

PUBLIC PRIVATE PARTNERSHIP AGREEMENT (PPP)

Between the

KANNALAND LOCAL MUNICIPALITY

as the first Pilot Implementation Site and Participating
Municipality in the PPP and

INOVASURE (PTY) LTD

As a further guideline to the ensuing Participating Municipalities who take
Resolutions to take part in similar PPP Agreements by means of similar
documentation

CONTENTS

| CLAUSE | | PAGE |
|--------|--|------|
| 1. | GENERAL CONDITIONS | 4 |
| 1.1 | Definitions | 4 |
| 1.2 | Interpretation | 17 |
| 1.3 | Conditions Precedent | 18 |
| 1.4 | Communications | 18 |
| 1.5 | Law and Language | 18 |
| 1.6 | Priority of Documents | 19 |
| 1.7 | Effective Date | 19 |
| 1.8 | Special Conditions Agreement | 19 |
| 1.9 | Assignment | 19 |
| 1.10 | Care and Supply of Documents | 19 |
| 1.11 | Confidentiality | 20 |
| 1.12 | Project Documents | 20 |
| 1.13 | Employer's Use of Contractor's Documents | 20 |
| 1.14 | Contractor's Use of Employer's Documents | 21 |
| 1.15 | Confidential Details | 21 |
| 1.16 | Compliance with Laws and Consents | 21 |
| 1.17 | Joint and Several Liability | 21 |
| 1.18 | Third Party Rights | 21 |
| 1.19 | Entire Agreement | 22 |
| 1.20 | Amendment | 22 |
| 1.21 | Severability | 22 |
| 1.22 | Indemnities | 22 |
| 1.23 | Costs | 22 |
| 1.24 | Independent Contractor | 22 |
| 1.25 | Effect of enquiry or inspection | 22 |
| 1.26 | Approvals | 23 |
| 1.27 | Survival of Rights | 23 |
| 2. | THE EMPLOYER | 23 |
| 2.1 | Right of Access to the Site | 23 |
| 2.2 | Permits, Licences or Approvals | 24 |
| 2.3 | Employer's Personnel | 24 |
| 2.4 | Employer Obligations | 24 |

| | | |
|-----------|--|-----------|
| 3. | THE EMPLOYER'S ADMINISTRATION | 25 |
| 3.1 | The Employer's Representative | 25 |
| 3.2 | Other Employer's Personnel | 25 |
| 3.3 | Delegated Persons | 25 |
| 3.4 | Instructions | 25 |
| 3.5 | Determinations | 26 |
| 4. | THE CONTRACTOR | 26 |
| 4.1 | Contractor's General Obligations | 26 |
| 4.2 | Performance Security | 27 |
| 4.3 | Contractor's Representative | 27 |
| 4.4 | Subcontractors | 28 |
| 4.5 | Nominated Subcontractors | 28 |
| 4.6 | Co-operation | 28 |
| 4.7 | Setting Out | 28 |
| 4.8 | CDM Regulations | 28 |
| 4.9 | Quality Assurance | 29 |
| 4.10 | Sufficiency of the Contract Price | 29 |
| 4.11 | Unforeseeable Difficulties | 30 |
| 4.12 | Rights of Way, Servitudes and Facilities | 30 |
| 4.13 | Avoidance of Interference | 30 |
| 4.14 | Access Route | 30 |
| 4.15 | Transport of Goods | 31 |
| 4.16 | Contractor's Equipment | 31 |
| 4.17 | Protection of the Environment | 31 |
| 4.18 | Electricity, Water and Gas | 31 |
| 4.19 | Employer's Equipment and Free-Issue Material | 32 |
| 4.20 | Progress Reports | 32 |
| 4.21 | Security of the Site/s | 33 |
| 4.22 | Contractor's Operations on Site/s | 33 |
| 4.23 | Contractor Warranties | 34 |
| 5. | DESIGN | 34 |
| 5.1 | General Design Obligations | 34 |
| 5.2 | Contractor's Documents | 34 |
| 5.3 | Contractor's Undertaking | 35 |
| 5.4 | Technical Standards and Regulations | 35 |
| 5.5 | Training | 36 |

| | | |
|------|--|----|
| 5.6 | As-Built Documents | 36 |
| 5.7 | Operation and Maintenance Manuals | 36 |
| 5.8 | Design Error | 37 |
| 6. | STAFF AND LABOUR | 37 |
| 6.1 | Engagement of Staff and Labour | 37 |
| 6.2 | Rates of Wages and Conditions of Labour | 37 |
| 6.3 | Persons in the Service of Others | 37 |
| 6.4 | Labour Laws | 37 |
| 6.5 | Working Hours | 37 |
| 6.6 | Facilities for Staff and Labour | 38 |
| 6.7 | Health and Safety | 38 |
| 6.8 | Contractor's Superintendence | 38 |
| 6.9 | Contractor's Personnel | 38 |
| 6.10 | Records of Contractor's Personnel and Equipment | 39 |
| 6.11 | Disorderly Conduct | 39 |
| 7. | PLANT, MATERIALS AND WORKMANSHIP | 39 |
| 7.1 | Manner of Execution | 39 |
| 7.2 | Samples | 39 |
| 7.3 | Inspection | 39 |
| 7.4 | Testing | 40 |
| 7.5 | Rejection | 41 |
| 7.6 | Remedial Work | 41 |
| 7.7 | Ownership of Plant and Materials | 41 |
| 7.8 | Royalties | 42 |
| 8. | COMMENCEMENT, DELAYS AND SUSPENSION | 42 |
| 8.1 | Commencement of Works | 42 |
| 8.2 | Time for Completion | 42 |
| 8.3 | Program | 43 |
| 8.4 | Extension of Time for Completion | 43 |
| 8.6 | Delays Caused by Authorities | 44 |
| 8.7 | Rate of Progress | 44 |
| 8.8 | Delay Damages | 45 |
| 8.9 | Suspension of Work | 45 |
| 8.10 | Consequences of Suspension | 46 |
| 8.11 | Payment for Plant and Materials in Event of Suspension | 46 |
| 8.12 | Prolonged Suspension | 46 |

| | | |
|-------|--|----|
| 8.13 | Resumption of Work | 47 |
| 9. | TESTS ON COMPLETION | 47 |
| 9.1 | Contractor's Obligations | 47 |
| 9.2 | Delayed Tests | 48 |
| 9.3 | Retesting | 48 |
| 9.4 | Failure to Pass Tests on Completion | 48 |
| 10. | EMPLOYER'S TAKING OVER | 49 |
| 10.1 | Taking Over of the Works and Sections | 49 |
| 10.2 | Taking Over of Parts of the Works | 49 |
| 10.3 | Interference with Tests on Completion | 49 |
| 11. | DEFECTS LIABILITY | 50 |
| 11.1 | Completion of Outstanding Work and Remedying Defects | 50 |
| 11.2 | Cost of Remedying Defects | 50 |
| 11.3 | Extension of Defects Notification Period | 51 |
| 11.4 | Failure to Remedy Defects | 51 |
| 11.5 | Removal of Defective Work | 51 |
| 11.6 | Further Tests | 51 |
| 11.7 | Right of Access | 52 |
| 11.8 | Contractor to Search | 52 |
| 11.9 | Making Good Defects Certificate | 52 |
| 11.10 | Unfulfilled Obligations | 52 |
| 11.11 | Clearance of Site | 52 |
| 12. | PERFORMANCE | 53 |
| 13. | VARIATIONS AND ADJUSTMENTS | 53 |
| 13.1 | Right to Vary | 53 |
| 13.2 | Value Engineering | 53 |
| 13.3 | Variation Procedure | 54 |
| 13.4 | Payment in Applicable Currencies | 54 |
| 13.5 | Provisional Sums | 54 |
| 13.6 | Daywork | 55 |
| 13.7 | Adjustments for Changes in Legislation | 55 |
| 13.8 | Adjustments for Changes in Costs | 56 |
| 14. | CONTRACT PRICE AND PAYMENT | 56 |
| 14.1 | The Contract Price | 56 |
| 14.2 | Advance Payment | 56 |
| 14.3 | Application for Interim Payments | 57 |

| | | |
|-------|--|----|
| 14.4 | Schedule of Payments | 58 |
| 14.5 | Interim Payments | 58 |
| 14.6 | Timing of Payments | 58 |
| 14.7 | Final Payment Notice | 58 |
| 14.8 | Statement at Completion | 58 |
| 14.9 | Application for Final Payment | 59 |
| 14.10 | Cessation of Employer's Liability | 59 |
| 14.11 | Currencies of Payment | 60 |
| 15. | ENERGY SECURITY MANAGEMENT AND ADMINISTRATIVE SERVICES | 60 |
| 16. | ADOPTION AND AMENDMENT OF AN ANNUAL BUDGET | 61 |
| 17. | GENERAL ADMINISTRATION | 61 |
| 18. | POWER (ENERGY) MANAGEMENT AND ADMINISTRATIVE SERVICES FEES | 61 |
| 19. | OPERATIONS AND MANAGEMENT AFTER COMPLETION AND TAKE OVER | 61 |
| 20. | TERMINATION BY EMPLOYER | 61 |
| 20.1 | Notice to Correct | 61 |
| 20.2 | Termination by Employer | 61 |
| 20.3 | Valuation at Date of Termination | 63 |
| 20.4 | Payment after Termination | 63 |
| 21. | SUSPENSION AND TERMINATION BY CONTRACTOR | 63 |
| 21.1 | Contractor's Entitlement to Suspend Work | 63 |
| 21.2 | Termination by Contractor | 64 |
| 21.3 | Cessation of Work and Removal of Contractor's Equipment | 64 |
| 21.4 | Payment on Termination | 64 |
| 22. | RISK AND RESPONSIBILITY | 65 |
| 22.1 | Indemnities | 65 |
| 22.2 | Contractor's Care of the Works | 65 |
| 22.3 | Employer's Risks | 66 |
| 22.4 | Consequences of Employer's Risks | 66 |
| 22.5 | Intellectual and Industrial Property Rights | 67 |
| 22.6 | Limitation of Liability | 67 |
| 23. | INSURANCE | 68 |
| 23.1 | General Requirements for Insurances | 68 |
| 23.2 | Insurance for Works and Contractor's Equipment | 69 |
| 23.3 | Insurance against Injury to Persons and Damage to Property | 70 |
| 23.4 | Insurance for Contractor's Personnel | 71 |
| 23.5 | Product Liability Insurance | 71 |

