AMENDED AND RESTATED AGREEMENT

in respect of

THE PURCHASE OF POWER

entered into by and between

[redacted]

and

CITY OF CAPE TOWN

[redacted]

TABLE OF CONTENT

[redacted]

1 **BACKGROUND**

1.1 The Government of South Africa has announced the policy of encouraging and promoting the development of independent power producers, for generating energy, as part of the privatisation and restructuring process of the Electricity Industry.

1.2 The Minister of Mineral and Energy has approved and declared the [redacted] as a National Demonstration Wind Farm Project, in order to, through its implementation of the policies of the White Papers on Energy and Renewable Energy, test and inform decisions around the commercial viability of wind power projects taking into account environmental and other factors.

1.3 The City of Cape Town, has adopted a draft energy strategy, one of the goals of which is to "increase the renewable and clean energy contribution to the energy supply mix, thereby reducing dependence on unsustainable sources of energy". The measures to achieve this goal are, inter alia, to "facilitate the implementation of grid-connected renewable electricity generation systems (e.g. solar and wind power)......"

1.4 To this end the City of Cape Town resolved in February 2003 that "it be agreed in principle to enter into a contract to purchase energy from [redacted] subject to a mutually acceptable Power Purchase Agreement being negotiated."

1.5 On or about 30 June 2006, the City of Cape Town and [redacted] entered into written agreement for the provision of the City of Cape Town purchasing power from [redacted] (the "**Original Power Purchase Agreement**").

1.6 As result of numerous changes to the terms and conditions of the Original Power Purchase Agreement, the City of Cape Town and [redacted] hereby agree to the terms and conditions of this amended and restated power purchase agreement.

2 **INTERPRETATION**

2.1 Unless there is something in the subject matter or the context which is inconsistent therewith, any reference in this Agreement to a statute, statutory instrument, regulation, by-law or Order, shall be construed as a reference to such statute, statutory instrument, regulation or Order, as amended, or re-enacted, from time to time and to all instruments, Orders or regulations, then in force and made under, or deriving from the relevant statute.

[redacted]

2.2 Any reference, in this Agreement, save where the context otherwise requires, to the masculine, shall include the feminine and any reference to the singular shall include the plural and words denoting natural persons shall include companies, corporations, municipal councils and any other legal entities and vice versa, in each case.

2.3 The table of contents and the headings to the Clauses, Sub-clauses and Annexures of this Agreement are inserted for ease of reference only and shall be ignored in the construction and interpretation of this Agreement.

2.4 If any period is referred to in this Agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

2.5 In this Agreement, any reference to a numbered Clause or is a reference to a Clause or a Sub-Clause in this Agreement bearing that number. Any reference to a numbered Annexure is, subject to any contrary indication, a reference to an Annexure in this Agreement so numbered.

2.6 Unless otherwise indicated, words to which a meaning is ascribed in the body of this Agreement shall bear that meaning wherever such words appear thereafter.

2.7 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any person, whether or not a party to the Agreement, then, notwithstanding that such provision appears only in the definition clause, effect shall be given thereto as if it were a substantive provision contained in the body of this Agreement.

3 DEFINITIONS

3.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:-

3.1.1	"the Act"	shall mean the Electricity Regulation Act, No 4 of 2006, as amended from time to time;
3.1.2	"the Agreement"	shall mean this Agreement, including any Annexures or any related subsequent agreement or amendment or amendments thereto;
3.1.3	"the Amended Licence"	shall mean the Licence, as amended or replaced from time to time;

[redacted]

3.1.4	"the Commencement Date"	shall mean **2006-06-28** notwithstanding the date of signature of this Agreement;
3.1.5	"Commercial Energy"	shall mean a minimum of 25% (twenty-five percentum) of the net (export minus import) Renewable Electrical Energy production of the Facility during each Eskom megaflex time-of-use period;
3.1.6	"Commercial Production Date"	shall mean the date as determined in accordance with the provisions of clause 4 of the Agreement;
3.1.7	"the Competent Authority"	shall mean such authority, including the Minister of Energy, NERSA and any relevant local or national authority, department, inspectorate, ministry official or public or statutory person (whether autonomous or not) of the government of the Republic of South Africa;
3.1.8	"CPI"	shall mean the weighted average consumer price index as published by Statistics South Africa (or its equivalent successor entity), which is referred to as "Headline CPI – All urban areas" in Statistical Release P0141 from time to time (or its equivalent successor index);
3.1.9	[redacted]	shall mean the [redacted] (registration number [redacted]), a duly incorporated company, according to the Companies Act, 2008, as amended, operating a Wind Farm at the [redacted] including its assignees and/or successor-in-law;
3.1.10	"[redacted] Application"	shall mean the application for the Licence, submitted by [redacted], pursuant to section 7 of the Electricity Act of 1987 or any succeeding legislation;
3.1.11	"Effective Date"	shall mean the effective date of the amendments agreed upon in terms of this Memorandum, namely the date on which both

[redacted]

		Parties have signed the amended version of the PPA incorporating the contents hereto and procured all authorisations and/or consents required in terms of their internal processes and applicable laws;
3.1.12	"Energy Price"	shall mean the price, detailed in Annexure A, that the PURCHASER shall pay [redacted] for each kilowatt-hour (kWh) of electrical energy, generated by the Facility, metered at the Injection Point, duly delivered and purchased from [redacted] in terms of this Agreement;
3.1.13	"Eskom"	means Eskom Holdings SOC Limited, registration number [redacted], a state-owned public company with limited liability incorporated in terms of the laws of the Republic of South Africa with its registered office at [redacted]
3.1.14	"the Eskom System"	shall mean that part of the Eskom power system that is required to successfully transport the energy generated by [redacted] from the Facility to the Point of Delivery;
3.1.15	"Estimated Annual Production"	shall mean the estimated net average annual production of 13.2 GWh Renewable Electrical Energy by the Facility;
3.1.16	"the Facility"	shall mean the plant and equipment installed by [redacted] at the Location and as fully described in Annexure "B";
3.1.17	"Force Majeure"	shall mean those events meeting the criteria contemplated in Clause 32;
3.1.18	"Injection Point"	shall mean the sole connection point between the Facility and the Eskom System, located at the 66 kV Darlipp substation, and at which point the electrical energy generated by the Facility is injected into the Eskom System for transportation to the PURCHASER;
3.1.19	"the Law"	shall mean any applicable law, proclamation, ordinance, by-law, act of Parliament or any

[redacted]

		other enactment having force of law;
3.1.20	"the Licence"	shall mean the generation licence, issued to [redacted] by the NER, in terms of section 4 of the Electricity Act, 1987. Which licence is annexed hereto marked Annexure "C";
3.1.21	"the Location"	shall mean the Facility situated at the [redacted] more fully described in Annexure "B";
3.1.22	"the Month"	shall mean a calendar month and shall start at 00h00 hours on the first day of the month and shall end at 24h00 on the last day of the same month;
3.1.23	"NERSA"	means National Energy Regulator of South Africa as established by section 3 of the National Energy Regulator Act, 2004;
3.1.24	"the Parties"	shall mean, collectively the PURCHASER and [redacted];
3.1.25	"the Permits"	shall mean all permits, licences, consents, authorisations, approvals or similar documentation necessary for the lawful operation of the Facility for the duration of the Agreement;
3.1.26	"Point of Delivery"	shall mean the connection point between the Eskom System and the PURCHASER's electricity networks, located at the Morgengronde 132kV substation, or any other connection point designated subsequently in writing by the PURCHASER to [redacted] in terms of the conditions of the Wheeling Agreement and further subject to the conditions that the PURCHASER will be liable for any increase in cost due to variants in the loss factor as a result of the redesignation of the connection point, and at which point the PURCHASER takes delivery of the electrical energy purchased from [redacted];
3.1.27	"Production Year"	shall mean any twelve (12) consecutive

[redacted]

months. The inception of such 12 (twelve) month period shall be calculated as commencing on the Commercial Production Date and thereafter on each and every succeeding anniversary of the Commercial Production Date for the duration of this Agreement;

3.1.28 "the PURCHASER" shall mean the City of Cape Town, a metropolitan municipality, established in terms of the Local Government : Municipal Structures Act, 1998 read with the Province of the Western Cape : Provincial Gazette 5588 dated 22 September 2000, as amended, including its assignees and/or successors-in-law;

3.1.29 "the Regulations" shall mean those regulations promulgated in terms of the Act, from time to time.

