****

LOAD MANAGEMENT CONTRACT

**A contract between**

**Eskom Holdings SOC Ltd (Reg No. 2002/015527/30)**

**and**

**[Please insert full name of the Project Developer] (Reg No.)**

**for the implementation of the following project:**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Project Number** | **Project Name** | **Demand Reduction (MW)**  | **Maximum Contracted Value (R)** | **Contract Start Date** | **Contract End Date** |
|  |  |  |  |  |  |

**LOAD MANAGEMENT CONTRACT**

# PARTIES

### The Parties to this Contract are:

### **ESKOM HOLDINGS SOC LTD**, (Registration Number: 2002/015527/30) a state-owned company with limited liability incorporated in terms of the laws of the Republic of South Africa with its registered office at Megawatt Park, Maxwell Drive, Sandton (“**Eskom**”)

### herein represented by……………………………………………………………in his/her/their capacity/capacities as …………………………………………..

### -AND-

### [Insert name of Project Developer], (Registration Number: ……)a [private or public] company incorporated in terms of the laws of the Republic of South Africa with limited liability with its registered office at………… (“the Project Developer”)

 ***[Drafting note:*** *ensure that the correct type of company is inserted. This could be a private company …. (Pty) Ltd or a public company … Limited]*

herein represented by……………………………………………………………in his/her/their capacity/capacities as …………………………………………..

# DEFINITIONS

In this Contract, the following terms shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:

### “**Adjusted M&V Baseline**” is the M&V Baseline/s of the Approved Project or technologies that has been modified by the M&V Body to account for the conditions of the energy-governing factors during the measurement period;

### “**Annexure A**” means the particular terms and conditions and technical specifications agreed to by and between the Parties in respect of each particular installation; detailing scope of works and project plan;

### “**Annexure B**” means the methodology agreed to by the Project Developer and M&V Body outlining how the Approved Project’s baseline and savings will be determined and the obligations of each Party with regard to the measurement and verification of the Approved Project; also referred to as M&V Plan; and the M&V Baseline report;

### “**Annexure C**” refers to the SHE Plan, detailing Safety compliance;

### “**Annexure D**” refers to the Load Management Programme Rules which governs the implementation of this Contract;

### “**Approved Project**” means the project approved through the Eskom governance approval process for the chosen programmes available for implementation;

### “**Business Day**”means any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa;

### “**Certificate of Completion**” (CoC) means a document issued by the Project Developer to Eskom and the M&V Body, certifying the installation of the Approved Project as Completed;

### “**Commencement Date**”means the date agreed to between the parties that this contract will commence;

### “**Completed**” means that the Approved Project at the Facility has been implemented, as defined in Annexure A;

### “**Consumption**” means the electrical energy used at or by the Facility whether supplied to the Facility by Eskom or any other licensee (being an entity which is the holder of a distribution license granted by the National Energy Regulator of South Africa);

### “**Contract**” means this written contract signed by the duly authorised representatives of both Parties, including all its annexures;

### “**Dispute**” means any difference or disagreement between the Parties arising out of or in connection with this Contract;

### “**Eligible Evening Peak Demand Saving**” means demand savings as verified by the M&V Body during Evening Peak Demand as defined by Eskom’s time of use tariff i.e., Low demand Season (6pm to 8pm) and High Demand Season (5pm to 7pm)

### “**Load Management Programme**” means the funding programme by which Eskom supports approved demand savings initiatives proposed by an approved Project Developer upon proposal and submission of an Approved Project;

### “**Evening Peak Demand Saving**” means the Eligible Evening Peak Demand Saving as verified by the M&V Body;

### “**Expert**” means an expert in the area under Dispute appointed pursuant to Dispute resolution provisions provided for herein;

### “**Facility**” means and includes any place where the Approved Project will be implemented;

### “**Fixed Price per Megawatt**” means the price (in Rands) per Megawatt (excluding VAT);

### “**Implementation Phase**” means the period commencing from the Contract Start Date up to and including the date on which the CoC is issued by the Project Developer;