| | | |
|-------------------|---|-----------|
| 24. | FORCE MAJEURE | 71 |
| 24.1 | Definition of Force Majeure | 71 |
| 24.2 | Notice of Force Majeure | 72 |
| 24.3 | Duty to Minimise Delay | 72 |
| 24.4 | Consequences of Force Majeure | 72 |
| 24.5 | Force Majeure Affecting Subcontractor | 73 |
| 24.6 | Optional Termination, Payment and Release | 73 |
| 25. | CLAIMS AND DISPUTES | 73 |
| 25.1 | Contractor's Claims | 73 |
| 25.2 | Resolution by Board | 75 |
| 25.3 | Due Legal Process | 75 |
| SCHEDULE 1 | | 77 |
| | Particular Conditions | 77 |
| SCHEDULE 2 | | 78 |
| | Schedule of Payments | 78 |
| SCHEDULE 3 | | 79 |
| | Performance Security | 79 |
| SCHEDULE 4 | | 80 |
| | Insurance Requirements | 80 |
| APPENDIX 1 | | 81 |
| | Employers Requirements | 81 |
| APPENDIX 2 | | 82 |
| | Site/s | 82 |
| APPENDIX 3 | | 83 |
| | Contractor's Proposals and Financial Model | 83 |
| APPENDIX 4 | | 84 |
| | Before and After Comparison of the Proposes InovaSure Energy Vault | 84 |

THIS CONTRACT (“PPP Agreement”) is made

Between:

- (1) **Kannaland Local Municipality**, 32 Church Street, Ladismith, Western Cape (email reyno.stev@yahoo.com), as Employer and First Party; and
- (2) **InovaSure Proprietary Limited**, a company duly and legally incorporated in South Africa with registration number 2015/333853/07, with registered office at 263 Oak Avenue, Rapid Blue Building, Randburg, Johannesburg (email: max@inovasure.com) as Contractor and Second Party;

with the understanding that further Local, District and Metropolitan Municipalities may wish to enter into similar PPP Agreements as Further Parties by means of similar, terms and conditions as contained in this PPP Agreement and its Schedules, Appendices and Annexures, with specific recordal of its/their Financial Model for their specific Energy Vault Project/s which will in turn be executed by separate suitable special purpose vehicles implemented by the Contractor.

RECORDALS

- (A) The First Party (and future Employer/s in terms of future PPPs) require/s Energy, Water and Information Communications Technology (“ICT”) Security, management and administration services, to:
 - a. upgrade, and/or convert and/or refurbish existing power generation, distribution, storage and trading facilities and/or to construct new Renewable Energy power generation, distribution, storage and trading facilities in both formal (in AC power supply) and informal (in DC power supply) settlement areas (which is understood to include the refurbishment of existing Power Plants, whether currently owned by the Employer/s or in future to be transferred to its/their balance sheets for refurbishment and management through the Contractor’s Energy Vault/s installation/s);
 - b. in due course and once Energy Security has been established in the relevant Municipal area, upgrade, and/or convert and/or refurbish existing water supply, storage, purification, waste-water recycling and distribution facilities and/or to construct new water supply, storage, purification, waste-water recycling and distribution facilities in both formal and informal settlement areas;
 - c. as part of the Energy Vault/s installation and management process, upgrade, and/or convert and/or refurbish existing ICT telecommunications facilities and/or to construct new telecommunications facilities in both formal and informal settlement areas;
 - d. manage energy generation, distribution, storage and dispatch facilities, energy metering, payments and settlements, collections, risk and all other relevant administrative and management activities, including the relevant Municipal assets involved;
 - e. in due course and once the Energy Security has been established in the relevant Municipal area, manage water supply, storage, purification, waste-water recycling and distribution facilities, water metering, payments and settlements, collections, risk and all other relevant administrative and management activities, including the relevant Municipal assets involved;

- f. manage, as part of the Energy Vault/s operational procedures, telecommunications facilities, metering, connectivity, WIFI services, payments and settlements, collections, risk and all other relevant administrative and management activities, including the relevant Municipal assets involved;
 - g. and, generally, to establish and ensure a continuous supply of energy and in due course water and telecommunications to the First Party (and future Employer/s) as Municipality/ies tasked with service delivery, on behalf of the First Party (and the future relevant Participating Municipality/ies), which includes the design, execution, construction and post Take Over management of the of the Works.
- (B) The Employer/s has/have provided the Contractor with the Employer's Requirements which are included in schedule 4 attached to this PPP Agreement and amplified in the Contractor's Feasibility Study and Financial Model which is attached to this PPP Agreement on USB Drive as Appendix 3.
- (C) In response to the Employer's Requirements, as well as the general requirements of Future Parties as Participating Municipalities in their own PPP Agreement/s, the Contractor has supplied to the First Party and/or Employer/s the documents showing and describing the Contractor's proposals for the Works, initially, and thereafter for the Energy management and administrative services (herein referred to, jointly, as the Contractor's Proposals).
- (D) The Contractor has examined the Employer's Requirements as a Municipality specifically and as an organ of State generally and collectively and is satisfied that the Contractor's Proposals satisfy the First Party Employer's Requirements as well as the Requirements of future Employer/s as Participating Municipalities to their own PPP Agreement/s.
- (E) The Contractor, as part of the initial process of engagement with the First Party Employer, entered into a process of procurement for its services during 2012 and subsequently engaged with the First Party Employer over the years to date to produce various pre-feasibility and feasibility studies for various aspects of the proposed Works, which process involved the Council of the First Party Employer.
- (F) All required Resolutions for the process and proposed Works were taken and the required notice of the process and relevant Resolution taken provided to the public on an ongoing basis and specifically during October 2019 by means of publication of the final reports on its website and relevant newspapers and to the key stakeholders in government to request comment and confirmation of non-objection to the proposed Project/s and Work/s, including, but limited to, the Central Energy Fund, the Department of Energy, COGTA, SALGA, the National Treasury GTAC division, the Development Bank of Southern Africa, various Trade Unions and Eskom. Various support letters from the key stakeholders were received by the First Party and the Contractor and no objections were received by either the First Party of the Contractor to the publications and Feasibility Study and Financial Model pertaining to the First Party Employer as published to the public and key stakeholders. The Feasibility Study and Financial Model so published indicates the financial implications and benefit of the Energy Vault Project/s for the First Party Employer in Kannaland Local Municipality as a pilot implementation Project and all future Participating Municipalities as Employer/s, as well as Eskom as the nett receiver of the benefit of stored energy from the Energy Vault/s provided by the Participating Municipalities to the distribution network/s during peak periods.
- (G) The First Party Employer, together with its Transactional Advisors, Stefanutti Stocks, which it employed to determine the Financial, Technical and Legal viability of the proposed Energy Vault Project for its Municipal area and in general for all future Participating Municipalities up to 200 (Two hundred) similar Energy Vault sites situated at various other sites around

the Country, has conducted a thorough due diligence in respect of and relating to the Contractor and the Feasibility Study and Financial Model that it has provided, and has satisfied itself as to the ability of the Contractor to meet the Employer's Requirements as well as the requirements of all Future Parties as Participating Municipalities in their own similar PPP Agreements.