3.1.30 "Renewable Electrical Energy" shall mean electrical energy produced by facilities using only renewable non-fossil fuel sources (wind, solar, geothermal, wave, tidal, hydropower, biomass, landfill gas, sewerage treatment plant gas and biogas);

3.1.31 "the Supply" shall mean the generation and supply of Renewable Electrical Energy by the Facility into the Eskom System for transportation to the Point of Delivery in terms of the Agreement;

3.1.32 "the Termination Date" shall mean the date as determined in terms of clause 4.6 of this Agreement;

3.1.33 "the Total Metered Output" shall mean all of the Renewable Electrical Energy (in kilowatt hours) generated per Month by the Facility, duly metered at the Injection Point, for transportation to the PURCHASER, at the Point of Delivery;

3.1.34 "the Under Production" shall mean any shortfall in Renewable Electrical Energy generated in a Production Year by the Facility relative to the Estimated Annual Production;

[redacted]

3.1.35 "the Wheeling Agreement" shall mean the agreement entered into between [redacted] and Eskom, whereby Eskom agrees and consents to [redacted] transporting electrical energy through the Eskom System from the Injection Point to the Point of Delivery;

3.1.36 "Working Day" shall mean any day other than a Saturday, Sunday, or a public holiday as designated by legislation in the Republic of South Africa.

4 COMMENCEMENT DATE AND COMMERCIAL PRODUCTION DATE

4.1 This Agreement shall commence on the Commencement Date and shall terminate on the Termination Date.

4.2 The PURCHASER shall, only with effect from the Commercial Production Date, purchase from [redacted] the Commercial Energy supplied by the Facility, in accordance with the terms and conditions of the Agreement.

4.3 For the purposes of the Agreement "Commercial Production Date" shall mean the first day of the Month following the date upon which the PURCHASER is satisfied that [redacted] has complied with all of the terms and conditions of clauses 4.7 and 4.8.

4.4 The PURCHASER shall, within five (5) Working Days of being satisfied that all the requirements relating to the Commercial Production Date have been met, give written notification to [redacted] of the date. For avoidance of doubt the date shall be the Commercial Production Date. The Parties acknowledge and agree that they will not be bound by any verbal communication relating to the Commercial Production Date.

4.5 [redacted] shall ensure that, with effect from the Commercial Production Date, the Supply is delivered to the PURCHASER at the Point of Delivery.

4.6 Unless extended by mutual written agreement between the Parties or terminated earlier in terms of Clause 27 of the Agreement, the Agreement shall continue in force for a period of twenty (20) consecutive years calculated as and from the Commercial Production Date.

4.7 [redacted] shall furnish the PURCHASER with a written certificate strictly in accordance with the provisions of Annexure "G". This certificate must be issued by a recognised international wind turbine engineer, appointed independently by the Danish Government or alternatively by an appropriate authority approved by the PURCHASER.

[redacted]

4.8 [redacted] shall furnish the PURCHASER with a written confirmation from ESKOM that the Eskom System is capable of transmitting electricity from the Injection Point to the Point of Delivery.

5 ENERGY PURCHASES AND PRICES

5.1 The quantities of energy supplied to the PURCHASER by [redacted], pursuant to this Agreement, shall be measured in accordance with Clause 7 hereof and the PURCHASER shall pay the charges for the energy so supplied as calculated in accordance with Annexure "A" and Clause 6 hereunder.

6 CALCULATION AND PAYMENT OF CHARGES

6.1 The following charges are to be paid by the PURCHASER to [redacted] for electrical energy supplied by [redacted] to the PURCHASER in terms of the Agreement during any one Month, and duly metered in accordance with clause 7:

> Energy charge (in ZAR) = Commercial Energy supplied by [redacted] (in kWh) x prevailing Energy Price (as per Annexure A), plus VAT

6.2 Accounts for energy charges payable under this Agreement shall be based on the meter readings recorded at 24h00 on the last day of each month. Accounts shall become due and payable on the date the account is received by the purchaser. For administrative convenience, a copy of the account shall be emailed each month to the Purchaser by no later than 16h00 on the second working day after receipt by [redacted] of the account from Eskom. The account is to include a copy of [redacted] latest notification to Eskom of the amount of the commercial energy sold to the Purchaser for the preceding month of production.

6.3 The PURCHASER shall effect payment of each account by not later than the 10th (tenth) Working Day after the "due date". Payments in terms of this Clause shall be made into a bank account designated for that purpose in writing by the board of directors of [redacted] Any changes of this arrangement to a different account shall require a mandate to the PURCHASER, in writing and signed by not less than two directors of the board of [redacted]

6.4 Should payment not be received by [redacted] by the applicable date as set out above, the amount outstanding shall bear interest compounded monthly from the due date to date of payment, at a rate per annum equal to the prevailing prime overdraft rate charged by ABSA Bank, or failing the quotation of such rate, such other equivalent prime overdraft rate as quoted by any other major South African bank mutually nominated by the Parties.

[redacted]

6.5 Should the PURCHASER dispute an account, it shall not be entitled to reduce or set off its debt or defer payment thereof beyond the period allowed for in subclause 6,3; but the account shall be settled in full pending resolution of such dispute. If a manifest error is however evident, the PURCHASER shall be entitled to pay in lieu of the amount claimed an amount equal to the average of the accounts rendered for the preceding 3 (three) consecutive Months.

6.6 Should the PURCHASER be incorrectly charged for any amount(s) payable in terms of the Agreement, [redacted] shall inform the PURCHASER of the correct amount(s) payable and the reasons therefore in writing immediately after becoming aware of or being notified of the error.

6.7 In the event of the PURCHASER being overcharged and paying such overcharged amount, [redacted] shall immediately credit the PURCHASER'S account or reimburse the PURCHASER with the total amount overcharged. If the PURCHASER so insists, the said amount shall include interest, compounded monthly from the day of payment by the PURCHASER, up to the repayment date by [redacted], at a rate per annum equal to the prevailing prime overdraft rate charged by ABSA Bank or failing the quotation of such rate, such other equivalent prime overdraft rate as quoted by any other major South African bank mutually nominated by the Parties.

6.8 In the event of the PURCHASER being undercharged, [redacted] shall debit the PURCHASER's account with the total amount undercharged and such amount shall be payable by the PURCHASER.

6.9 Should any of the Parties dispute an account it should not be entitled to reduce or set off its debt or defer payment thereof beyond the period allowed for in Sub-Clause 6.3 but the account shall be settled in full pending resolution of such dispute."

7 METERING OF SUPPLY AND TESTING OF METERING INSTALLATIONS

7.1 The quantities of electrical energy supplied by [redacted] to the PURCHASER shall be measured at the Injection Point and recorded by [redacted] and ESKOM, as specified in the Wheeling agreement between [redacted] and ESKOM, and accounts for energy charges shall be rendered monthly on the basis of such measurements. The records of such measurements shall at all reasonable times be open for inspection by the PURCHASER or its authorised representative. [redacted] shall not establish any further Injection Point without the prior written consent of the PURCHASER.

[redacted]

7.2 Duplicate metering equipment for measuring the electrical energy supplied by [redacted] to the PURCHASER shall be provided, installed and kept in repair by ESKOM, as specified in the Wheeling Agreement..

7.3 Furthermore, duplicate metering equipment for measuring and verifying the electricity supplied by [redacted] to the PURCHASER shall be provided, installed and kept in repair by [redacted] Such metering equipment shall be of the same accuracy as the ESKOM metering equipment referred to in Clause 7.2.

7.4 The average of the readings of the ESKOM main and check meters/recorders shall be used for purposes of calculating the energy charge. If the readings at any time differ by more than 2% (two per centum) from the average of the two readings, then for the purposes of rendering accounts, if ESKOM's records show that the discrepancy is attributable to one meter/recorder only, the reading of the other meter/recorder shall be taken.

7.5 If the discrepancy between the readings of the ESKOM main and check meters/recorders may be due to the inaccuracy of both ESKOM meters/recorders, the average of the [redacted] main and check meters/recorders shall be used for the purpose of calculating the account. If these two readings at any time differ by more than 2% (two per centum) from the average of the two readings, then for the purposes of rendering accounts, if [redacted] records show that the discrepancy is attributable to one meter/recorder only, the reading of the other meter/recorder shall be taken.

7.6 During any period when both the ESKOM and [redacted] meters/recorders have not registered, or ESKOM's and [redacted] records show that the readings are unreliable due to the meters or any associated equipment being defective, a reasonable estimate shall be made jointly by ESKOM, [redacted] and the PURCHASER of the correct quantity for each of the months in question and the account(s) for such period shall be based on such estimate, provided that such estimate shall take account of the evidence supplied by the [redacted] generator meters in estimating the correct quantity/quantities.

7.7 Such defective meters/recorders as referred to in Clauses 7.5 and 7.6 above shall be tested and repaired as soon as possible.

7.8 [redacted] shall provide for and allow the PURCHASER to read this metering equipment, both locally and remotely subject to the condition that [redacted] will take responsibility for the onsite modifications and the PURCHASER will be liable for the direct third party cost of the communication link.