### “**Initial Purchase Price**” means the anticipated total payment to be made by Eskom to the Project Developer over the duration of the Sustainability Period (subject to the terms of this Contract);

### “**M&V Baseline**” means a typical usage profile before installation of the DSM Measures and as adjusted by agreement by all parties thereafter as described in the M&V Plan;

### “**M&V Body**” means the measurement and verification entity appointed by Eskom to independently conduct the M&V Process;

### “**M&V Equipment**” means any equipment as specified by the M&V Plan for the purposes of establishment of the M&V Baseline and the measurement and verification of the Approved Project;

### “**M&V Plan**” means the document produced and distributed by the M&V Body comprising an overview of the activities undertaken by the M&V Body to establish Evening Peak Demand Saving also referred to as Annexure B;

### “**M&V Process**” means the processes followed to measure and verify the activities as stipulated in the M&V Plan;

### “**MW (Megawatt)**” means a unit for measuring power that is equivalent to one million watts;

### “**Parties**” means the Parties to this Contract as described in clause 1 of this Contract and ‘Party’ shall be construed accordingly;

### “**Performance Assessment Period**” means an assessment conducted by the M&V Body over a 3 (three) month period to determine the performance of the Approved Project. This period starts on the first day of the calendar month following the issue and acceptance of the COC, and continues over eight said periods;

### **“Project Developer”** means the entity that will implement the Approved Project in accordance with the terms of this Contract;

### “**Safety Health Plan** or **SHE**” means a documented planwhich addresses hazards identified and includes safe work procedures to mitigate, reduce or control the hazards identified;

### “**Sustainability Term**” means a two-year term beginning on the first day of the first Performance Assessment Period.

# INTERPRETATION

### Where any number of days is prescribed for the calculation of a time period, and not for the Eligible Evening Peak Demand Savings, those days shall be reckoned exclusive of the first and inclusive of the last day, but the calculation shall exclude any Saturday, Sunday, or public holiday.

### The rule of construction that any clause of a contract shall be interpreted against the party benefitting from it, or who had requested its inclusion, shall not apply.

### Any reference to any law or an enactment is to that law and/or enactment as at the Signature Date and as amended or re-enacted from time to time.

### Expressions defined in the Contract shall bear the same meanings in annexures to the Contract where such annexures do not contain their own definitions.

### This Contract will replace and supersede all and any oral or written negotiations or agreements between the Parties regarding the subject matter hereof, save where this Contract specifically makes provision for them.

### In the case of conflict between the documents entitled LOAD MANAGEMENT CONTRACT and Annexure A, the content of this Contract will prevail.

### This Contract shall only be amended in writing and such amendment must be signed by both Parties before it becomes effective.

### If a communication in terms of this Contract is required to be in writing, writing will include data messages as defined in the Electronic Communications and Transactions Act 25 of 2002. This sub-clause 3.8 does not apply to sub-clause 3.7.

# AGREEMENT

### This Project Developer undertakes that it will implement the Approved Project as set out more fully in Annexure A, namely at, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[Drafting Notes: please insert the location of the Facility]* (herein referred to as the “**Facility**”), and Eskom undertakes to compensate at an agreed rate for the Evening Peak Load Management achieved in the Sustainability Term, subject to the terms of this Contract.

# COMMENCEMENT AND DURATION

### This Contract will commence on the date the last Party signs hereto (“Contract Start Date”) and will endure to the end of the Sustainability Term (“Contract End Date”).

### The duration of the Contract will include both the Implementation Phase and a Sustainability Term and will remain in force for the fixed period not exceeding 30 (thirty) months.

# Implementation phase

### Implementation Phase shall be up to a maximum of 6 (six) months from the Signature Date.

# SUSTAINABIliTY PHASE

### The contracted Evening Peak Load Management reduction for the 24 (twenty four) month Sustainability Term is: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

### Any savings, additional to that contracted to, shall not be invoiced to Eskom.

### Evening Peak demand savings over the 24 (twenty four) month Sustainability Term, will be measured and verified periodically over 8 (eight) quarterly periods by the M&V Body after issuance of the CoC by the Project Developer.