- (H) During the engagement/s with the First Party Employer and other Participating Municipalities over the years, after the engagement and contract with the First Party in September 2012 to provide various energy and water and related services, the Contractor also engaged with National Treasury GTAC division with regard to the possible arrangement of a Public Private Partnership for the Project, as well as future Project/s with other Participating Municipalities. The GTAC division provided its support for the proposals as PPP arrangement and encouraged the Contractor to execute the process under the auspices of the Development Bank of Southern Africa (DBSA) and to finalise the process for a specific Municipality, being the First Party's Municipality of Kannaland, and well as with other interested Municipalities who may wish to also take part in similar PPP arrangement/s. The Contractor duly finalised Resolutions for the introduction of Energy Vault/s similar to that of the First Party's Energy Vault in the Kannaland Local Municipality with other Municipality/s and is in the process of finalising other similar engagements with other Municipalities for Resolutions in a similar manner, with the understanding that the Kannaland Local Municipality will serve as a pilot implementation site for an Energy Vault and its concomitant systems and installations.
- (I) In designing the Energy Vault installation and project, over the years since its first engagement during 2012 at the Kannaland Local Municipality and other Participating Municipalities such as the Garden Route District Municipality, the Contractor investigated various social inequalities with regard to housing, electrification and telecommunications in informal settlements and formal settlements and the implications thereof with regard to the service delivery mandate of specifically energy and water and education of the various Municipalities as organs of state with delegated power in terms of the Constitution of South Africa. During the process of formulation of the Energy Vault installation for the First Party Employer, as well as all other future Participating Municipalities, the Contractor developed a system of electrification of informal dwellings in DC format and the provision of telecommunications and other services such as water and access to educational content and other media. This installation, the so-called "InovaSure LivPak" installation, is included in the Financial Model and Feasibility Study for the Energy Vault installation at the First Party Employer's Municipality as well as all Future Parties Municipalities where there is a need for it. The LivPak installation is executed within a Co-operative structure which is registered for each informal settlement and the Contractor provides the Co-operative, itself and through its collaborators, with the services and products required at cost effective monthly rates. In this manner, the Contractor postulates, all of the dwellings in the informal settlements located within the Municipal area of the First Party Employer and all Future Parties which are not electrified, can be electrified at the cost of the Contractor and provided with other services and products such as potable water and sanitation and educational content by means of the provision of video streaming over the WIFI networks which are included in the LivPak installations.
- (J) Further in designing the Energy Vault installation and project, both prior to and post its engagement with the various Participating Municipalities in South Africa, the Contractor investigated the possibility of refurbishing defunct, or soon to be defunct, hydro or coal-fired power stations which it proposes be transferred to the closest Municipality and thereafter incorporated into the Energy Vault/s Project/s for full refurbishment at the cost of the Contractor. In this regard, although there is not a power station within the First Party's Municipality that can be so dealt with, other Future Municipality/s with their own PPP

Agreement/s may indeed wish to do so, such as the Middleburg Local Municipality with regard to the Hendrina Power Station, which the Contractor has obtained the funding commitment for from the financial institution providing the funding for the Project/s, as well as the integrated Feasibility Study and Financial Model, as well as for all other power stations which will become defunct in the coming years. Once the relevant Municipality/ies has/have the defunct power station on their balance sheet, which is then refurbished, it may enter into a Power Purchase Agreement with Eskom (or any other relevant party under the applicable Laws), which in turn may be securitised to generate immediate cashflow for the organ of State to deploy against the current liability of Treasury towards the distribution networks and/or Eskom.

- (K) After following due process, the Employer has agreed to appoint the Contractor for the implementation and management of the Project, as detailed in the Feasibility Study and Financial Model completed and adjudicated, and the Contractor has agreed to execute and complete the Works and thereafter manage them in accordance with the provisions of this PPP Contract and as according to the proposal contained in the Feasibility Study and Financial Model.

1. **GENERAL CONDITIONS**

1.1 **Definitions**

In this Contract, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

- 1.1.1 **"Affiliate"** means any person that directly or indirectly through any one or more intermediaries controls or is controlled by or is under common control with any person, where "control" means the ability to direct or cause the direction of the business affairs and management policies or practices of a person;
- 1.1.2 **"Agreed Form"** means, in relation to any document not executed simultaneously with this PPP Agreement, the terms and conditions of that document that have been agreed by the Parties and initialled by each of them for identification purposes on or before the Signature Date and which may also be included as an addendum to this PPP Agreement after the Signature Date;
- 1.1.3 **"All Resources Account"** means, following the Take Over of the Works by the Employer/s and concomitant management thereof by the Contractor, the single, combined monthly account from the Contractor submitted to the Employer/s with respect to the management activities all of the Contractor's products and services costs programs and activities, including the provision of its warranties for the provision of power through the Energy Vault/s, and in due course water through the Water Vault, and ICT services through its telecommunications system/s, as well as all other related services, and which becomes due and payable within 7 (Seven) days of presentation to the Employer;
- 1.1.4 **"Availability Certificate"** means the certificate to be issued by the Contractor certifying that the relevant Services are available to the Employer/s;
- 1.1.5 **"Balance of Month Transaction"** means the facilitation by the Contractor of the purchase or sale of electric energy, capacity and / or other related attributes, as well as in due course water and telecommunications services, for a term not greater than 1 (one) month, to be performed or delivered by the Contractor through the intervention of the Energy and/or in due course the Water Vault/s and/or the ICT

System/s on behalf of the Employer/s within the current or next succeeding calendar month;

- 1.1.6 "**Business Day**" means any day except a Saturday, Sunday or a public holiday in the Republic of South Africa;
- 1.1.7 "**Calendar Day**" means all days including Saturdays, Sundays and public holidays;
- 1.1.8 "**Capital Expenditure**" means any expenditure treated as capital expenditure under GAAP and which is detailed in the attached Feasibility Study and Financial Model and marked as such;
- 1.1.9 "**CDM Regulations**" means the Construction Design and Management Regulations of the country in which the Contractor is conducting the Works, being South Africa;
- 1.1.10 "**Commencement Date**" means the date notified under Sub-Clause 8.1 [*Commencement of Works*].
- 1.1.11 "**Compensation Events**" means those events specified in the attached Feasibility Study and Financial Model;
- 1.1.12 "**Completion Certificate/s**" means the certificate/s to be issued by the Independent Certifier declaring that the Works have been completed in accordance with the terms of this PPP Agreement and/or its Annexures, Appendices and Addendums;
- 1.1.13 "**Consents**" means the consents to be obtained by the Employer/s or Contractor for any aspect of this PPP Agreement and its Schedules, Annexures or Appendices;
- 1.1.14 "**Contract**" means the conditions of this PPP Agreement, the Particular Conditions, and all Schedules, Annexures and Appendices (including the Employer's Requirements, if any, and the Contractor's Proposals which are encapsulated in the attached Feasibility Study and Financial Model);
- 1.1.15 "**Contractor's Equipment**" means all apparatus, machinery, vehicles, vessels and other things required for the execution and completion of the Works and the remedying of any Defects. However, Contractor's Equipment excludes Temporary Works, Employer's Equipment (if any), Plant/s, Materials and any other things intended to form or forming part of the Permanent Works;
- 1.1.16 "**Contractor's Documents**" means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature supplied or to be created or compiled by the Contractor under the Contract and otherwise as described in Sub-Clause 5.2 [*Contractor's Documents*];
- 1.1.17 "**Contractor's Personnel**" means the Contractor's Representative and all personnel whom the Contractor engages in connection with the Works, who may include the staff, labour and other employees of the Contractor and of each Subcontractor and/or Consultant; and any other personnel assisting the Contractor in the execution of the Works;
- 1.1.18 "**Contractor's Proposals**" means the document so named included in the Contract as Appendix 3 and which is the Feasibility Study and Financial Model completed for the Project and adjudicated and approved by the relevant Transactional Advisors;

- 1.1.19 "**Contractor's Representative**" means the person named by the Contractor in the Contract or appointed from time to time by the Contractor under Sub-Clause 4.3 [*Contractor's Representative*], who acts on behalf of the Contractor;
- 1.1.20 "**Construction Subcontract/s**" means the contract/s between the Contractor and the Construction Subcontractor in respect of the Works;
- 1.1.21 "**Construction Subcontractor**" means the person/s appointed by the Contractor to undertake the Works;
- 1.1.22 "**Corrupt Act**" means a bribe, gift, gratuity, commission or other thing of value, as an inducement or reward as set forth in clause 20.2(f) below;
- 1.1.23 "**Cost**" means all costs, losses and expenditure reasonably directly and properly incurred (or to be incurred) by the Contractor, whether on or off the Site/s, but does not include profit or any allowances or contingency sums for the assumption of any risks under or in connection with the Contract;
- 1.1.24 "**Country**" means the country in which the Site/s (or most of it/them) is located, where the Permanent Works are to be executed, being South Africa;
- 1.1.25 "**CPI**" means the consumer price index excluding interest on mortgage bonds for the metropolitan and other urban areas published from time to time by the Statistics South Africa provided that, if:
- 1.1.25.1 such index ceases to be published; or
- 1.1.25.2 the Employer/s and the Contractor agree (or, failing agreement, if it is determined by the Independent Expert that due to a change in circumstances such index is no longer representative, then from the date when the index was last published, the Parties shall use such other index as agreed between them or, failing agreement, as determined by the Independent Expert as being a fair and reasonable replacement index;
- 1.1.26 "**day**" means a calendar day and "year" means 365 days;
- 1.1.27 "**Debt**" means, at any date, all amounts due and payable by the Contractor that are outstanding under any financing agreements which it has entered into as at that date, but excluding all default interest, breakage premiums as well as fees, costs and expenses whatsoever in connection with any hedging arrangements entered into by the Contractor;
- 1.1.28 "**Debt Relief Services**" means any form of debt relief services which the Contractor may provide or facilitate and arrange to provide, upon specific request, to the Employer/s by means of a separate agreement, with regard to any amount which may be owing to Eskom or any other party;
- 1.1.29 "**Defects Notification Period**" means 3 years (with any extension under Sub-Clause 11.3 [*Extension of Defects Notification Period*]), calculated from the date on which the Works or Section is completed as certified under Sub-Clause 10.1 [*Taking Over of the Works and Sections*];
- 1.1.30 "**Defect**" means any error, defect or damage in or to the Works (including in any design, materials or workmanship) and any failure of the Works to comply with the requirements of the Contract, and includes all damage to the Works or to any other property arising from such error, defect, damage or failure;