[redacted]

7.9 If within 30 (thirty) days of the rendering of any monthly account the PURCHASER requests [redacted] in writing to have the ESKOM meter(s)/recorder(s) and/or the metering installation(s) tested, [redacted] shall do so on payment by the PURCHASER of the appropriate meter test fee(s) and/or the estimated cost that [redacted] would incur in having the metering installation(s) tested, and if such test shows a meter/recorder inaccuracy exceeding 2% (two per centum) or an overall metering installation inaccuracy exceeding 5% (five per centum), the same shall in the absence of evidence to the contrary be deemed to have existed since the first day of the month for which such account was rendered, and the account(s) shall be adjusted accordingly as soon as practicable after the inaccuracy has been ascertained, and the aforesaid fee(s) and/or costs paid in advance shall be refunded to the PURCHASER.

7.10 If the test shows the inaccuracy to be less than 2% (two per centum) and/or 5% (five per centum) respectively, the account(s) shall stand as rendered and the aforesaid fee(s) and/or costs paid by the PURCHASER shall be forfeited to [redacted]

8 MINIMUM ENERGY SUPPLY BY [redacted]

8.1 [redacted] shall be obliged for the duration of this Agreement to deliver from the Facility at the Injection Point not less than the amount of the Commercial Energy.

9 [redacted] OBLIGATIONS

9.1 [redacted] shall for the duration of the Agreement ensure that it complies with all the terms and conditions of the Agreement.

9.2 [redacted] shall for the duration of the Agreement, ensure that it complies with all the provisions of the Licence, the Amendment Licence (as applicable), any Permits, the Act, as well as the provisions of any other Law which may have application to the Agreement

9.3 Throughout the duration of the Agreement, [redacted] shall ensure that the Wheeling Agreement remains in full force.

9.4 [redacted] hereby warrants and undertakes to the other Party, that throughout the duration of the Agreement:-

9.4.1 subject to Clause 14 of the Agreement it shall operate and maintain the Facility;

9.4.2 the Facility will be driven only by wind energy;

[redacted]

9.4.3 it shall provide to the PURCHASER such evidence, information, certificates, or other material, relating to its obligations under the Agreement, the Wheeling Agreement and the fulfilment thereof, as the PURCHASER shall reasonably request.

9.5 [redacted] hereby warrants and undertakes to the other Party, that the facts, information and details, contained in or referred to in [redacted] Application, were, when given and now are true, accurate and complete in all respects.

9.6 [redacted] shall be obliged to maintain the Supply to the PURCHASER in accordance with the terms and conditions of the Agreement pending the settlement of any dispute that may arise between the Parties.

9.7 Throughout the duration of the Agreement, [redacted] shall be obliged to exercise all reasonable skill, care and diligence in carrying out all of its responsibilities and obligations envisaged in terms of the Agreement. For the purposes of this clause it is envisaged that [redacted] as the holder of the Licence and/or the Amended Licence, as applicable, will at all times exercise a high degree of skill, diligence and foresight which would be expected of a skilled and experienced operator of a generating facility.

10 WHEELING AGREEMENT

The Parties acknowledge and agree that the delivery of electrical energy to the PURCHASER is dependant upon inter alia the Wheeling Agreement being in full force and effect for the duration of the Agreement. Therefore in the event of a dispute arising between [redacted] and Eskom in respect of the Wheeling Agreement, [redacted] undertakes to immediately notify the PURCHASER of such dispute and any steps, which the parties to that agreement may be taking to resolve the matter.

11 CERTIFICATION OF RENEWABLE ELECTRICAL ENERGY

11.1 DWP shall, for the duration of the Agreement, ensure that the Supply it delivers to the Injection Point is certifiable as Renewable Electrical Energy in accordance with the accepted standards and norms of the RECS Group, as referenced in Annexure "D" in the Agreement, or any other standards and norms as notified in writing by the PURCHASER to [redacted] In the event of these standards and norms being amended, [redacted] hereby undertakes and agrees to conform to such amended standards and norms subject to the condition that where these amendments are substantive, the PURCHASER will be responsible for all additional costs of certification.

11.2 [redacted] will register the Facility at its own cost, according to the requirements of clause 11.1, if required.

11.3 The PURCHASER will reconsider the issue of certification at a future date.

[redacted]

11.4 On request from the PURCHASER, DWP shall provide the PURCHASER with certificates and guarantees of origin in accordance with the standards and norms specified in clause 11.1.

11.5 DWP shall transfer to the PURCHASER, at no additional cost to the PURCHASER, the entire rights, privileges, attributes and values, monetary or otherwise, that the Renewbable Electrical Energy purchased by the PURCHASER from [redacted] in terms of the Agreement has or may have in future, during the duration of this Agreement, over/relative to electricity produced from non-renewable sources. Such transfer is deemed to take place on receipt of payment to [redacted] by the PURCHASER for Renewable Electrical Energy supplied to and received by the PURCHASER.

11.6 [redacted] warrants that none of the rights, privileges, attributes and values, referred to in clause 11.5 above, have been sold to or traded with any third party.

11.7 [redacted] warrants that the rights, privileges, attributes and values of the Renewable Electrical Energy as described in Clause 11.5 above and purchased by the PURCHASER from [redacted] in terms of the Agreement have not and will not for the duration of the Agreement be devalued, altered or forfeited through any act or omission by [redacted] including any support for the investment in the Facility or support for the ongoing production of Renewable Electrical Energy by the Facility.

12 MARKETING CAMPAIGN

12.1 When developing any marketing campaign, the PURCHASER shall consult with [redacted] to ensure that appropriate recognition and representation is given to [redacted]

12.2 [redacted] undertakes to consult and obtain prior written approval from the PURCHASER'S Communication Department on any marketing campaigns or media interaction it may consider.

12.3 The Parties agree that before either launches a marketing or information campaign, each party shall advise the other of the details of their campaigns and, if necessary, shall reasonably adapt their campaigns to ensure that no conflict of interest arises and that there is conformity between their respective campaigns when involving the other party's brand.

12.4 The Parties agree that if either party's brand name and/or logo is to be used in such campaigns, such party's written approval shall be obtained prior to the launching of such campaigns.

[redacted]

13 PURCHASER'S OBLIGATIONS

13.1 For the duration of the Agreement, the PURCHASER hereby agrees to use all reasonable endeavours to ensure that the supply agreement entered into between the PURCHASER and Eskom for the supply of electricity at the Point of Delivery remains in full force.

13.2 The PURCHASER undertakes subject to the terms and conditions of the Agreement to purchase from [redacted] as a maximum, 13.2 GWh per annum of Commercial Energy from the Effective Date until the Agreement is terminated. The Parties agree that the PURCHASER shall not be obliged to purchase more than 13.2 GWh per annum of Commercial Energy, but may do so on its written election.

14 ASSIGNATION

14.1 The rights, powers, duties and obligations of [redacted] and the PURCHASER under the Agreement, are personal to them and they shall not assign, cede or make over such rights or burden the Agreement, whether in whole or in part, without the prior written consent of the other Party, which consent shall not unreasonably be withheld or delayed.

14.2 Notwithstanding anything contained in clause 14.1, [redacted] may, without prior consent of the PURCHASER, at any time, assign its rights (but not its obligations) under this Agreement to, or in favour of, banks, financial entities or other lenders as security for any financing relating to the Facility.

14.3 Notwithstanding anything contained in clause 14.1 , the PURCHASER may, without prior written consent of [redacted] at any time, cede its rights and assign its obligations and liabilities in terms of the Agreement to any entity that is being created as a result of the restructuring of the electricity supply industry and/or the electricity distribution industry in South Africa.

14.4 Upon an assignment pursuant to clause 14.1, the assigning party shall, to the extent that it has assigned its obligations under the Agreement, be relieved from its obligations assumed by the assignee hereunder but, notwithstanding the obligations assumed by the assignee, no such assignment shall operate to relieve that assigning party of any obligations and/or liabilities incurred, but undischarged, pursuant to the Agreement prior to the effective date of such agreement, which liabilities shall also become, and be, the liabilities of the assignee.

14.5 No assignment in accordance with this clause shall be effective until the assigning party has provided the other Party with a written undertaking by

[redacted]

the assignee, in a form reasonably acceptable to the other Party, that the assignee will comply with its obligations under the Agreement.

15 TAXATION

15.1 All amounts mentioned in the Agreement, as payable by the PURCHASER, are exclusive of Value Added Tax where applicable and the Parties shall add, to such amounts, and shall pay, in respect of such amounts payable by them, Value Added Tax, at the rate applicable, thereto, from time to time.

15.2 All amounts mentioned in the Agreement, as payable by the PURCHASER, are exclusive of levies and taxes that may in future be imposed on the generation or sales of energy by the South African Government and the Parties shall add to such amounts, and shall pay, in respect of such amounts payable by them, levies and taxes, at the rate applicable, thereto, from time to time.

16 CONFIDENTIALITY

16.1 The Parties shall not disclose nor authorise access to and shall keep confidential, at all times, before and after the expiry or earlier termination of the Agreement, any information concerning the commercial or financial arrangements of either party, unless expressly permitted to be disclosed by the Agreement.