# SAFETY

### The Project Developer shall comply with Eskom’s minimum safety requirements and make safety commitment as guided by Eskom.

# MEASUREMENT AND VERIFICATION

### The M&V Body at all times will be the only authorised entity to do measurement and verification through the implementation of the Approved Project.

### All measurement and verification must take place in accordance with the M&V Plan.

### The Project Developer is responsible for ensuring that the M&V Process takes place by allowing Eskom and the M&V Body access to the Facility during reasonable times and upon reasonable prior written notice having been given.

### The Project Developer will remain responsible for the purchase, installation, and maintenance of all measurement equipment, as well as provision of measurement data in accordance with the M&V Body requirements.

### Any Dispute arising regarding M&V will follow the Disputes process as stated in clause 14.

# PAYMENT PROCESS

### Upon receipt of the quarterly performance assessment report from the M&V Body, Eskom will calculate the applicable rebate payable to the Project Developer for that quarterly period.

### Calculations contemplated in clause 10.1 above, are based on the approved Fixed Price per Megawatt of **Rm\_\_\_\_\_\_\_\_\_\_/MW.**

### Eskom will then issue the Project Developer the amounts to be invoiced for that specific quarter, as per the Performance Assessment Period performance reflected in the Performance Assessment Report.

### On receipt of a valid invoice from the Project Developer, Eskom will within 60 Business Days from date of receipt of the invoice, make payment to the Project Developer.

### Payment table below shows the payment schedule over the Sustainability Term:



 Table 1: Payment Table

### Payments will be capped at a maximum performance value of 100%.

### Payments per Quarter will be based on [Actual Performance (MW) x Approved Rate (Rm/MW) x 1/8].

# Project Developer’s Obligations

### The Project Developer must:

### Commence and complete the Approved Project at the Facility at its sole cost and risk, upon Contract Start Date of this Contract;

### Ensure that Eskom and the M&V Body, upon reasonable prior written notice given have access to the Facility for the duration of this Contract;

### Ensure that the necessary M&V Equipment is available for the M&V Body to conduct their activities;

### Maintain the accuracy of the M&V Equipment, at its own cost, for the duration of the Contract;

### Provide a CoC upon completion of the Implementation Phase;

### Comply with all applicable legislation which relate to the implementation and continued operation of the Approved Project; and

### Do all reasonably required and necessary to give effect to the terms and spirit of this Contract.

# ESKOM’S OBLIGATIONS

### Eskom must:

### Compensate Project Developer for the Evening Peak Load Management reduction in accordance with the terms of this Contract;

### Pay the fees and expenses of the M&V Body, in accordance with the separate agreement between Eskom and the M&V Body; and

### Do all other things reasonably required and necessary to give effect to the terms and spirit of this Contract.

###

# WARRANTIES, GUARANTEES and indemnity

### Eskom does not guarantee or undertake any liability in respect of the skill and expertise of the Project Developer or any party that the Project Developer uses to implement, commission, maintain, repair, or replace the Approved Project.

### Eskom does not guarantee that the Approved Project will achieve or maintain any level of Consumption reduction, or any other level of Evening Peak Demand Saving.

### The Project Developer defends, indemnifies and holds Eskom harmless against any claim a third party may have or institute against Eskom relating to any loss or damages allegedly suffered by such third party and which relates to any aspect of this Contract, which includes, but is not limited to, claims for equipment failure or other loss of property or goods, consequential loss (which includes, but is not limited to,loss of profits, loss of use, business interruption, loss of data, cost of cover, loss of income and loss of production), payment for any Consumption reduction of any type, death or personal injury or guarantees, quality of supply or interruption of electricity supply on any equipment, or any abuse by any employee or agent of the Project Developer of another Party’s intellectual property rights.

### In the event that the Project Developer is not the owner of the Facility, the Project Developer undertakes to procure the consent of the owner with respect to the implementation of the Approved Project at the Facility, that it has no objection to such implementation and will allow all necessary access to Eskom and the M&V Body for the purposes of discharging any obligations and exercising any rights they may have in respect of this Contract. Eskom agrees to adhere, and the Facility owner can insist that the M&V Body adheres to any reasonable safety and health requirements of the Project Developer or owner of the Facility, to the extent that it has been advised thereof in writing.