- 1.1.31 "**Delay Damages**" means the delay damages set out in the Particular Conditions;
- 1.1.32 "**Demand Side Management**" shall mean the way in which the Contractor shall, on behalf of the Employer/s, install the Energy Vault/s and all its components and provide Energy Security products and services in order to alleviate pressure on the relevant Municipal or Eskom substations through the hybrid utilisation of Renewable Energy, battery storage facilities and the management input of Eskom power at optimum times;
- 1.1.33 "**Dispute**" means any dispute or difference between the Employer and Contractor in connection with or arising out of the Contract or the execution of the Works;
- 1.1.34 "**Distribution Network**" shall mean the demand side network of assets of the Employer/s which shall be provided by the Employer/s for utilisation by the Contractor on its behalf as it may deem fit in the provision of the Energy Security services by means of the Energy Vault/s, and which Distribution Network the Employer/s undertakes, at its/their own cost, to maintain, service, and operate as separate from the Energy Vault/s and also to provide the Contractor, as collateral, in the provision of any Debt Relief Services which the Contractor may provide to the Employer/s by means of a separate agreement/s;
- 1.1.35 "**Electric System**" means all property/s and other assets (including but not limited to those real and personal and tangible and intangible) of the Employer/s, which the Employer/s owns or will own in the future, used for or in relation to the generation for sale, transmission, transformation, distribution, storage or utilisation of electric capacity and energy, provided that, where the Employer/s is/are not the sole owner of an asset or property or to the extent that an asset or property is used in part for generation for resale, transmission, distribution, storage or sale of electric capacity and energy, only the Employer/s ownership interest in such asset or property shall be considered to be part of its/their Electric System;
- 1.1.36 "**Employer/s**" means the First Party and/or Participating Municipality/s named as the Employer/s and its/their legal successors in title and permitted assigns;
- 1.1.37 "**Employer/s Equipment**" means the apparatus, machinery and vehicles (if any) made available by the Employer/s for the use of the Contractor in the execution of the Works, as stated in the Employer/s Requirements, but does not include Plant/s which has/have not been taken over by the Employer/s;
- 1.1.38 "**Employer/s Personnel**" means the Employer/s Representative, the assistants referred to in Sub-Clause 3.2 [*Other Employer/s Personnel*] and all other staff, labour and other employees of the Employer/s and of the Employer/s Representative; and any other personnel notified to the Contractor, by the Employer/s or the Employer/s Representative, as Employer/s Personnel;
- 1.1.39 "**Employer/s Representative**" means the person named by the Employer/s in the Contract or appointed from time to time by the Employer/s under Sub-Clause 3.1 [*The Employer/s Representative*], who acts on behalf of the Employer/s;
- 1.1.40 "**Employer/s Requirements**" means the document entitled "Employer's Requirements", as included in this PPP Contract as an Appendix and any additions and modifications to such document in accordance with the Contract. Such document specifies the purpose, scope, and/or design and/or other technical criteria, for the Works and may refer to the Feasibility Study and Financial Model as developed and provided by the Contractor;

- 1.1.41 **“Energy and/or Water and/or ICT Risk Management Policy/s”** means the Contractor’s energy and in due course water and/or ICT risk management policy/s, as published from time to time, and applicable to the Employer/s;
- 1.1.42 **“Energy, Water and ICT Security”** means the provision of a continuous supply of power and in due course water and/or ICT services to the Employer/s resulting in the reduction of the risk of blackouts and load shedding and the provision of cost-effective electricity and in due course the provision of cost effective potable water and ICT services;
- 1.1.43 **“Energy and/or Water and/or ICT Security Management”** means to upgrade, convert or establish facilities, staff and the capability for providing and managing, on behalf of the Employer/s, Energy and in due course Water and/or ICT Security including, but not limited to, conversion, upgrade or introduction of new technology types, refurbishment and/or new build of existing, defunct and/or new power generation and in due course water purification and/or telecommunications plants and facilities, substations, piping and cabling, renewable energy facilities, real-time dispatch management, resource management, storage management, energy distribution and in due course water and/or telecommunications meter management, settlements management, payments management, collections management, risk management, and all other relevant management and administrative activities;
- 1.1.44 **“Energy and/or Water and/or ICT Security Scoping Due Diligence Process”** means the process that the Contractor has employed to determine the readiness and capability for the Employer/s to receive the benefit of the minimum levels of power through the Energy Vault/s, and in due course water through the Water Vault/s and ICT services through the telecommunications system/s;
- 1.1.45 **“Energy and/or Water and/or ICT Security Warranty”** means the warranty provided by or facilitated by the Contractor and/or the Energy Vault/s and/or in due course the Water Vault/s and/or ICT services, component suppliers, by separate agreement, to the Employer/s for the provision of the services and minimum levels of performance as agreed to and set out in this Agreement and/or the Schedules, Appendices and Annexure(s) hereto;
- 1.1.46 **“Energy and/or Water and/or ICT Security Penalties”** means the penalties which may be imposed for payment (with a concomitant reconciliation with regard to the monthly payment amount) by the Company to the Employee in the event of load shedding, blackouts and/or service delivery defaults in terms of the Energy Security and/or in due course Water Security and/or ICT Security Warranty provided, other than those caused by force majeure and/or which are beyond the control of the Contractor, as according to the pre-determined Contractor Energy, and in due course Water and ICT Security, penalties list as published from time to time by the relevant component suppliers to the Energy Vault/s and/or in due course the Water Vault/s and/or ICT telecommunications installation/s;
- 1.1.47 **“Energy Security Commissioner”** means the commissioner appointed to act on behalf of the Employer/s in all dealings with the Contractor;
- 1.1.48 **“Equity”** means the entire issued share capital of the Contractor;
- 1.1.49 **“Eskom”** means the Eskom Holdings SOC Limited;

- 1.1.50 "**Expiry Date**" means the 25th anniversary of the Take Over date of the Works in terms of this PPP Contract, or any extension period thereof;
- 1.1.51 "**First and Second Parties**" means InovaSure (Pty) Ltd and Kannaland Local Municipality as the First and Second Parties respectively to this PPP Agreement;
- 1.1.52 "**Facilities**" means the buildings and other facilities together with all supporting infrastructure, plant and equipment as required to enable the Contractor to exercise its rights and perform its obligations included in the Project/s Deliverables;
- 1.1.53 "**Feasibility Study**" means the studies undertaken by the Contractor and its collaborators in order to determine final parameters for the Project/s cost with relation to the Works and the various Site/s, as well as the management services costs that will be charged by the Contractor to the Employer/s during the period of the management of the Works and the Project/s following the Take Over by the Employer/s;
- 1.1.54 "**FIDIC**" means the Fédération Internationale des Ingénieurs-Conseils, the international federation of consulting engineers;
- 1.1.55 "**Final Statement**" means the statement defined in Sub-Clause 14.9 [*Application for Final Payment*] with regard to the Works up to the point of Take Over and prior to the inception of the management period of this PPP Agreement;
- 1.1.56 "**Financial Model**" means the financial base case for the Project/s for the Employer/s in terms of the Energy and in due course the Water and/or ICT aspects thereof as reflected in the draft computer model attached to this PPP Agreement on USB Drive as Appendix 3, which model/s may be provided in various stages, phases and Time/s with regard to the Works at various Site/s and which incorporates the forecast cash flow statements of the Contractor, including all expenditure, revenues, taxation and financing of the Project/s Deliverables together with the income statements and balance sheets for the Contractor over the Project/s Term and thereafter during the envisaged 25 (Twenty five) year management term, or extensions thereof in multiples of 10 (Ten) years, and details of all assumptions, calculations and methodology used in the compilation thereof;
- 1.1.57 "**Financing Agreement/s**" means the confidential agreement/s relating to the Debt as entered into between the Contractor and the financial institution providing the funding or the Project/s and which shall be disclosed in summary format to the Employer/s upon request;
- 1.1.58 "**First Phase**" means the initial planning, scoping and due diligence process that was conducted by the Contractor with regard to the Employer/s and the Project and which in due course may be conducted by the Contractor with other Participating Municipality/es;
- 1.1.59 "**Fiscal Year**" shall mean the Contractor's fiscal year which, as at the Signature Date is the 12 (twelve) month period commencing 1 March and ending on the 28th of February on the following year;
- 1.1.60 "**Force Majeure**" is defined in Clause 24 [*Force Majeure*];
- 1.1.61 "**Foreign Currency**" means a currency in which part (or all) of the Contract Price may be payable, but not the Local Currency;