16.2 The restrictions imposed by Clause 16.1 above in the Agreement shall not apply to the disclosure of any information:-

16.2.1 which, now or hereafter comes into the public domain otherwise than as a result of a breach of an undertaking of confidentiality;

16.2.2 which is required by Law to be disclosed to any person who is authorised, by Law, to receive the same including, but not limited to, any government department, the NERSA, local authority or any governmental or regulatory agency having jurisdiction over such party but only to the extent that such party is required by Law to make such disclosure;

16.2.3 which is required to be disclosed by the regulations of any recognized exchange, upon which the share capital of the Party making the disclosure ("the Disclosing Party") is or is proposed to be, from time to time, listed or dealt in or by any body or organization having authority over or regulating such Party;

16.2.4 to a court, arbitration or administrative tribunal, in the course of proceedings before it, to which the Disclosing Party is a party;

[redacted]

16.2.5 to, firstly, employees of the Disclosing Party, on a need to know basis only, after such employees have been made fully aware of the Disclosing Party's obligations of confidence thereto and secondly, bankers, lawyers and accountants instructed by and acting on behalf of the Disclosing Party, who are bound by their professional obligations to keep such information in confidence;

16.2.6 any lending or other financial institution and advisers employed by such institution, or bona fide potential investor, in connection with the financing or proposed financing (in the nature of either debt or equity) of such party's operations;

16.2.7 any bona fide intended assignee of the whole or part of the rights and obligations of the disclosing party under the Agreement, provided that such assignee will be capable of meeting the requirements of clause 16 hereof;

16.2.8 any person which is or may become a contractor to such party to provide materials, equipment or services in connection with such party's operations hereunder;

16.3 Provided that, where either Party intends to disclose any information in terms of this Clause, it shall (so far as is reasonably practicable) give as much prior written notice of such disclosure, to the other Party.

17 GENERAL CONDITIONS

17.1 No alteration, cancellation, variation of or addition to the Agreement shall be of any force or effect unless reduced to writing and signed by the [redacted] and the PURCHASER or their duly authorised representatives.

17.2 The Agreement constitutes the entire Agreement between the Parties hereto and neither of the Parties shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.

17.3 No extension of time or other indulgence granted by either party to the other in respect of either of the Parties' obligations will constitute a waiver of either of the Parties' right to enforce compliance with the terms of the Agreement, neither shall it constitute a novation of the Agreement.

17.4 Subject as herein before provided, the PURCHASER and [redacted] undertake to give effect to any amendment required to be made to the Agreement in terms of the Act or any other relevant legislation and/or by the NERSA, as a result of a change in the Licence or an Order made, pursuant to the Act, provided that, if any such amendment becomes required, the PURCHASER and [redacted] shall, in good faith, discuss the terms of an agreement supplemental hereto, to give effect to such amendment. If the

[redacted]

terms of each supplemental agreement, giving effect to such amendment to the Agreement, have not been agreed and put into effect within 3 (three) months after such amendment becomes required, either Party shall be entitled to refer the terms of such supplemental agreement to NERSA, for determination. The Parties shall give effect to the determination of NERSA and shall enter into any such supplemental agreement, as shall be so agreed or so determined.

18 DOMICILE AND NOTICES

18.1 Each of the Parties chooses domicilium citandi et executandi for the purposes of the giving of any notice, the serving of any legal process and for any purposes arising from the Agreement at their respective addresses set forth hereunder:

18.2 The PURCHASER : The City of Cape Town

Civic Centre

12 Hertzog Boulevard

CAPE TOWN

8001

18.3 [redacted] [redacted]

18.4 Any notice to any party shall be addressed to it at its domicilium aforesaid and be sent either by pre-paid registered post, or be delivered by hand. In the case of any notice:

18.4.1 Sent by pre-paid registered post, it shall be deemed to have been received, unless the contrary is proved, on the fourth Working Day after posting;

[redacted]

18.4.2 Delivered by hand, it shall be deemed to have been received, unless the contrary is proved, on the date of delivery, provided such date is a Working Day or otherwise on the next following Working Day.

18.5 Any party shall be entitled by notice in writing to the other, to change its domicilium to any other address, provided that the change shall become effective only fourteen (14) days after the service of the notice in question.

18.6 Any notice addressed to the PURCHASER shall be required to be addressed to the City Manager (for the Attention: Director, Electricity Services) to be deemed to have been effectively delivered or served.

19 DISPUTE RESOLUTION

19.1 MEDIATION

19.1.1 Informal Resolution

Either party to the Agreement may request that any dispute or difference arising out of the Agreement be referred by the Parties, without legal representation, to mediation by a single mediator. If the Parties agree on mediation then the mediator shall be selected by agreement between the Parties or, failing such agreement, shall be nominated by a mutually respected neutral party. Subject to Clause 19.1.2 the written opinion expressed by the mediator shall be binding on the Parties. The mediator shall formulate his costs in respect of the mediation and these shall be borne equally by the Parties to the mediation.

19.1.2 Failure of Mediation

If either party to the Agreement is dissatisfied with or unwilling to accept mediation or an opinion expressed by the mediator then that party may, by written notice served upon the other, within one calendar month of the date of declaring a dispute or of the mediator's decision, require that the dispute or difference arising out of the Agreement shall be referred to the NERSA on issues in dispute, or to arbitration on any other issues in dispute in terms of Clause 19.2.

19.2 ARBITRATION

19.2.1 Any dispute between the Parties, arising out of the Agreement, or its interpretation, shall be submitted to, and decided by, arbitration on notice given by either Party to the other.

19.2.2 The arbitration shall be held in Cape Town, informally, and otherwise in accordance with the terms of the provisions of the Arbitration Act No 42 of 1965 (as amended, from time to time), it being intended that, if possible, it

[redacted]

shall be held and concluded within 10 (ten) Working Days after it has been demanded.

19.2.3 Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:

19.2.3.1 primarily a legal matter, a practising Senior Advocate of the Cape Bar Society of not less than 5 (five) years' standing;

19.2.3.2 primarily a matter envisaged in terms of the Act, the NERSA or their nominee;

19.2.3.3 any other matter, an independent and suitably qualified person, as may be agreed upon, between the Parties to the dispute.

19.2.4 If agreement cannot be reached on whether the question in dispute falls under sub-clauses 19.2.3.1 or 19.2.3.2, or 19.2.3.3 and/or upon a particular Arbitrator, within 3 (three) Working Days after the arbitration has been demanded, then the President, for the time being, of the Law Society of the Cape of Good Hope shall:

19.2.4.1 determine whether the question in dispute falls under sub-Clauses 19.2.3.1 or 19.2.3.2, or 19.2.3.3 and/or

19.2.4.2 nominate the Arbitrator, within 7 (seven) Working Days after the Parties have failed to agree.

19.2.5 The Arbitrator shall give his decision, within 5 (five) Working Days after completion of the arbitration, and shall, in arriving at his decision, have regard to all terms and conditions of the Agreement.

19.2.6 The Arbitrator may determine that the costs of the arbitration are to be paid either by one or other of the disputing Parties, or apportioned between them.

19.2.7 The decision of the Arbitrator shall be final and binding and may be made an order of the Cape Provincial Division of the High Court of South Africa, upon the application, of either Party, to the arbitration.

19.2.8 This clause is severable from the rest of the Agreement and will remain in effect even if the Agreement is terminated, lapses or is declared invalid for any reason.

19.2.9 Notwithstanding anything to the contrary herein, neither of the Parties shall be precluded from approaching any court of competent jurisdiction for an interdict or other form of urgent relief.

[redacted]

20 GOVERNING LAW AND JURISDICTION

The Agreement shall be governed, interpreted and construed in accordance with the Law of the Republic of South Africa and the Parties hereby agree to the jurisdiction of the High Court of South Africa (CPD).

21 RIGHTS OF ACCESS

[redacted] shall ensure that officers, employees, agents and all contractors and others appointed and acting on behalf of the PURCHASER, shall, upon giving reasonable notice, be entitled to enter the Facility at times which are reasonably convenient to [redacted], for any purpose required in connection with the Agreement including, without prejudice to that generality, for the purposes of ascertaining whether or not [redacted] is complying with the warranties and fulfilling the obligations set out in the Agreement and shall be given safe and unobstructed access to the Facility for such purposes. Any individual to whom access is given pursuant to this Clause, shall comply with all reasonable directions, given by [redacted] and its appropriately authorised employees and agents, as to general safety and site-security requirements.

22 GOOD FAITH

In the implementation of the Agreement the Parties undertake to observe the utmost good faith in all their dealings with each other.

23 BOOKS OF ACCOUNT

23.1 [redacted] shall cause to be prepared in respect of each financial year, such financial and other statements as are required in terms of any applicable Law.

23.2 [redacted] shall appoint reputable auditors and shall cause the financial statements of [redacted] to be audited by such auditors.