### In the event that the Project Developer is not the owner of the Facility, it guarantees that it has and will maintain the exclusive right to implement the Approved Project at the Facility and defends, indemnifies and holds Eskom harmless against any claims from any other person in respect of payment for any Consumption reduction achieved by the Approved Project to the extent that such claim may not be covered by the indemnity contained in clause14.3.

# DISPUTES and dispute resolution

### All Disputes between the Parties must be determined in accordance with the provisions of this clause 14.

### The Parties shall seek to resolve in good faith any Dispute arising between them in respect of any matter connected with this Contract.

### Where a dispute arises, either Party (the “Disputing Party”) may within 2 (two) Business Days of the date on which the dispute arose, give written notice of the Dispute to the other Party (the “Receiving Party”).

### The notice must inform the Receiving Party of the Dispute and describe the nature of the Dispute with sufficient clarity for the Receiving Party to be able to identify it.

### Within 3 (three) Business Days of receipt of the notice from the Disputing Party, the negotiation representatives of the Parties, possessing sufficient authority to be able (if necessary with consultation back to their respective organisations) to resolve the dispute, will meet or communicate in such a manner expedient to resolving the dispute if it is impractical to meet in person (by way of example via email, video/telephone conferencing etc.) to attempt to settle the dispute in an amicable manner, within a period of 3 (three) days after the commencement of the negotiations.

### In the event that the dispute is resolved between the negotiation representatives, the outcome of such negotiations will be reduced to writing and signed by the Parties.

### The negotiation representatives are –

### For the Project Developer:

[Name of the representative]

[Designation]

[Telephone number/s]

###  For Eskom:

[Name of the representative]

[Designation]

[Telephone number/s]

### The Parties agree that while a dispute is continuing, they will both continue to perform their respective obligations under this Contract until the Dispute has been fully and finally resolved in accordance with the provisions of this clause. It being specifically agreed that where the nature of the Dispute precludes compliance (whether in full or in part) with this clause, the Party who is so precluded from performing will forthwith notify the other Party that it is so unable to perform and the reasons therefor. Any Party receiving notice of an inability to perform in terms of this clause may Dispute the content thereof, which Dispute will be dealt with contemporaneously with the Dispute.

### If the Dispute is not resolved by the negotiation representatives within the period stated in sub-clause 14.5, either Party may, within a period of 5 (five) Business Days after the last day of that period, and by written notice to the other Party (the “Mediation Notice”) refer the dispute to mediation by 1 (one) mediator appointed in accordance with the remaining provisions of this clause.

### The Mediation Notice, which must be sent to the service address of the other Party, must

### Record the failure of the negotiation representatives to resolve the dispute within the period stated in sub-clause 14.5;

### Notify the other Party of the identities and details of 5 (five) mediators nominated by the Party sending the Mediation Notice, and request the other Party to, within 3 (three) Business Days of receipt of the Mediation Notice, and by written response (“Mediation Response Notice”), agree to the appointment of 1 (one) of such nominated mediators, and

### Advise the other Party of its right to, by way of the Mediation Response Notice, nominate 5 (five) mediators of its own should it object to the nominated mediators.

### Should the other Party fail to respond to such Mediation Notice, within 5 (five) Business Days of the giving of the Mediation Notice, the other Party will be deemed to have agreed to the use of the first listed mediator as nominated on the Mediation Notice.

### If the Parties are not able to agree on the appointment of such mediator, within 3 (three) Business days of the giving of the Mediation Response Notice, either Party may within 3 (three) Business Days thereafter, by written notice to the other Party, refer the appointment of the mediator to the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead) (“AFSA”).

### Only persons with the adequate level of skill and expertise in relation to the nature of the dispute and the scope of the contract will be appointed as mediators.