- 1.1.62 **"Further Parties"** means any further Participating Municipality, whether District or Local, which may decide by resolution to become a Party to their own similar PPP Agreement, either by signing as a party to it, or by means of incorporation of this whole agreement and its terms as an attachment to a separate agreement which is or shall be designed to incorporate this PPP Agreement and its salient terms in totality;
- 1.1.63 **"Funder"** means any person, company, bank or other financial institution at any time providing finance in connection with the Works for the Project/s and/or any part thereof;
- 1.1.64 **"Funder's Representative"** means any the person appointed by the Funder from time to time who acts on behalf of the Funder, as notified in writing by the Contractor to the Employer/s;
- 1.1.65 **"General Manager"** means the General Manager of the Contractor who shall represent the Contractor in all dealings with the Employer/s in respect of the implementation of this PPP Agreement and all its Annexures, Schedules and Appendices;
- 1.1.66 **"Good Industry Practice"** means the manner in which the Works and the Services are rendered, the standards, methods and procedures conforming to applicable law and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under similar circumstances;
- 1.1.67 **"Goods"** means Contractor's Equipment, Materials, Plant/s, and Temporary Works, or any of them as appropriate;
- 1.1.68 **"ICT System"** means the system designed, implemented and managed by the Contractor for the provision of telecommunications and related management services with regard to the various components and aspects of the Energy Vault/s and in due course the Water Vault/s;
- 1.1.69 **"Independent Certifier"** means the independent certifier appointed by the Parties who shall be responsible for the issue of the Completion Certificate/s for the Works at the various Site/s and at the various Time/s;
- 1.1.70 **"Installation Date/s"** means the date/s identified for installation of the Works at the various Site/s in the Particular Conditions, as may be amended by the Contractor in conjunction with the Employer/s pursuant to Sub-Clause 2.6;
- 1.1.71 **"Institution"** means the Employer/s, being Participating Municipality/s as organs of State;
- 1.1.72 **"Institution Assets"** means any assets made available by the Employer/s to the Contractor for use in the Project/s, including, if applicable, the Project Site/s;
- 1.1.73 **"Intellectual Property"** means all intellectual property whatsoever used from time to time by the Contractor (as the Private Party to this PPP Agreement) in connection with the Works and the Services whether capable of registration, registered or not;
- 1.1.74 **"Laws"** means all international and national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority that apply in respect of the Works, and the performance thereof;

- 1.1.75 "**Lender/s**" means the same as Funder/s which is any financial institution providing finance to the Contractor for the Project/s under the Financing Agreement/s;
- 1.1.76 "**Lien**" means any charge, lien, pledge, claim, mortgage, lease, easement, security interest or encumbrance of any kind;
- 1.1.77 "**Licensed Intellectual Property**" means all intellectual property to be used under license from any third party;
- 1.1.78 "**Local Currency**" means the currency of South Africa;
- 1.1.79 "**Making Good Defects Certificate**" means the certificate issued under Sub-Clause 11.9;
- 1.1.80 "**Materials**" means things of all kinds (other than Plant/s) intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under this PPP Agreement;
- 1.1.81 "**Net Cash Flow**" means, on any date:
- 1.1.81.1 all monetary sums of any income nature received by the Contractor under the Financing Agreements at that date;
 - 1.1.81.2 all amounts drawn down by the Contractor under the Financing Agreements at that date, less
 - 1.1.81.3 all expenditure of the Contractor at that date in relation to the Project Deliverables (excluding interest);
- 1.1.82 "**O&M Agreement**" means the agreement/s between the Employer and the O&M Contractor/s, and/or the Contractor itself, for the operation and maintenance of the Plant/s in terms of the period post Take Over when the Contractor will provide Energy security management and administrative services to the Employer/s at the costs and fees indicated in the attached Feasibility Study and Financial Model;
- 1.1.83 "**O&M Contractor**" means the person/s appointed by the Employer to operate and maintain the Energy Vault/s and in due course the Water Vault/s and/or Telecommunications systems and the Services following Take Over, which may be the same entity as the Contractor;
- 1.1.84 "**Operating Expenditure**" means any expenditure treated as operating expenditure under GAAP and specifically detailed in the attached Financial Model and Feasibility Study;
- 1.1.85 "**Operations Sub Contract/s**" means the contract/s between the Contractor and the relevant Sub Contractor/s;
- 1.1.86 "**Operations Sub Contractor/s**" means the person/s appointed by the Contractor to perform the various Services;
- 1.1.87 "**Other Contractors**" means any other contractors appointed by the Contractor to undertake works or perform services in relation to the Site/s, building/s, Plant/s, installations or surrounding areas;

- 1.1.88 **"Party"** means the First Party Employer or the Contractor (or in due course other Participating Municipality/s to their own similar PPP Agreements), as the context requires;
- 1.1.89 **"Participating Municipality"** means any Municipality which is situated in South Africa and which is or becomes a Party to a similar PPP Agreement/s to this PPP Agreement;
- 1.1.90 **"Performance Certificate/s"** means the certificate/s issued under Sub-Clause 12.2 [*Performance Certificate*];
- 1.1.91 **"Performance Criterion"** means any of the performance criteria required in the energy industry and as specifically set out in the attached Financial Model and Feasibility Study (being, with regard to power, the output, electrical efficiency, thermal efficiency and plant availability, and in due course with regard to water and ICT services the suitable industry related performance criteria));
- 1.1.92 **"Performance Damages"** means, if any, the performance damages set out in the Particular Conditions which in turn refer to the attached Feasibility Study and Financial Model;
- 1.1.93 **"Performance Guarantees"** means the document/s so named (if any), as included in the either this PPP Agreement and its attached Financial Model and Feasibility Study or attached as addendums;
- 1.1.94 **"Performance Security"** means an advance payment bond, if required by the Lender, in the form set out at Schedule 3, for the security, (or securities) under Sub-Clause 4.2 [*Performance Security*];
- 1.1.95 **"Permanent Works"** means the permanent works to be designed and executed by the Contractor for the Project/s under this PPP Agreement;
- 1.1.96 **"Plant/s"** means the Energy Vault and in due course Water Vault/s and/or ICT services installations and systems, the Balance of Plant/s and the Services and the apparatus, machinery and vehicles intended to form or forming part of the Permanent Works of the Project/s;
- 1.1.97 **"PPP"** means this Public Private Partnership Agreement between the Parties;
- 1.1.98 **"Project/s"** means the design, introduction and management of the InovaSure Kannaland Energy Vault and/or any other Future Party Participating Municipality/s Energy Vault/s in terms of such similar PPP Agreement/s, and in due course Water Vault/s and ICT telecommunications systems and the ensuing management thereof by the Contractor on behalf of the Employer/s for a further period of 25 (Twenty five) years following the Take Over of the Works and Project/s, as well as any further extension of the management period, upon the terms and conditions as contained in the attached Financial Model and Feasibility Study and further Addendums added in due course;
- 1.1.99 **"Project/s Assets"** means all assets as are required to design, construct, develop, install, commission, operate and maintain the Project/s including the Facilities, any books and records, any spare parts and tools as well as the Intellectual Property and the Institution Assets, but excluding all cash;
- 1.1.100 **"Project/s Deliverables"** means the carrying out of the Works, the installation, commissioning, operation of the Project/s Assets including the repair, renewal or

replacement thereof, the management and provision of the Services and the exercise and performance of all other rights and obligations of the Contractor under this PPP Agreement from time to time;

- 1.1.101 "**Project/s Documents**" means the Financing Agreements, the Shareholders Agreements, the Subcontracts, the relevant service level agreement/s (either existing as attached to this PPP Agreement or to be provided in due course as Addenda), the Feasibility Study and Financial Model and all other relevant documents relating to the performance of the Project/s Deliverables, each executed by the Parties thereto simultaneously with this PPP Agreement or thereafter or otherwise in the Agreed Form;
- 1.1.102 "**Project/s Insurances**" means all formats and types of the required and necessary Project/s Insurances, of all manner and type, as facilitated and provided by the Contractor for all aspects of the Project/s at all times;
- 1.1.103 "**Project/s Officer**" means the official designated by the accounting officer of the Employer/s in notice to the Contractor as the Project Officer/s for the Project/s. The Employer/s may replace the Project Officer/s from time to time on prior written notice to the Contractor;
- 1.1.104 "**Project/s Term/s**" means the period from the Signature Date to the Expiry Date or the Termination Date, whichever occurs first;
- 1.1.105 "**Provisional Sum**" means a sum (if any) which is specified in the Contract as a provisional sum, for the execution of any part of the Works or for the supply of Plant/s, Materials or services under Sub-Clause 13.6 [*Provisional Sums*];
- 1.1.106 "**Required Testing Performance**" means the testing of:
- (a) contracted outputs:
 - (b) contracted efficiency levels,
- for the Plant/s and Works by the suitable agent's as agreed to between the Parties;
- 1.1.107 "**Responsible Authority**" means any ministry, minister, organ of state, any official in public administration, or any other governmental or regulatory department, commission, institution, entity, service utility, board, agency, instrumentality or authority (in each case whether national, provincial or municipal) or any court, each having jurisdiction over the matter in question but excluding, in all instances, the Employer/s;
- 1.1.108 "**Revenue**" means, with respect to the Employer/s, all income, rents, rates, fees, charges, and other moneys derived by the Employer/s from the facilitated operation of its Electric System and in due course when applicable its Water System and/or ICT System, including, without limiting the generality of the foregoing: (a) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing and supplying of electric capacity and energy and in due course when applicable, potable water and/or ICT services and other related services, facilities, and commodities sold, furnished, or supplied through the facilities of its Electric System and in due course the Water System and/or ICT System; (b) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its Electric System and in due course the Water System and/or

ICT System; and (c) the proceeds derived by the Employer directly or indirectly from the sale, lease or other disposition of all or a part of the Electric System and in due course the Water System and/or ICT System, but the term Revenues shall not include (i) customers' deposits or any other deposits subject to refund until such deposits have become the property of the Employer or (ii) contributions from customers for the payment of costs of construction of facilities to serve them;

