seller and the Lenders, or an agent for the Lenders, on terms reasonably satisfactory to the Buyer, in which the Buyer:
  - i. consents to, and acknowledges, the granting and enforcement of the Security;
  - ii. agrees that it will not terminate this Agreement without first allowing the Lenders, or a person acting on their behalf, a reasonable period to cure any Seller Event of Default; and
  - iii. agrees that the Lenders, or a person acting on their behalf, may transfer the Facility, the Site, the Seller's rights and obligations under this Agreement and the Connection Agreement and/or the Seller's share capital to a person reasonably satisfactory to the Buyer.

#### **14.5 Payments**

- (a) Each Party shall make all payments due under this Agreement without counter-claim or set-off and free and clear of all taxes, deductions, withholdings and other charges of whatever nature.
- (b) All payments shall be made by direct bank transfer of freely available funds to such account as the Seller may nominate in writing.
- (c) Any sum due but unpaid under this Agreement shall bear interest at a rate equal to the rate generally charged by the Seller's local Lesotho bank for borrowing on an overdraft basis plus 3%.

#### **14.6 Taxes**

Amounts due under this Agreement shall be calculated free of any value added tax or other tax. Any tax imposed on such amounts shall be for the account of the Buyer and shall be grossed up accordingly.

### **15. NOTICES**

#### **15.1 Notices**

- (a) Any notice or other formal communication given under this Agreement must be in writing and may be delivered or sent by courier, fax or email to the other Party at its address, fax number or email address appearing in the execution Clause 15.2 below.
- (b) A Party may, by notice to the other Party, change its notice details, provided that the address and fax number shall always be located in the Kingdom of Lesotho.

## **15.2 Delivery**

- a) Any notice or other formal communication shall be deemed to have been given:
  - a) if delivered, at the time of delivery;
  - b) if sent by courier, at 10.00 on the third Business Day after it was accepted by the courier;
  - c) if sent by fax, on the date of transmission, if transmitted before 15.00 on any Business Day, and in any other case on the Business Day following the date of transmission; or
  - d) if sent by e-mail, upon receipt.

## **16. GOVERNING LAW AND DISPUTE RESOLUTION**

### **16.1 Governing law**

This Agreement is governed by the Laws of the Kingdom of Lesotho.

### **16.2 Dispute resolution**

- (a) Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration Rules, which Rules are deemed to be incorporated in this Agreement by reference into this Clause.
- (b) The number of arbitrators shall be three.
- (c) The venue, or legal place, of arbitration shall be Lesotho or any other jurisdiction agreed by the Parties.
- (d) The language to be used in the arbitral proceedings shall be English.

### **16.3 Waiver of sovereign immunity**

- (a) To the extent that the Buyer may be entitled in any state or jurisdiction to claim any immunity (whether characterized as state immunity, sovereign immunity, act of state or otherwise) for itself or any of its property the Buyer expressly agrees not to claim such immunity or permit it to be invoked. The Buyer expressly waives such immunity to the fullest extent permitted by the laws of such jurisdiction.
- (b) The Buyer acknowledges that the execution and performance of this Agreement constitute private and commercial (and not public) acts.

## **17. FINAL PROVISIONS**

### **17.1 Rights and remedies**

- (a) The rights and remedies provided by this Agreement to the Parties are cumulative and not exclusive of rights or remedies provided by any applicable law.

- (b) Each Party waives any such rights and remedies provided by applicable law, and release the other Party from all obligations and liabilities provided by applicable law in respect of the matters dealt with in this Agreement.

#### **17.2 Counterparts**

This Agreement may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same agreement.

#### **17.3 Severability**

Each provision contained in this Agreement shall be enforceable independently of each other and its validity shall not be affected if any of the provisions are invalid.

#### **17.4 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties in relation to its subject matter. This Agreement supersedes all previous agreements and discussions in relation to its subject matter. Each Party represents that it is not entering into this Agreement in reliance on any warranty or representation except as expressly set out in this Agreement.

#### **17.5 Amendments**

- a) Any amendment to this Agreement shall be made in writing and submitted to the Authority for consideration and approval; and
- b) All the amendments reduced into writing and approved in terms of paragraph a) of this Clause shall constitute the clauses of the Agreement between the Parties for the purposes of the power purchase agreement.

#### **17.6 Language**

- (a) This Agreement is entered into in English.
- (b) All notices under this Agreement shall be provided in English.

**AS WITNESS** this Agreement has been signed by the Parties on the date stated at the beginning of this Agreement.

**THE BUYER**

**WITNESS**

\_\_\_\_\_

\_\_\_\_\_

Name:

Name:

Title:

Title:

Address for notices: [●]

[●]

Kingdom of Lesotho

Email: [●]

Fax number: + [●]

Telephone: [●]

Attention: [●]

**THE SELLER**

**WITNESS**

\_\_\_\_\_

\_\_\_\_\_

Name:

Name:

Title:

Title:

Address for notices: [●]

[●]

Kingdom of Lesotho

Email: [●]

Fax number: + [●]



Telephone: [●]

Attention: [●]

## SCHEDULE 1 – PROJECT-SPECIFIC INFORMATION

### Part 1 – Facility Description

The Facility has the following outline parameters:

Total nominal capacity: [●] MW

Estimated energy output:

Maximum estimated Energy Output per month: [●] MWh

Minimum estimated Energy Output per month: [●] MWh

Scheduled Commissioning Date: [●]

A more detailed description of the Facility is:

Energy source: [●]

Generation specification:

Type: [●]

Number of generating units: [●]

Output voltage: [●]

Power factor: [●]

Method of output power control: [●]

Method of output voltage control: [●]

Transformer: [●]

Protection equipment: [●]

Grid Connection [●]

### Part 2 – Interconnection Facilities

The Interconnection Facilities for the Facility comprise the following: [●].

**Part 3 – Site details**

The details of the Site, including, where relevant, a site plan, coordinates and cadastral details are: [●]

**Part 4 – Initial Shareholders**

The direct and indirect shareholders of the Seller, as at the date of this Agreement are: [●]

## SCHEDULE 2 – PURCHASE PRICE

- (1) The Buyer shall pay the Seller a Purchase Price for the Delivered and Deemed Electricity from the Facility.
- (2) The agreed Purchase Price shall be [INSERT PURCHASE PRICE] LSL per MWh.
- (3) The Purchase Price shall be adjusted according to the following formula

$$PP_n = PP_{n-1} \times \left( \frac{CPI_n}{CPI_{n-1}} \right)$$

where:

$PP_n$ : Purchase Price per MWh agreed in this Schedule

$PP_{n-1}$ : Purchase price per MWh in year n-1

$CPI_n$ : Consumer price index in January of year n, published by the Lesotho Bureau of Statistics

$CPI_{n-1}$ : Consumer price index in January of year n-1, published by the Lesotho Bureau of Statistics