### The Mediator shall be if the matter in Dispute is principally –

### a legal matter, an advocate or attorney practising in South Africa either of whom is of not less than 10 (ten) years’ standing; or nominated by the president of the Law society;

### an accounting matter, a chartered accountant of not less than 10 (ten) years standing; or nominated by the Chairman of the local chapter of the South African Institute of Chartered Accountants;

### a measurement or verification matter, a measurement and verification Expert, or

* + 1. a technical or engineering matter, a registered professional engineer of not less than 10 (ten) years standing; nominated by the president of the South African Institute of Electrical Engineers.

### No person will be eligible to be nominated or appointed as a mediator pursuant to this Contract, if such person –

#### is presently or has been in the previous 24 (twenty four) months an employee or agent of, or consultant or counsel to, either Party or any affiliate of either Party, or

#### acted against either Party or any affiliate of either Party in the previous 24 (twenty four) months in a litigious proceeding, or

#### is not in good standing with any professional body that such person is affiliated with, or

#### accounting matter, a chartered accountant of not less than 10 (ten) years standing; or nominated by the Chairman of the local chapter of the South African Institute of Chartered Accountants;

### Should mediation be conducted according to the directions of the mediator, the Parties must participate in the mediation in good faith and must respond to all reasonable directions and requests of the mediator in attempting to resolve the dispute. The costs of the mediation will be borne equally by the Parties, save where otherwise agreed to in writing by the Parties.

### No prior direction, decision, conclusion, or recommendation (or similar act) by any Party or the mediator may be referred to, or used in any subsequent arbitration proceedings, whether in respect of the dispute or any subsequent dispute which may arise, irrespective of whether such subsequent dispute is the same subject matter as the dispute.

### Should the mediation not resolve the dispute within 7 (seven) Business Days of its commencement, either Party may by written notice to the other Party (the “Arbitration Notice”) refer the dispute for resolution by arbitration in terms of the Rules of the Arbitration Foundation of Southern Africa from time to time in force (the “AFSA Rules”), subject to the provisions of this clause.

###  The then-current rules for expedited arbitration of AFSA (which may not act as the administrator of the arbitration) will govern such arbitration,

###  Regarding any arbitration conducted in accordance with this clause 14:

#### the seat will be the Republic of South Africa,

#### the arbitration will be held and conducted in the city of Johannesburg in South Africa,

#### the arbitration will be conducted in the English language and all documents submitted in connection with such proceeding will be in the English language or, if in another language, accompanied by a certified English translation,

#### the arbitration will be conducted before 1 (one) arbitrator appointed in accordance with the provisions of this Contract,

#### the arbitration will be final and binding on the Parties. The arbitrators must allocate the cost of arbitration between the Parties to the arbitration in any arbitral award by the arbitrators.

### The Arbitration Notice, which must be sent to the service address of the other Party, must –

### record the failure of the Parties to resolve the dispute within 7 (seven) Business Days of commencement of mediation,

### notify the other Party of the identities and details of 5 (five) arbitrators nominated by the Party sending the Arbitration Notice, and request the other Party to, within 3 (three) Business Days of receipt of the Arbitration Notice, and by written response (“Arbitration Notice Response”), agree to the appointment of 1 (one) of such nominated arbitrators, and

### advise the other Party of its right to, by way of the written response, nominate 5 (five) arbitrators of its own should it object to the nominated arbitrators.

###  If the Parties cannot agree on the arbitrator within a period of 2 (two) Business Days after the giving of the Arbitration Notice Response, either Party may within 3 (three) Business Days thereafter, by written notice to the other Party, refer the appointment of the arbitrator to the Secretariat of AFSA, which may, as it deems fit, appoint any 1 (one) of the arbitrators nominated by both Parties.

### Only Persons with the adequate level of skill and expertise in relation to the nature of the dispute and the scope of the contract may be appointed as arbitrators. No person will be eligible to be nominated or appointed as an arbitrator pursuant to this Contract, if such person –

### presently or has been in the previous 24 (twenty four) months an employee or agent of, or consultant or counsel to, either Party or any Affiliate of either Party, or,

### acted against either Party or any affiliate of either Party in the previous 24 (twenty four) months in a litigious proceeding, or

### is not in good standing with any professional body that such person is affiliated with.

### Notwithstanding the AFSA Rules for expedited arbitrations, the arbitrators will be obliged to provide written reasons for the award or other decision, together with reasons for such decision to the Parties within 14 (fourteen) Business Days after the conclusion of the arbitration hearing.