- 1.1.109 "**Servitude/s**" means the Right of Use Servitude/s and/or Usufruct Servitude/s which the Employer/s shall grant to the Contractor in order to allow for the minimum period of 25 (Twenty Five) years, renewable for at least another 10 (Ten) years, with regard to a suitable property/s with suitable zoning rights, for the installation of the Energy Vault/s and in due course the Water Vault/s and/or ICT Systems at the various relevant Site/s adjacent to the suitable substations or, in due course, the water storage facilities or other relevant municipal installations and which the Employer/s shall allow the Contractor to take all steps necessary, and sign all agreements and documents necessary, for the registration of said Servitude/s in the relevant Deeds Office/s;
- 1.1.110 "**Service Level Agreements**" means the relevant portions of this PPP Agreement or other agreements for Energy management and administration services which may be entered into between the Parties, as Addenda, in relation to the supply of Services during and/or after the completion of the Project/s at its various relevant Site/s and at the various relevant Term/s after Take Over;
- 1.1.111 "**Schedule of Payments**" means the schedule of payments as agreed to between the Contractor and the financial institution providing the funding for the Project/s;
- 1.1.112 "**Scheduled Service Commencement Date**" means the date stipulated in the Works Program for the Project/s as the day after the date on which the Availability Certificate/s is/are scheduled to be issued and the Services are due to commence;
- 1.1.113 "**Second Phase**" means planning, design and development of the installation of the Energy Vault and in due course the Water Vault/s and/or ICT Systems or other Project/s to be conducted by the Contractor, or which may have already been conducted in the case of the First Party Employer;
- 1.1.114 "**Section**" means a part of the Works specified in the Particular Conditions as a Section (if any);
- 1.1.115 "**Service Commencement**" means the actual commencement of the Services subsequent to the issue of the Availability Certificate/s in accordance with the terms of this PPP Agreement or Addenda which may be included in the future;
- 1.1.116 "**Service Commencement Date**" means the date of service commencement as provided in the Availability Certificate/s issue by the Contractor in accordance with the terms of this PPP Agreement or its Addenda, Schedules or Annexures;
- 1.1.117 "**Service Period**" means the period from the Service Commencement Date to the Expiry Date unless this PPP is terminated earlier in accordance with its terms;
- 1.1.118 "**Services**" means the operational services to be performed by or on behalf of the Contractor for the Employer/s as set forth in the attached Feasibility Study and Financial Model as may be subsequently amended in accordance with the relevant Addenda to be formulated and attached;

- 1.1.119 "**Shareholder/s**" means the holder/s of the Equity in the Contractor;
- 1.1.120 "**Shareholder's Loans**" means, at any date, in relation to any financing, other than the Equity and the financing under any Financing Agreement, made available for the Project/s by the Shareholder/s at any stage, all principal unpaid at that date;
- 1.1.121 "**Signature Date**" means the date of signature of this PPP Agreement by the last signing Party with regard to the First Party Employer and any Future Party Participating Municipality of either this PPP Agreement or any Addenda incorporating this PPP Agreement;
- 1.1.122 "**Site/s or Project Site/s**" means the places where the Permanent Works are to be executed and to which Plant/s and Materials are to be delivered as described in the attached Feasibility Study, and any other places as may be specified in the Contract as forming part of the Site/s of the Project/s;
- 1.1.123 "**Smart Meter**" means any device or devices which the Contractor may utilise or arrange to utilise on behalf of the Employer/s for the implementation and management of the Energy, and in due course the Water and/or ICT Security services, through the Energy, and in due course, Water Vault/s and/or the ICT Systems;
- 1.1.124 "**Special Conditions**" means those conditions or requirements which, from time to time, may be requested by the Employer which are not incorporated in this PPP Agreement and may be added as Addenda;
- 1.1.125 "**Statement**" means a statement submitted by the Contractor as part of an application for payment under Clause 14 [*Contract Price and Payment*];
- 1.1.126 "**Subcontract/s**" means any of those contracts entered into between the Contractor and Subcontractor/s for the provision of any product or service in terms of the Project/s, both prior and post Take Over by the Employer/s, upon the terms and conditions as negotiated between the Contractor and such Subcontractor/s;
- 1.1.127 "**Subcontractor/s**" means any person/s named in the Contract as a Subcontractor/s, or any person/s appointed as a Subcontractor/s, for a part of the Works, and the legal successors in title to each of these person/s;
- 1.1.128 "**Subcontractor/s Costs**" means, if applicable, all losses, damages, liabilities and expenses (including legal costs and expenses) ("Losses") that have been or will be reasonably and properly incurred by the Contractor as a result of the termination of this PPP Agreement but only to the extent that:
- 1.1.128.1 the losses are incurred in connection with the completion of the Works and/or the provision of the Services by the Subcontractor/s, including, without limitation:
- (a) the costs of any materials or goods ordered or Subcontract/s placed that cannot be cancelled without such Losses being incurred;
 - (b) Subcontractor/s' loss of profits for a period not exceeding 3 (Three) months;
 - (c) any expenditure incurred in anticipation of the Completion of the Works or the provision of the Services;

(d) the cost of demobilisation including the cost of relocation of equipment used in connection with the Project/s; and

(e) retrenchment payments; and

1.1.128.2 the Losses have been incurred under arrangements or agreements which are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and

1.1.128.3 each of the Parties, including the relevant Subcontractor/s, has used reasonable endeavours to mitigate its losses;

1.1.129 "**Substation**" means a substation operated by Eskom and the Employer/s, where the Energy Vault/s shall be installed by the Contractor;

1.1.130 "**Taking-Over Certificate**" means a certificate issued under Clause 10 [*Employer's Taking Over*];

1.1.131 "**Taxes**" means any and all taxes, charges, fees, levies, duties and/or imposts of any nature whatsoever, and includes all fines, penalties, surcharges or interest imposed, collected, assessed or payable to any public authority located anywhere in the world;

1.1.132 "**Temporary Works**" means all temporary works of every kind (other than Contractor's Equipment) required on Site/s for the execution and completion of the Permanent Works and the remedying of any Defects;

1.1.133 "**Termination Date**" means any date of early termination of this PPP Agreement in accordance with the terms of the Contract;

1.1.134 "**Tests on Completion**" means the tests which are specified in the Employer's Requirements or agreed by both Parties in Addenda or instructed as a Variation, and which are carried out under Clause 9 [*Tests on Completion*] before the Works or a Section (as the case may be) are Taken Over by the Employer;

1.1.135 "**Third Phase**" means the specific arrangements between the Employer/s and the Contractor relating to the financing, construction and management of an Energy Vault and/ in due course a Water Vault/s and/or ICT System, which in the case of the First and Second Parties to this PPP Agreement has been encapsulated in the attached Feasibility Study and Financial Model and in the case of Future Parties as Participating Municipalities shall be completed as part of the process of implementation of the relevant Energy Vault/s, and in due course Water Vault/s and/or ICT Systems, as Project/s;

1.1.136 "**Time for Completion**" means the time for completing the Works or a Section (as the case may be) under Sub-Clause 8.2 [*Time for Completion*], as stated in the Particular Conditions and/or set out in the attached Feasibility Study and Financial Model (with any extension under Sub-Clause 8.4 [*Extension of Time for Completion*]), calculated from the Commencement Date;

1.1.137 "**Tri-Annual Budget**" means the Employer/s budget for the previous three Fiscal Years adopted by it / them and approved by National Treasury, duly audited, with regard to the procurement, usage and sale of electricity and/or water and/or ICT Services and all concomitant costs;

- 1.1.138 "**Treasury**" means the relevant Provincial Treasury Department and/or National Treasury of South Africa;
- 1.1.139 "**Vault/s or Energy Vault/s**" means the patented and secure grouping of installations and devices of approximately 20 MW/53 MW per unit, or multiples or fractions thereof, on land designated for this purpose by the Employer/s, which serves to effect inter alia, the time related dispatch, storage, shifting, shaving and distribution of power on behalf of the Employer as further detailed in the Employers Requirements and/or attached Feasibility Study and Financial model;
- 1.1.140 "**Variation**" means any change to the Employer's Requirements or the Works, or the Project/s Deliverables which is/are instructed or approved as a Variation under Clause 13 [*Variations and Adjustments*];
- 1.1.141 "**VAT**" means any value added tax or any similar tax which is imposed in place of or in addition to such tax;
- 1.1.142 "**Water Vault/s**" means the arrangements of systems and equipment for the supply, purification and delivery of potable water on behalf of or to the Employer/s which shall be deployed in due course once the Energy Vault/s have been implemented;
- 1.1.143 "**Works**" means the design, design integration, engineering, construction, installation, completion, testing and commissioning of the complete system comprising the Permanent Works and the Temporary Works (including rectification of Defects), or either of them as appropriate.

1.2 Interpretation

In the Contract, except where the context requires otherwise:

- (a) words indicating one gender include all genders and references to a "person";
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
- (d) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (e) reference to any law or legislation shall include such legislation as amended, supplemented, consolidated or re-enacted from time to time in so far as such amendment, re-enactment, consolidation applies or is capable of applying to any transaction entered into under this Agreement;
- (f) reference to "indexed to CPI" in relation to any amount of money shall mean that such amount has been expressed in March 2019 prices and shall be escalated annually as at the Signature Date and each anniversary thereof with reference to the then most recently publication of the CPI subject to any adjustments for rebasing or recalculation thereof;
- (g) references to "Parties" shall include the parties respective successors-in-title and, if permitted in this Agreement, their cessionaries and assignees.