23.3 [redacted] shall be obliged to furnish certified copies of these audited financial statements to the PURCHASER by no later than 4 months after the end of each of [redacted] financial years for the duration of the Agreement.

23.4 If so required by the purchaser upon reasonable written request, [redacted] shall make available to the PURCHASER its most recent records reflecting the performance of the wind farm operationally and financially.

24 THE PURCHASER'S EVENTS OF DEFAULT

24.1 In the event that:-

[redacted]

24.1.1 the PURCHASER ceases for any reason to be authorised by a licence or an exemption granted under the Act to distribute electricity; or

24.1.2 the PURCHASER places [redacted] in a position such that [redacted] ability to comply with its obligations and duties under the Act, the terms and conditions of its Licence and/or the Amended Licence and this Agreement, is materially adversely affected; or

24.1.3 the PURCHASER fails to take such steps as may be reasonable to enable the other Party to comply with any Order or Provisional Order of the NERSA, under the Act, affecting or applying to its Licence; or

24.1.4 the electricity industry is so restructured that the PURCHASER loses its mandate as a licensed distributor or an effective resolution is passed for the winding up or dissolution of that part of the PURCHASER's mandate; or

24.1.5 the PURCHASER has failed or is unable to pay its debts and has been instructed by the MEC, in terms of Section 10G(m) of the Local Government Transition Act, No 209 of 1993, to take any steps or cause such steps to be taken, as the MEC may deem necessary to restore the finances of the PURCHASER to a sound footing,

such event shall become an Event of Default.

25 [redacted] EVENTS OF DEFAULT

25.1 In the event that:-

25.1.1 [redacted] fails in any material respect to comply with any of its obligations under the Agreement or the Licence and/or the Amended Licence and/or the Permits; or

25.1.2 [redacted] ceases for any reason to be authorised by the Licence and/or the Amended Licence or an exemption granted under the Act to generate electricity; or

25.1.3 [redacted] places the PURCHASER in a position, such that its ability to comply with its obligations and duties under the Act, the terms and conditions of its Licence and/or the Amended Licence and the Agreement, is materially adversely affected; or

25.1.4 [redacted] fails to take such steps as may be reasonable to enable the PURCHASER to comply with any Order, or Provisional Order of the NERSA, under the Act, affecting or applying to its Licence and/or the Amended Licence; or

[redacted]

25.1.5 [redacted] enters into any scheme or arrangement whereby it disposes of its rights in [redacted], without the prior written approval of the NERSA, and without prior written notification to the PURCHASER; or

25.1.6 [redacted] is unable to pay its debts and is placed under judicial management, in terms of the Companies Act, of 2008, as amended; or

25.1.7 There is an unauthorised assignment of [redacted] rights or obligations under the Agreement; or

25.1.8 [redacted] ceases or abandons the operation of the Facility,

such event shall become an Event of Default.

26 RIGHTS AND REMEDIES AGAINST DEFAULTERS

26.1 On the occurrence of an Event of Default the party aggrieved thereby shall, in addition to and without prejudice to any other rights the aggrieved party may have in terms of the Agreement or in law, have the right to give the defaulting party written notice to rectify such default.

26.2 In the event of the defaulting party failing to rectify such Event of Default within thirty days (30) of the dispatch of such notice, the aggrieved party shall be entitled to give written notice of termination of the Agreement to the other party. Such termination shall take effect on the date the notice is deemed to have been received by the other party in terms of Clause 18 of the Agreement.

27 TERMINATION OF AGREEMENT

The Agreement shall terminate with immediate effect upon the happening of any of the following events:-

27.1 If either Party fails to rectify an Event of Default and/or breach of the Agreement; or

27.2 An Order of Court is made or an effective resolution passed for the winding up, or dissolution of [redacted] or

27.3 [redacted] becomes insolvent, within the meaning of the relevant section of the Insolvency Act (Act 24 of 1936, as amended); or

27.4 In the event that a dispute arises between Eskom and [redacted] regarding the terms and conditions of the Wheeling Agreement and such dispute results in the Wheeling Agreement being terminated.

[redacted]

28 SURVIVAL ON TERMINATION

Termination of the Agreement (howsoever and whensoever terminated) shall not affect any rights or obligations, which may have accrued prior to such termination. Neither shall it affect any rights and obligations of either of the Parties, specifically expressed to continue in force, after termination of the Agreement.

29 BREACH OTHER THAN AN EVENT OF DEFAULT

29.1 Should either party hereto breach or fail to comply with any term or condition of the Agreement, other than those defined as Events of Default, then the party aggrieved thereby shall give the defaulting party written notice to rectify such a breach.

29.2 In the event of the defaulting party failing to rectify such a breach within 45 (forty five) days of the dispatch of such notice, the aggrieved party shall be entitled to give written notice of termination of the Agreement to the other party. Such termination shall take effect on the date the notice is deemed to have been received by the other party in terms of Clause 19 of the Agreement.

29.3 Should either party repeatedly breach any of the terms and conditions of the Agreement in such a manner as to justify the aggrieved party in holding that the defaulting party's conduct is inconsistent with the defaulting party's intention to carry out the terms and conditions of the Agreement, then and in such event the aggrieved party shall without prejudice to its legal rights and remedies, be entitled to terminate the Agreement.

29.4 On terminating the Agreement, the aggrieved party will be entitled to claim and recover such reasonably foreseeable damages as the aggrieved party may be able to prove that it has sustained.

30 WARRANTY OF AUTHORITY

Each party warrants to the other party that it has the power, authority and legal right to sign and perform in terms of the Agreement and that the Agreement has been duly authorised by all necessary actions of its Directors and/or persons on whose behalf it acts herein and constitutes valid and binding obligations on it in accordance with the terms and conditions of the Agreement.

31 COST OF THE AGREEMENT

Each party shall bear their own costs incurred in the negotiation, preparation and settling of the terms of the Agreement.

[redacted]

32 FORCE MAJEURE

32.1 No Party shall be liable to the other in respect of the non-performance of any of the provisions of the Agreement in the event and to the extent that such non-performance is the direct result of or has been directly caused by Force Majeure, which shall mean any event beyond the reasonable control of a party and which could not reasonably have been foreseen by it at the date of signature of the Agreement, and shall include:-

32.1.1 war, whether declared or not, civil war, civil violence, riots and revolutions, terrorist act, acts of piracy, acts of sabotage;

32.1.2 natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning;

32.1.3 explosions, fires, destruction of machines, of factories and of any kind of installations;

32.1.4 boycotts, strikes and lock-outs of all kinds, go-slows, occupation of factories and premises, and work stoppages;

32.1.5 acts of Competent Authority, whether lawful or unlawful, apart from acts for which the party seeking relief has assumed the risk for by virtue of any of the other provisions of the Agreement.

32.2 For the purposes of clause 32.1, Force Majeure does not include or refer to lack of authorisations, of licences, of Permits or of approvals necessary for the performance of the Agreement and to be issued by the appropriate public authority.

32.3 A party claiming Force Majeure shall as soon as reasonably possible after becoming aware of the Force Majeure event, notify the other party thereof, stating the nature, extent and expected duration of same.

32.4 The burden of proof of the existence and extent of the alleged event and the enforceability thereof, shall rest on the party claiming Force Majeure.

32.5 The party receiving notice in terms of Clause 32.3 shall within 7 days of receipt thereof notify the other party of its acceptance or otherwise of the claim. In the event of such party notifying the other that the latest claim of Force Majeure is not accepted, the provisions of Clause 19 apply.

32.6 In the event of a Force Majeure as notified and acceptance in terms of Clause 32.5 continuing for a period of 30 days, the Parties will consult with each other regarding the future implementation of the Agreement. If no mutually accepted arrangement is arrived at within a period of 15 (fifteen)

[redacted]

days thereafter, either Party will be entitled to terminate the Agreement forthwith on written notice.

32.7 It is expressly recorded and agreed in order to avoid any doubt that in the event of a Force Majeure relevant to the Supply the PURCHASER shall not be required to pay [redacted] any amounts due under the Agreement, for the duration of such Force Majeure.

33 CO-ORDINATORS

33.1 The Parties shall each be required for the purposes of liaison between the Parties and decision-making by the Parties to appoint a Co-Ordinator in terms of the further provisions of this clause.

33.2 The PURCHASER shall be required to appoint a Co-Ordinator of operations and [redacted] shall similarly be required to appoint a Co-Ordinator of operations.

33.3 The Co-Ordinators appointed in terms of this clause shall have the authority to issue any lawful instruction relating to the terms and conditions of the Agreement. It is specifically recorded that the Co-Ordinators appointed by the Parties shall not have the authority to amend or vary the terms or conditions of the Agreement nor to issue any notices of termination.

33.4 It is recorded that the PURCHASER's Co-Ordinator of operations shall for the purposes of the Agreement be the Director: Electricity Generation and Distribution or such person as may be appointed by him/her under his/her delegated authority.