### The Parties irrevocably agree that the decision of the arbitrators in any such arbitration proceedings will be final and binding upon them, will forthwith be put into effect and may be made an order of any court of competent jurisdiction.

### This clause will not preclude any party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or mandamus pending finalisation of this dispute resolution process, for which purpose the Parties irrevocably submit to the jurisdiction of the South Gauteng High Court, a division of the High Court of the Republic of South Africa or review process.

### The periods for negotiation, mediation or arbitration may be shortened or lengthened by written agreement between the Parties.

# Force Majeure

### If a Party (‘the Affected Party’) is unable to perform all or part of its obligations in terms of this Contract due to a Force Majeure Event, the Affected Party shall, as soon as reasonably practicable but no later than 7 (seven) Business Days of it becoming aware of the Force Majeure Event, notify the other Party in writing (a ‘Force Majeure Notice’) setting out:

15.1.1 full particulars of the Force Majeure Event;

15.1.2 the impact of the Force Majeure Event on the Affected Party's obligations under this Contract;

15.1.3 the Affected Party’s reasonable estimate of the length of time which its performance has been and will be affected by such Force Majeure Event; and

15.1.4 the steps which it is taking or intends to take or will take to remove and mitigate the adverse consequences of the Event on its performance hereunder.

15.2 The Affected Party shall have the burden of proving both the existence of any Event and the effect (both as to nature and extent) which any such Force Majeure Event has on its performance.

15.3 If it is agreed or determined that an Force Majeure Event has occurred, the Affected Party shall, provided that it has complied with the requirements of this clause 15, not be liable for any failure to perform an obligation under this Contract to the extent that:

### such performance is prevented, hindered, or delayed by a Force Majeure Event; and

### such failure could not have been mitigated by the Affected Party taking reasonable action.

### The Affected Party shall use all reasonable efforts to mitigate, rectify and overcome the effects of any Force Majeure Event(s) and to minimise the effect on the other Party and shall give the other Party (i) regular reports on the progress of the mitigation measures and (ii) prompt notice on the cessation of the Force Majeure Event(s).

### If the Force Majeure Event subsists for more than 30 (thirty) days, the Parties agree to renegotiate the terms of this Contract, to mutual satisfaction of the Parties, or terminate the Contract and neither party shall have any claim against the other.

### Notwithstanding the provisions of Annexure D and for purposes of this Contract, ‘Force Majeure Event’ means any act, event or circumstance or any combination of acts, events or circumstances which:

(a) is beyond the reasonable control of either Party (the ‘Affected Party’);

(b) is without fault or negligence on the part of the Affected Party and is not the direct or indirect result of a breach by the Affected Party to perform any of its obligations under the Contract;

(c) was not foreseeable or, if foreseeable, could not have been (including by reasonable anticipation) avoided or overcome by the Affected Party, taking reasonable action;

(d) prevents, hinders, or delays the Affected Party in its performance of all (or part) of its obligations under the Contract.

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 paragraphs (a) – (d) above:

(i) war, hostilities, belligerence, blockade, acts or terrorism, sabotage, civil commotion, riot, revolution or insurrection occurring in South Africa;

(ii) any laws, decrees, regulations of Governmental authorities;

(iii) strikes that are widespread, nation-wide or political in nature (but excluding strikes, lockouts and other industrial disturbances of the Affected Party’s employees which are not part of a wider industrial Dispute materially affecting other employees within South Africa);

(iv) an Act of God, including, drought, fire, earthquake, volcanic eruption, landslide, flood, storm, cyclone, tornado, typhoon, or other natural disasters;

(v) epidemic or plague;

(vi) fire, explosion or radioactive or chemical contamination;

(vii) air crash, shipwreck, or train crash; and

(viii) any act, event, or circumstance of a nature analogous to any of the foregoing.