- (h) examples and the use of the words "include", "including" and similar expressions do not limit what else may be listed or otherwise itemised.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

1.3 **Conditions Precedent**

The provisions of this PPP Agreement and the Contract are subject to the fulfilment of the condition precedent that all such statutory and regulatory approval from Treasury and the DBSA as may be required to give effect to this PPP Agreement, shall be obtained by no later than _____ 2020.

The time period contemplated herein may be extended by agreement in writing between the First and Second Parties provided that any such extensions shall be in writing and signed by both such Parties.

If the condition precedent is not fulfilled on time or extended as provided in this PPP Agreement then:

- (a) This Agreement shall be of no force and effect;
- (b) The Parties shall be entitled to be restored as near as possible to the positions they would have been in had this PPP Agreement not been entered into; and
- (c) No party shall have any claim against any other in terms of this PPP Agreement.

1.4 **Communications**

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices and requests, these communications shall be:

- (a) in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the Particular Conditions; and
- (b) delivered, sent or transmitted to the address for the recipient's communications as stated in the Contract. However:
 - (i) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
 - (ii) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed.

1.5 **Law and Language**

The Contract shall be governed by the laws of the Republic of South Africa and the ruling language and the language for communications shall be English.

1.6 **Priority of Documents**

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- (a) the conditions of Contract;
- (b) the Particular Conditions (which in turn refer to the Feasibility Study and Financial Model attached);
- (c) the Employer/s Requirements;
- (d) the Contractor's Proposals;
- (e) the Annexures, Schedules and Addendums.

1.7 **Effective Date**

The Contract shall come into full force and effect on the date of its execution by the First and Second Parties in the first instance, and thereafter by the Future Parties as Participating Municipalities upon such dates as they may execute their similar PPP Agreement/s themselves. All costs or charges (if any) imposed by law in connection with entry into this PPP Agreement shall be borne by the Employer/s.

1.8 **Special Conditions Agreement**

The Contractor shall be entitled, at its sole discretion, to enter into a Special Conditions Agreement with the Employer/s.

Should the Employer/s wish that the Contractor enter into a Special Conditions Agreement with the Employer/s, it/they shall submit a written request to the General Manager outlining its requirements, and at the sole discretion of the Contractor, the Contractor may agree to meet such requirements and shall furnish the General Manager with the terms and conditions under which it is prepared to fulfil these obligations and record it as an Addendum.

1.9 **Assignment**

No Party shall assign any interest in or under the Contract without the prior, written agreement of the other Party/ies.

1.10 **Care and Supply of Documents**

Each of the Contractor's Documents shall be in the custody and care of the Contractor. Unless otherwise stated in the Contract, the Contractor shall supply to the financial institution providing the funding for the Project/s and to the Employer a copy of each of the Contractor's Documents.

The Contractor shall keep, on the Site/s, a copy of the Contract, publications named in the Employer's Requirements, the Contractor's Documents, and Variations and other communications given under the Contract. The financial institution providing the funding for the Project/s and the Employer/s Personnel shall have the right of access to all these documents at all reasonable times.

If a Party becomes aware of an error or defect of a technical nature in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.

1.11 Confidentiality

All Parties shall treat the details of and relating to the Contract as private and confidential, except to the extent necessary to carry out obligations under it or to comply with applicable Laws. The Contractor shall not publish, permit to be published, or disclose any particulars of the Works in any trade or technical paper or elsewhere without the previous agreement of the Employer/s.

The provisions of this sub-clause 1.11 survive the expiry or earlier termination of the Contract for whatever reason.

1.12 Project Documents

The Contractor shall comply with the provisions of the Project Documents and, save as otherwise provided herein, may only:

- a. Terminate or make any amendment to (or otherwise agree to do so) any Project/s Document; or
- b. In any respect, depart from its obligations or waive any rights under any Project/s Document

with the prior written agreement of the Employer/s.

The Contractor shall ensure that a Project Document not executed simultaneously with this PPP Agreement is executed in the Agreed Form and is annexed to this PPP Agreement.

Without limiting the generality of the restrictions on amendments to the Project Documents as provided in this clause, the Contractor shall furnish the financial institution providing the funding for the Project/s and the Employer/s with a true and complete copy (including all annexures) of any amendment to any Project/s Document or of any Project Document not executed by the Signature Date, within 14 (Fourteen) Business Days of the date of the Contractor's execution of such Project Document/s.

1.13 Employer's Use of Contractor's Documents

As between the Parties, the Contractor shall retain the copyright and other intellectual property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor.

The Contractor shall be deemed (by signing the Contract) to give to the Employer/s a terminable non-transferable non-exclusive royalty-free licence to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This licence shall:

- (a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works and the ensuing management period following Take Over by the Employer/s,
- (b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works; and

- (c) in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site/s and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.

The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Employer/s for purposes other than those permitted under this Sub-Clause.

1.14 Contractor's Use of Employer's Documents

As between the Parties, the Employer/s shall retain the copyright and other intellectual property rights in the Employer's Requirements, if any, and other documents made by (or on behalf of) the Employer/s. The Contractor may, at his cost, copy, use, and obtain communication of these documents for the purposes of the Contract. They shall not, without the Employer/s consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

1.15 Confidential Details

The Contractor shall not be required to disclose, to the Employer/s, any information which the Contractor described in the Contractor's Proposals as being confidential. The Contractor shall disclose any other information which the Employer/s may reasonably require in order to verify the Contractor's compliance with the Contract.

1.16 Compliance with Laws and Consents

The Contractor shall, in performing the Contract, comply and ensure the Works comply with applicable Laws and Consents. Unless otherwise stated in the Particular Conditions:

- (a) the Employer shall have obtained (or shall obtain) those planning, zoning or other permission for the Permanent Works, stated as being the Employer/s responsibility in the Employer's Requirements; and the Employer/s shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so; and
- (b) the Contractor shall give all notices, pay all Taxes and obtain all permits, licences and approvals, as required by the Laws in relation to the design, execution and completion of the Works and the remedying of any Defects; and the Contractor shall indemnify and hold the Employer/s harmless against and from the consequences of any failure to do so.

1.17 Joint and Several Liability

If the Contractor constitutes (under applicable Laws) a joint venture, consortium or other unincorporated grouping of two or more persons:

- (a) these persons shall be deemed to be jointly and severally liable to the Employer/s for the performance of the Contract;
- (b) these persons shall notify the Employer/s of their leader who shall have authority to bind the Contractor and each of these persons; and
- (c) the Contractor shall not alter its composition or legal status without the prior consent of the Employer/s.

1.18 **Third Party Rights**

No person shall be entitled to enforce the benefit of the Contract.

1.19 **Entire Agreement**

The Employer/s and the Contractor respectively acknowledge that this Contract forms the entire contract between the Employer/s and the Contractor to the exclusivity of any antecedent statement or representation. The Employer/s and the Contractor further acknowledge that:

- (a) no Party has entered into this Contract in reliance upon any representation, warranty or undertaking of any Party which is not expressly set out or referred to in this Contract;
- (b) no Party shall have any remedy in respect of misrepresentation or untrue statement made by any other Party which is not contained in this Contract nor for breach of warranty which is not contained in this Contract;
- (c) this provision shall not exclude any liability for, or remedy in respect of, fraud or fraudulent misrepresentation.

1.20 **Amendment**

No amendment or variation of the Contract is valid or binding on a Party unless made in writing and signed by all Parties.

1.21 **Severability**

If at any time any provision of this Contract is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Contract nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

1.22 **Indemnities**

Each indemnity given under the Contract is a continuing obligation, separate and independent from the other obligations of the Parties and survives the termination or expiration of the Contract. It is not necessary for a Party to incur an expense before enforcing a right of indemnity conferred by the Contract.

1.23 **Costs**

Each Party shall be responsible for paying its own costs and expenses incurred in connection with negotiating, preparing and entering into the Contract.

1.24 **Independent Contractor**

The Contractor shall be an independent contractor performing the Contract. The Contract does not create any juristic joint venture or other joint relationship between the Employer/s and the Contractor other than that of a Public Private Partnership in the legal definition thereof.

1.25 **Effect of enquiry or inspection**

The obligations and liabilities of the Contractor under this Contract shall not be released, diminished or in any way affected by:

- (a) any enquiry, inspection, testing, review, consent, notice, permission, payment certificate or other approval which may be made, given or carried out by or on behalf of the Employer/s;
- (b) the appointment by the Employer/s of, or failure by the Employer/s to appoint, any clerk of works to inspect or otherwise report to the Employer/s in respect of the Works; nor
- (c) any act or omission of any clerk of works or other person employed or appointed by the Employer/s whether or not such act or omission might give rise to an independent liability of such person to the Employer/s.

1.26 **Approvals**

Notwithstanding any other provision of this Contract, the term "approval" when used in the context of any approval to be given by the Employer/s or the Employer's Representative shall have the meaning "acceptance of general principles only" and no such approval shall diminish or relieve the Contractor from any of his obligations or responsibilities under this Contract.