33.5 DWP's Co-Ordinator of operations shall for the purposes of the Agreement be its Managing Director or such person as may be appointed by him/her.

33.6 Either Party may by notice in writing to the other Party change its appointed Co-Ordinator.

34 SEVERABILITY

In the event that any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the Agreement, but the agreement shall be construed as if such invalid, illegal or unenforceable provision had never been set forth herein, and the Agreement shall be carried out as nearly as possible according to its original terms and intent.

[redacted]

35 ELECTRONIC MEDIUM

Upon the commencement of the Agreement the Parties shall immediately engage in discussions regarding the feasibility of using any electronic medium as a means of communication between the Parties. The Parties shall use their best endeavours to complete these discussions within a reasonable period of time.

SIGNED at Rosebank on the 6th day of June 2017.

AS WITNESSES :

[redacted]

1.

2.

[redacted]

SIGNED at Cape Town on the 8 day of June 2017.

AS WITNESSES :

[redacted]

1.

2.

[redacted]

FOR AND ON BEHALF OF THE PURCHASER, DULY AUTHORISED THERETO

[redacted]

ANNEXURE "A" ENERGY PRICES

ENERGY PRICE AND DISCOUNTED ENERGY PRICE

1. The Energy Price payable, by the PURCHASER, shall be a flat rate of 37c (thirty-seven ZAR cents) exclusive of VAT per kilowatt-hour (kWh), subject to an annual escalation detailed in clause 2 below.

2. The Energy Price shall be increased annually on the first day of May. This increase shall be equal to the annual percentage increase of the CPI for the twelfth month of the previous Production Year.

3. For avoidance of doubt, the tariff as at 1 May 2017 is R0.6101 (sixty one point zero one cents) per kWh.

[redacted]

ANNEXURE "B" DESCRIPTION OF THE FACILITY

DESCRIPTION OF THE FACILITY OWNED AND OPERATED BY DARLING WIND POWER (PTY) LTD

1. **Location of the Facility:**

   The [redacted]enerating facility is located on the [redacted]

2. **Description of the Facility:**

   The primary plant consists of:

- Four wind driven turbines of type AN Bonus 1.3MW/62 or equivalent, including a hydraulic fail-safe braking system. The main characteristics of each turbine are:

▪ Rated power	-	1300 kW
▪ Cut-in wind speed	-	3 m/s
▪ Cut-out wind speed	-	25 m/s
▪ Rotor	-	3 blades / 62m Ø / 3019m^2 swept area
▪ Power regulation	-	Combistall
▪ Generator	-	690 V / 3phase asynch / 1500 rpm
▪ Tower	-	tubular steel
▪ Hub height	-	approx 50 m

- Electrical transforming and switching equipment
- Metering equipment comprising:
  - Duplicate four quadrant metering owned by ESKOM
  - Duplicate four quadrant metering owned by DWP.

3. **Operational performance period (life expectancy of the Facility and its plant):**

   25 years minimum

[redacted]

4. **Location plan of the Facility:**

[redacted]

[redacted]

ANNEXURE "C" THE NER GENERATION LICENSE

GENERATION LICENSE

Issued by

THE NATIONAL ELECTRICITY REGULATOR

(Hereinafter referred to as the "NER",

a statutory body established in terms of the Electricity Act 41 of 1987)

to

[redacted]

(hereinafter referred to as the "Licensee")

NER/G/IPP/[redacted]

1. PREAMBLE

Whereas:

1) The NER hereby issues a generation license to [redacted]
2) [redacted] is a company that intends to generate electricity by means of wind turbines;
3) [redacted] applied to the NER that the generation licence issued to [redacted] be transferred to [redacted] and
4) The Chief Executive Officer of the NER approved the said application on the 13 September 2004 that the generation licence issued to [redacted] be transferred to [redacted] subject to the conditions decided by the NER Board on the 21 February 2002, which are the following:
   - The obtaining of subsidies for ensuring a viable business are entirely a [redacted] responsibility
   - The increased costs of wind generation cannot be passed to end use customers. This does not include customers who have a need for green energy and thus are willing to enter into a contract for their specific requirements. The NER needs to be informed about such agreements
5) The NER accordingly transfers the generation license issued to [redacted]

[redacted]

2. DEFINITION AND INTERPRETATION

In this License, words and phrases shall have the meaning ascribed to them in the definition section of the Electricity Act, 1987 (Act No. 41 of 1987) as amended (hereinafter referred to as "the Act").

3. GRANT OF LICENSE

The NER, in exercise of the powers conferred by section 6 of the Act, hereby licenses the Licensee to generate electricity at its Generation Station set out in schedule 1 below (hereinafter the "Generation Station") for the purpose of supplying and selling, subject to the conditions set out in this License and the Act.

4. TERM OF LICENSE

This License shall come into force on 13 September 2004 and shall continue for a period of 25 (twenty five) years unless modified or revoked in accordance with the provisions of section 11 and 12 hereof.

5. DUTIES OF LICENSEE

5.1. The Licensee shall not change the capacity or generating process of any Generation Station, without the approval of the NER.

5.2. The Licensee shall comply with any restrictions and conditions imposed by the relevant government environmental and safety agencies/ legislation

5.3. The Licensee shall enter into power wheeling agreements with network owners.

5.4. In the event that a green or wholesale electricity market is established, the Licensee may not trade in that market under the authority of this license, unless the licensee has been registered as a market participant in accordance with the market rules and complies with those market rules

6. SEPARATE ACCOUNTS FOR ELECTRICITY GENERATION BUSINESS

6.1. The Licensee shall prepare on a consistent basis in respect of each financial year of the Licensee, accounting statements comprising:

a) an income statement; and
b) a balance sheet;

together with notes thereto.

[redacted]

6.2. The Licensee shall annually submit audited copies of such accounting statements to the NER within 180 days of the end of the Licensee's financial year.

7. PRICES

If the purchaser is a distributor, it will not be allowed to pass any costs above the cheapest supply option on to end-use customers. This does not include customers who are willing to enter into specific arrangements for green energy.

8. COLLECTION OF INFORMATION

8.1. The NER shall be entitled to collect such information from the Licensee pertaining to the operation of the Generation Stations, as it deems necessary.

8.2. The NER may call upon the Licensee to furnish to it such periodical or other reports in such form as the NER may from time to time prescribe, and such particulars in respect of the undertaking as the NER may from time to time demand.

9. SETTLEMENT OF DISPUTES

9.1 The NER shall be entitled to settle disputes between the licensee and any other supplier regarding -

(1) the right to supply;
(2) the quality of such supply and the provision of services in connection therewith;
(3) the condition on and prices at which electricity is supplied;
(4) the installation and functioning of meters;
(5) the suitability of the equipment of the licensee;
(6) delays in or refusal to supply electricity by the licensee;
(7) any other matter in respect of which the licensee or its consumers requests the NER to act as mediator.

9.2 Any decision of the regulator on a dispute as contemplated in section 9.1 above is binding on the parties to the dispute.

10. PROHIBITION OF TRANSFER OF LICENSE

This License is not transferable without the approval of the NER as provided in the Act.

11. MODIFICATION OF LICENSE

The conditions of this License may be modified by the NER on the following basis:

[redacted]

1) by agreement with the Licensee; or
2) failing such agreement, 30 days notice will be given to the Licensee by the NER, advising of the recommended NER modification, after the consideration of any representation or objections.
3) to be in line with the developments in the Electricity Supply Industry.

The conditions of this License may not be otherwise modified.

12. REVOCATION OF LICENSE

12.1. The NER may at any time agree with the Licensee that this License should be revoked, in which case the term of the License shall end on the day agreed; alternatively,

12.2. The NER may at any time give 90 day's notice of revocation to the Licensee if the Licensee does not comply with any of its material duties and obligations under this License, and the Minister determines that it is necessary to revoke this License, in which case the term of this License ends on the expiration of the period of notice; provided that the Licensee's lenders shall be afforded an additional period of 90 days after such initial 90-day period in order to cure any such non-compliance. The term of this License does not end at the expiration of the period of a notice of revocation given under this paragraph if, before the expiration of such period (including any extended period afforded to the Licensee's lenders), the Licensee complies with its duties or obligations or the Licensee's lenders cure any non-compliance by the Licensee with such duties or obligations, as the case may be.

This License shall not otherwise be revoked or withdrawn nor shall any undertaker be authorised to enter into and take possession of any Generation Station.

13. POWERS OF ENTRY AND INSPECTION

The NER, or any person authorised by it in writing, may at all reasonable times enter upon premises of the Licensee and inspect any plant, machinery, books accounts and other documents found there, for the purpose of determining whether the Licensee is operating the Generation Stations in accordance with the conditions of this license and the applicable provisions of the Act; provided that the NER, or such authorised person, shall conduct such inspections in a manner which does not interfere in any material respect with the operation of the Generation Stations or the conduct of the Licensee's business.