### Eskom has the right to review, accept or decline Project Developer’s ‘Force majeure’ requests and to apply reasonable, required, and necessary consideration to give effect to the terms and spirit of this Contract.

# BREACH AND TERMINATION

### Either Party has the right to terminate this Contract for convenience and without consequence, if, after approval of the M&V Plan, the Party is of the opinion that it is no longer economically feasible to continue with the Contract. This right is only available for 15 (fifteen) Business Days after the date of written approval of the M&V Plan and, despite termination, previously accrued liabilities will remain intact.

### Eskom has the right to terminate this Contract, upon notice in writing and without consequence, should the Approved Project not be Completed within 2 (two) months of the Implementation Phase.

### In any other circumstance, if either Party breaches a term or condition of this Contract, the innocent Party may serve a notice of default on the defaulting party, calling on the defaulting Party to rectify the breach within a period of 30 (thirty) days after date of the notice of default.

### Should the defaulting Party not rectify the breach as requested, the innocent Party may terminate the Contract with immediate effect and without losing any right to claim damages suffered as a result of such breach or which otherwise may have accrued to it, from the defaulting party.

# LIABILITY

### No Party will be liable to the other for any consequential loss (which includes, without limitation,loss of profits, loss of use, business interruption, loss of data, cost of cover, loss of income and loss of production), arising from any action or inaction of any Party. This sub-clause does not apply to the indemnities provided to Eskom by the Project Developer in terms of sub-clauses 14.3 and 14.5.

### No Party will be liable to the other, whether in contract or delict for the payment of any loss or damage in excess of the Initial Purchase Price. This sub-clause does not apply to the indemnities provided to Eskom by the Project Developer in terms of sub-clauses 14.3 and 14.5.

### No Party will be liable to the other for any loss or damage incurred due to the M&V Equipment not operating, or not operating properly, if the M&V Equipment does not operate, or does not operate properly due to Force Majeure, If the M&V Equipment is unable to operate, or operate correctly as a result of Force Majeure, then the Contract will not terminate, provided that if the event persists for longer than 60 consecutive (days) from the date that it started, either Party will be able to terminate this Contract without consequence, save that any accrued obligations or liabilities, and rights, remain respectively recoverable and intact.

# ASSIGNMENT

### Neither Party may cede, delegate, or assign all or any of its rights, obligations, or liabilities under the Contract without the prior written consent of the other Party, which consent may not be unreasonably withheld.

### Notwithstanding the provisions of sub-clause 18.1 above, either Party may, without the prior written consent of the other, cede, delegate, or assign all or any of its rights, obligations, or liabilities under the Contract:

#### to any to any entity that its business, or part thereof is transferred to, following any restructuring of the current business model; or

#### where the control of the funds from which payment in terms of this Contract must be made is transferred to another entity, to such entity.

# Domicilia Citandi Et Executandi

### Eskom chooses the following address as its domicile:

## Maxwell Drive, Megawatt Park, Sunninghill, Sandton, 2191

## The Project Developer chooses the following address as itsdomicile:

## Eskom chooses the following address where it will receive all correspondence in terms of this Contract, except service of process, which must take place at its domicile address:

## Maxwell Drive, Megawatt Park, Sunninghill, Sandton, 2191

### The Project Developer chooses the following address where it will receive all correspondence in terms of this Contract, except service of process, which must take place at its domicile address:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Signature Name and Designation

On behalf of the Project Developer, who warrants that [she/he/they] [is/are] duly authorised.

Witnesses:

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name

Signed at \_\_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Signature Name and Designation

On behalf of Eskom, who warrants that [he/she/they] [is/are] duly authorised.

Witnesses:

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name

**ANNEXURES**

**ANNEXURE A: SCOPE OF WORK AND PROJECT PLAN**

**ANNEXURE B: M&V PLAN AND BASELINE**

**ANNEXURE C: SHE PLAN**

**ANNEXURE D: LOAD MANAGEMENT PROGRAMME RULES**