14. PAYMENT OF LICENSE LEVIES

The licensee shall pay the levies in respect of this license determined by the Minister under section 5B of the Act.

15. COMPLIANCE WITH CODES, RULES AND DIRECTIVES

15.1. The licensee shall comply with all regulations, guidelines, codes of conduct and practice directives issued by the NER from time to time.

15.2. The licensee shall monitor its compliance with the regulations, guidelines, codes of conduct and practice directives issued by the NER from time to time

15.3. If the Licensee becomes aware of a material breach of regulations, guidelines, codes of conduct and practice directives issued by the NER from time to time by Licensee, the Licensee must notify the NER of the material breach as soon as practicable.

16. COMMUNICATIONS

16.1 Communication between the Licensee and the NER must be in writing unless the context otherwise requires.

16.2 Should the address of the licensee change, the NER must be informed in writing in no less than 30 days after the change in the address.

17. CONDITIONS AND QUALITY OF SUPPLY

The Licensee shall supply electricity subject to such quality of supply and service standards as the NER may from time to time prescribe.

[redacted]

18. SCHEDULES

(a) SCHEDULE 1 Generating Stations

Generating Station	Location	Type	Capacity (MW)
[redacted]		Wind	5.2

(b) SCHEDULE 2 Supply Area

Swartland Municipality
Green power users

(c) SCHEDULE 3 Licensee Address

[redacted]

Signed: [redacted]
Chief Executive Officer

Date: 13 September 2004

[redacted]

ANNEXURE "D" RECS STANDARD

RENEWABLE ELECTRICAL ENERGY CERTIFICATION STANDARD

1. The Renewable Electrical Energy purchased by the PURCHASER from DWP in terms of this Agreement, shall until further notice by the PURCHASER in writing to [redacted], be certifiable in terms of the standards and norms, set by the RECS Group and as detailed in "RECS Basic Commitment", as amended from time to time.

2. RECS Group contact details ;

   http://www.recs.org

   RECS Secretariat
   [redacted]

   AIB Secretariat
   [redacted]

[redacted]

ANNEXURE "E" GEF PRODUCTION SUBSIDY DETAILS

GEF PRODUCTION SUBSIDY DETAILS

GEF

United Nations Development Programme

UNDP

To: [redacted]

From:

Cc:

3 February 2003

Subject: [redacted] Power Purchase Agreement - Minimizing Financial Risks

Dear Mr. Marsden,

With reference to our discussions on January 29 in Pretoria on the above subject I would like to clarify the following:

UNDP/GEF and DME have agreed to make funds available to assist the City of Cape Town in their marketing efforts for a green tariff with the objective of attracting customers to enter into specific arrangements for green energy. These funds are available through the South Africa Wind Energy Programme (SAWEP) which has been signed by the respective authorities last year[1]. Funds of up to US Dollar 50,000,- could be made available immediately to assist the City of Cape Town in launching a marketing campaign for a green tariff.

The production subsidy scheme which is mentioned on page 20 of the SAWEP project document will be developed over the next 6 to 8 months. The financial and legal aspects of such a scheme, (e.g. it could take the form of an escrow account) will be designed by specialized consultants in close cooperation with the project steering committee of which CCT is part. The scheme foresees to subsidize production of up to 20% of capital investment costs for 10 MW wind power, commencing with 5 MW at the [redacted] site. The purpose of such a scheme is to mitigate financial risks for those partners who carry the risks. A production subsidy will come into effect only if there is a real shortfall or deficit. Also, a production subsidy will be linked to the average total number of kWh bought per year for not less than 5 years. Since the PPA has not yet been finalized and signed it is not yet clear who is carrying what portion of the financial risk. Assumed that the PPA specifies that the City of Cape Town is buying all the electricity that [redacted] can produce for 37cent per kWh, then CCT will be the direct beneficiary of the production subsidy. If CCT is buying only a portion of the "green" power or for a price of less than 37cent per kWh

[redacted]

[redacted]

the production subsidy scheme would entail a pro-rata formula benefiting also other partners who are taking financial risks. The detailed design of the production subsidy scheme will be undertaken shortly and will form part of the project to be submitted to the GEF council for approval.

The date of effect of such a production subsidy would be the date of signing the project document of the full scale project document that is currently under preparation, which is a legally binding contract. The project document has to be signed by three parties which in this case are DME, UNDP Pretoria and DEAT. The date of effect would be the date of signature of the last party signing. This means that it would not be possible to pre-date the date of effect of a production subsidy to the date of GEF council approval or any other date prior to signature of the project document.

Yours Sincerely

[redacted]

[redacted]

United Nations Development Programme

GEF

To: [redacted]

From: [redacted]

Cc: [redacted]

9 June, 2006

Subject: [redacted] Power Purchase Agreement – Confirmation of UNDP-GEF letters

Dear [redacted]

With reference to my earlier letters to the City of Cape Town dated 3rd February 2003 and 12th April 2005 and your recent request for reconfirmation, I hereby confirm the applicability of the content of both letters. UNDP-GEF would like to congratulate the City of Cape Town for the approval of the PPA with [redacted]. Please rest assured of our continuous support to the City of Cape Town as described in the above-mentioned letters and in the SAWEP Project Document.

Yours Sincerely

[redacted]

UNDP/GEF Regional Coordinator for Climate Change and Energy

[redacted]

[redacted]

DME 6

DEPARTMENT: MINERALS AND ENERGY
REPUBLIC OF SOUTH AFRICA
Private Bag X59, Pretoria, 0001 Tel: (012) 317 9000 Fax: (012) 322 3419
Mineralia Centre, 391 Andries Street, Pretoria

Executive Director: Trading Services
City of Cape Town
[redacted]

11 December 2002

Dear [redacted]

[redacted] POWER PURCHASE AGREEMENT

With reference to the meeting between Department of Minerals and Energy (DME) and yourself on 09 December 2002, concerns about the financial risks involved with the premium for "green" power generation through the [redacted] have been raised and the following have been concluded:

1. The City of Cape Town (CCT) concluded on the basis of a "green" market analysis that 60% of the [redacted] Generation Capacity can be sold to "green" customers.

2. The grants from both the Danish Agency for Development Assistance (Danida) and the subordinate equity investment from Government via the Central Energy Fund (CEF) enable the generator to negotiate a "green" energy tariff of 37 cent per kWh.

3. At present the total budget is constituted as follows:

CONTRIBUTORS	[illegible]
Founder Members & BEE Investment	6 million
DME through CEF	19,38 million
Danish Development Aid (Danida)	19,8 million
Loan Funding DBSA	12 million
Loan Funding IDC	9 million
Euro Risk Fund	8,2 million
TOTAL	[illegible] million

4. The remainder of the risk will be addressed in the following ways:

[redacted]

4.1 "GREEN" MARKET STRATEGY

4.1.1 A continued marketing effort to develop support to the CCT for the trading of "green" power will be undertaken by a marketing entity hired under the auspices of the Global Environmental Facility (GEF) South Africa Wind Energy Programme (see Annexure A hereto) which includes the development of a "green" marketing strategy.

4.1.2 The DME will assist the CCT in negotiations with the three spheres of Government in order to secure "green" power purchase agreements. The objective will be the proportional use of "green" power in government owned/rental buildings (e.g. National 1,2 – 5% of [redacted] production; Provincial 10% and Cape Town Civic Centre 10%).

These provisions from the Government Departments are regarded as a fall- back situation only to be used if "green" customers and household sectors do not live up to expectations.

4.1.3 The DME will assist with negotiations for the selling of "green" energy to neighbouring municipalities and other metro councils in the Country should the market survey support such a process.

4.2 THE GEF PROJECT

The Department of Minerals and Energy (DME) has entered into a project with the Global Environmental Facility (see Annex A hereto).

In terms of this project a production subsidy scheme for the [redacted] wind farm Phase I and Phase II (pending the successful development of a replication of this phase) is being designed and could be made available up to a maximum of 20% of the capital investment of R 74 million that is R 14,8 million, pending final approval of the GEF Council.

In respect of the premium paid by CCT, the above mentioned production subsidy could be designed to cover real shortfalls or deficits in the first five years and unspent money could be made available for the remainder of the contract period of twenty years, pending final approval of the GEF council.

The GEF programme could also address the marketing of unsold "green" energy to neighbouring municipalities as well as the remainder of the Metro Councils.

The CCT will be a permanent member on the project steering committee thereby given direct participation in the preparation and execution of the project.

4.3 ESKOM UNDERTAKING (UNBUNDLED TARIFF STRUCTURE)

[redacted]

Eskom has undertaken in discussion with CCT and [redacted] to off set 11.13 cents/kWh against the Eskom/Cape Town Electricity Account for energy purchased by Cape Town from [redacted] This will result in estimated 25,8 cents per kWh net premium.

4.4 CAPE TOWN BUDGETARY PROVISION

- Concern was also raised regarding the provisions in the NER Licence Agreement.

The concern of Cape Town regarding the wording of the NER Licence (paragraphs 1.4 and 7 of the generation licence), which read as follows:

> *' If the purchaser is a distributor it will not be allowed to pass on any cost above the cheapest supply option on to the end use customer. This does not include customers which are willing to enter into specific arrangements for "green" energy'*

This has been discussed with the NER and they have indicated a willingness to revisit the wording of the generation licence in order to allow the City of Cape Town to recover shortfalls or deficits from standard budgetary provisions.

5 CONCLUSION

The result of the above is that the City of Cape Town would have protection against the financial risks mentioned above.

The [redacted] farm preparation activities contributed to South Africa succeeding in its bid for the World Wind Energy Association Conference to be hosted at the Cape Town Conference Centre in the year 2003. The World Wind Energy Association Conference will provide financial and tourist spin-offs for the City of Cape Town.

Yours sincerely

[redacted]

Deputy Director-General: Hydrocarbons and Energy Planning

[redacted]

ANNEXURE "F" DECLARATION BY [redacted]

DECLARATION BY [redacted] OF THE RENEWABLE ELECTRICAL ENERGY PURCHASED BY THE PURCHASER FROM [redacted]

[redacted]

[redacted]

[redacted] [redacted]

DECLARATION BY [redacted] IN TERMS OF CLAUSES 11.5, 11.6 AND 11.7 READ WITH CLAUSE 34.1.7 OF THE POWER PURCHASE AGREEMENT (PPA) IN RESPECT OF THE RENEWABLE ELECTRICAL ENERGY PURCHASED BY THE PURCHASER FROM [redacted]

This Declaration is a comprehensive description of all potential rights, privileges, attributes and values, monetary or otherwise, of the Renewable Energy Purchased by the Purchaser from DWP, that have or will be devalued, altered or forfeited as result of receiving or having received support in establishing and/or operating the Facility.

The funding of the project (which does not include the GEF five year guarantee scheme of $1.4million, which is production grant support to the Purchaser) is investment support and is constituted as follows:

Equity [redacted]	R06,11 million
CEF	R19,38 million
Grant funding: DANIDA	R19,80 million
Loan funding: DBSA	R24,64 million
Total project cost	R69,93 million

The potential rights, privileges, attributes and values, monetary or otherwise, of the Renewable Energy Purchased by the Purchaser from DWP have been devalued, altered or forfeited to the following extent.

1. Global Environmental Fund (GEF): In terms of the regulations of the Kyoto Protocol the GEF and CDM investments in one and the same project are not allowed. Certified Emission Reductions (CER's) are the tradable units defined within the framework of the CDM and the Project will therefore not qualify in terms of the Kyoto Protocol to generate CER's should the Purchaser accept the GEF guarantee scheme (See UNDP/GEF letter attached). The CER's for [redacted] are currently valued at R1.2 million.

2. Danish Grant Funding (DANIDA ODA): There is no clarity whether projects with ODA are eligible as CDM projects and there is currently no guidance regarding the extent to which ODA may be used to support CDM projects in developing countries. DANIDA has indicated that should [redacted] be developed as a CDM Project they will have to reconsider their investment of DK 14 million. (See letter from DME attached).

3. The Department of Minerals and Energy (DME): The DME has declared the [redacted] Windfarm Project as a National Demonstration Project, which means that the Project qualifies for ODA and is not seen as a CDM Project. The DME will not approve the project to be dealt with as a CDM project and therefore the project cannot generate and trade in CER's (See letter from DME attached).

The DBSA funding will not in any way negatively effect any of the potential rights, privileges, attributes and values, monetary or otherwise, (referred to in clause 11.5 of the PPA) that the Renewable Electrical Energy purchased by the Purchaser from [redacted] in terms of this PPA has or may have in future, during the term of the PPA, over/relative to electricity produced from non-renewable sources.

Directors: [redacted]

[redacted]

With reference to clause 11.6 of the PPA, [redacted] warrants that none of the potential rights, privileges, attributes and values, monetary or otherwise, referred to in clause 11.5 of the PPA that the Renewable Electrical Energy purchased by the Purchaser from [redacted] in terms of this PPA has or may have in future, during the term of the PPA, over/relative to electricity produced from non-renewable sources have been sold to or traded with any other/third party.

With reference to clause 11.7 of the PPA, [redacted] warrants that the potential rights, privileges, attributes and values of the Renewable Electrical Energy as described in Clause 11.5 of the PPA and purchased by the Purchaser from [redacted] in terms of the PPA have not and will not for the duration of this Agreement be devalued, altered or forfeited through any act or omission by [redacted], including any support for the investment in the Facility or support for the ongoing production of Renewable Electrical Energy by the Facility, other than that which is referred to in this declaration.

Thus done and signed at Cape Town on the 7th day of December 2005.

[redacted]

As Witnesses:

1. [redacted]

2. [redacted]

[redacted]

DME 6

DEPARTMENT: MINERALS AND ENERGY
REPUBLIC OF SOUTH AFRICA
Private Bag X59, Pretoria, 0001 Tel (012) 317 9000 Fax: (012) 322 3416
Mineralia Centre, 391 Andries Street, Pretoria

[redacted]

Dear [redacted]

RE: Clean Development Mechanism (CDM)

This is to confirm that the Department of Minerals and Energy has declared the Darlipp Windfarm Project as a National Demonstration Project, which means that the Project qualifies for ODA and is not seen as a CDM Project.

It also means that should the project opt for CDM both the Global Environmental Fund and Danida may have to reconsider their grant investment in the project. In the light of the status of the CDM process in SA and the risk of losing the abovementioned grants, this project will not be dealt with as a CDM project.

Best regards

[redacted]

Deputy Director: Renewable Energy

[redacted]

GEF

United Nations Development Programme

UNDP

To: [redacted]
Deputy Director Renewable Energy, DME
Delivered by hand

From: [redacted]

Subject: Wind Power Development – GEF and CDM

This is to confirm that under the UNDP-GEF supported SAWEP programme the issue of green power certification, including possibilities of the Clean Development Mechanism (CDM) will be assessed and applied to wind power development in South Africa as appropriate. However it has to be pointed out that combined GEF and CDM investments in one and the same wind power generation facility are under the Kyoto Protocol regulations not allowed.

Best Regards,

[redacted]

[redacted]

ANNEXURE "G" ENGINEER'S CERTIFICATE

The certificate to be issued in terms of Clause 4.7, shall:

1 Certify that the Facility has been inspected and found to have been completed satisfactorily and in accordance with the [redacted] contract specification for the supply and erection of the Facility, with exception of minor outstanding work (to be detailed).

2 Certify that testing of the Facility has been undertaken in accordance with industry standards, and that

2.1 the Facility has been successfully commissioned and has undergone operational tests proving the full functionality of the Facility, and

2.2 the Facility has been proven to be capable of generating Renewable Electrical Energy and capable of generating the planned electrical output.

3 Include a copy of the Letter of Appointment of the engineer by the Danish Government or alternatively by an appropriate authority approved by the PURCHASER

4 Detail the name, address and signature of the engineer

[redacted]

ANNEXURE "H" LETTER FROM CEF

LETTER FROM CENTRAL ENERGY FUND REGARDING INTENT TO PURCHASE [redacted] SHARES

[redacted]

Dear Sir/Madam

In light of the fact that the City of Cape Town has now approved the Power Purchase Agreement for [redacted], CEF is the process of taking up its shareholding as per the ministerial directive. As the directive was dependent on the successful conclusion of the Power Purchase Agreement, CEF did not take up the 49% shareholding until this issue had been finalised.

To ensure we do not delay the process we will also be authorising [redacted] to sign the PPA on behalf of [redacted]

We look forward to a fruitful partnership with the City as this National Demonstration Wind Farm develops,

Yours Sincerely

[redacted]

Chairman of DWP (Pty) Ltd
GM EDC a division of CEF (Pty) Ltd

[redacted]

[redacted]

1198

Civic Centre Iziko loLuntu Cape Town CM46330

[redacted]

CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Making progress possible. Together

Date : **02 June 2017**

To : **The City Manager: [redacted]**
City of Cape Town
5th Floor, Civic Centre

APPOINTMENT AS ACTING EXECUTIVE DIRECTOR: ENERGY
05 - 09 JUNE 2017 (EXTENSION)

The Acting Executive Director ENERGY: [redacted] will be out of office attending business meetings in London.

The Director: Electricity [redacted] is recommended to continue acting as the Acting Executive ED: ENERGY with full delegated authority.

- Extended Acting Period: 05th – 9th June 2017

RECOMMENDED	[redacted] **Acting Executive Director: WWIS**	**Date: 02 June 2017**
APPROVED/~~NOT APPROVED~~	[redacted]	02.06.2017 **Date:**

[redacted]
ACTING EXECUTIVE DIRECTOR: WWIS

OCM
02/06/2017