1.27 **Survival of Rights**

Termination of this Contract shall not affect any rights of the Parties accrued as at the date of termination and termination of this Contract shall not affect the continuing rights and obligations of the Parties under any clause that is expressed to survive termination or which are required to give effect the such termination or the consequences of such termination.

2. **THE EMPLOYER**

2.1 **Right of Access to the Site/s and Servitude of Usufruct and/or Use**

The Employer/s shall give the Contractor right of access, and exclusive licence, to enter and remain on the parts of the Site/s within the time (or times) stated in the Employer's Requirements, as reflected in the attached Feasibility Study and Financial Model or according to the terms of the industry related Servitude/s of Usufruct and/or Use which the Contractor shall be entitled to register over the applicable and required Site/s for the Works. If, under the Contract, the Employer/s is/are required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Employer/s shall do so in the time and manner stated in the Employer's Requirements and as reflected in the Feasibility Study and Financial Model or any additional Addendum entered into between the Parties for that purpose.

If no such time is stated in the Employer's Requirements, the Employer/s shall give the Contractor right of access to, and possession of, the Site/s with effect from the Signature Date.

If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer/s to give any such right within such time, the Contractor shall give notice to the Employer/s and shall be entitled subject to Sub-Clause 25.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost, which shall be added to the Contract Price.

After receiving this notice, the Employer/s shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

However, if and to the extent that the Employer/s failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time, Cost or profit.

2.2 Permits, Licences or Approvals

The Employer/s shall (where he/they is/are in a position to do so) provide reasonable assistance to the Contractor at the request of the Contractor:

- (a) by obtaining copies of the Laws / Regulations of South Africa and/or the Municipality in question which are relevant to the Contract but are not readily available, and
- (b) for the Contractor's applications for any permits, licences or approvals required by the Laws of South Africa:
 - (i) which the Contractor is required to obtain under Sub-Clause 1.16 [*Compliance with Laws*],
 - (ii) for the delivery of Goods, including clearance through customs, and
 - (iii) for the export of Contractor's Equipment when it is removed from the Site/s.

2.3 Employer/s Personnel

The Employer/s shall be responsible for ensuring that the Employer/s Personnel and the Employer/s other contractors on the Site/s:

- (a) co-operate with the Contractor's efforts under Sub-Clause 4.6 [*Co-operation*], and
- (b) take actions similar to those which the Contractor is required to take under subparagraphs (a), (b) and (c) of Sub-Clause 4.8 [*Safety Procedures*] and under Sub-Clause 4.17 [*Protection of the Environment*].

2.4 Employer/s Obligations

The Employer/s shall, on or before the Installation Date, complete those Works described in the Employer's Requirements.

The Employer/s may by notice to the Contractor revise the Installation Date/s to a date not earlier than that originally provided. Where an Installation Date is revised for a reason other than the failure of the Contractor to comply with its obligations under this Contract, and the Contractor suffers delay and/or incurs Cost as a result of the revision of that Installation Date, the Contractor shall, subject to Clause 25.1 [*Contractor's Claims*] be entitled to:

- (a) an extension of time in respect of the Time for Completion; and
- (b) the payment of a penalty fee per day which the Parties shall agree to in writing in an Addendum and based on a suitable amount which the financial institution providing the finance for the Project/s shall accept.

3. THE EMPLOYER'S ADMINISTRATION

3.1 The Employer's Representative

The Employer/s shall appoint an Employer's Representative to act on his/their behalf under the Contract. He/they shall give notice to the Contractor of the name, address, duties and authority of the Employer's Representative.

The Employer's Representative shall carry out the duties assigned to him, and shall exercise the authority delegated to him, by the Employer/s. Unless and until the Employer/s notifies the Contractor otherwise, the Employer's Representative shall be deemed to have the full authority of the Employer/s under the Contract, except in respect of Clause 20.2 [*Termination by Employer*].

If the Employer/s wish/es to replace any person appointed as Employer's Representative, the Employer/s shall give the Contractor not less than 14 (Fourteen) days' notice of the replacement's name, address, duties and authority, and of the date of appointment.

3.2 Other Employer's Personnel

The Employer/s or the Employer's Representative may from time to time assign duties and delegate authority to assistants and may also revoke such assignment or delegation. These assistants may include a resident engineer, and/or independent inspectors appointed to inspect and/or test items of Plant/s and/or Materials. The assignment, delegation or revocation shall not take effect until a copy of it has been received by the Contractor.

Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communications defined in Sub-Clause 1.5 [*Law and Language*]

3.3 Delegated Persons

All these persons, including the Employer's Representative and assistants, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by a delegated person, in accordance with the delegation, shall have the same effect as though the act had been an act of the Employer/s. However:

- (a) unless otherwise stated in the delegated person's communication relating to such act, it shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances;
- (b) any failure to disapprove any work, Plant/s or Materials shall not constitute approval, and shall therefore not prejudice the right of the Employer/s to reject the work, Plant/s or Materials; and
- (c) if the Contractor questions any determination or instruction of a delegated person, the Contractor may refer the matter to the Employer/s, who shall promptly confirm, reverse or vary the determination or instruction.

3.4 Instructions

The Employer/s may issue to the Contractor instructions which may be necessary or, in the Employer's opinion, appropriate for the Contractor to perform his obligations under the

Contract. Each instruction shall be given in writing and shall state the obligations to which it relates and the Sub-Clause (or other term of the Contract) in which the obligations are specified. If any such instruction constitutes a Variation, Clause 13 [*Variations and Adjustments*] shall apply.

The Contractor shall take instructions from the Employer/s, or from the Employer's Representative or an assistant to whom the appropriate authority has been delegated under this Clause and shall forthwith comply with such instructions issued.

3.5 **Determinations**

Whenever these Conditions provide that the Employer/s shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Employer/s shall consult with the Contractor in an endeavour to reach agreement. If agreement is not achieved, the Employer/s shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.

The Employer/s shall give notice to the Contractor of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination, unless the Contractor gives notice, to the Employer/s, of his dissatisfaction with a determination within 14 (Fourteen) days of receiving it. Either Party may then refer the dispute for resolution in accordance with Sub-Clause 25.3 *Resolution by the Board*] or 25.3 [*Due Legal Process*].

4. **THE CONTRACTOR**

4.1 **Contractor's General Obligations**

The Contractor shall design, execute and complete the Works in accordance with the Contract, and shall remedy any Defects in the Works. Without prejudice to any other obligation of the Contractor, the design, execution and completion of the Works shall be carried out with the reasonable skill and care of a competent contractor experienced in the design, execution and completion of works similar in size, nature, scope and complexity to the Works and in a good workmanlike manner. When completed, the Works shall, in all respects, meet the requirements of the Employer's Requirements and shall be fit for the purposes for which the Works are intended in accordance with the Contract.

The Contractor shall provide the Plant/s and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of Defects.

The Works shall include any work which is necessary to satisfy the Employer's Requirements, or is implied by the Contract, and all works which (although not mentioned in the Contract) are necessary for stability or for the completion, or safe and proper operation, of the Works.

The Contractor shall be responsible for the adequacy, stability and safety of all Site/s operations, of all methods of construction and of all the Works.

The Contractor shall, whenever required by the Employer/s, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works.

4.2 Performance Security

The Contractor shall provide to the financial institution providing the funding for the Project/s and with notice to the Employer/s, Performance Security for proper performance, in the amount and currencies required by the aforementioned.

The Performance Security shall be issued by an entity and from within a country (or other jurisdiction) approved by the financial institution providing the funding for the Project/s.

Where applicable, the Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects. If the terms of the Performance Security reaches its expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date 28 (Twenty eight) days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works have been completed and any defects have been remedied.

The Employer/s shall not make a claim under the Performance Security, except for amounts to which the Employer/s is/are entitled under the Contract in the event of:

- (a) failure by the Contractor to pay the Employer/s an amount due, as either agreed by the Contractor or determined under Clause 25.1 [*Claims, Disputes and Arbitration*], within 30 (Thirty) days after this agreement or determination,
- (b) failure by the Contractor to remedy a default within 30 (Thirty) days after receiving the Employer's notice requiring the default to be remedied, or
- (c) circumstances which entitle the Employer/s to termination under Sub-Clause 20.2 [*Termination by Employer*], irrespective of whether notice of termination has been given.

The Employer/s shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which the Employer/s was/were not entitled to make the claim.

The Employer/s shall work in conjunction with the financial institution providing the funding for the Project/s to return the Performance Security to the Contractor within 7 (Seven) days after the Contractor has become entitled to receive the Performance Certificate.

4.3 Contractor's Representative

The Contractor shall appoint the Contractor's Representative and shall give him all authority necessary to act on the Contractor's behalf under the Contract.

Unless the Contractor's Representative is named in the Contract, the Contractor shall, prior to the Commencement Date, submit to the Employer/s for consent the name and particulars of the person the Contractor proposes to appoint as Contractor's Representative. If consent is withheld or subsequently revoked, or if the appointed person fails to act as Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable person for such appointment.

The Contractor shall not, without the prior consent of the Employer/s, revoke the appointment of the Contractor's Representative or appoint a replacement.

The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause 3.4 [*Instructions*].

The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Employer/s has/have received prior notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

The Contractor's Representative and all these persons shall be fluent in the language for communications defined in Sub-Clause 1.5 [*Law and Language*].

4.4 **Subcontractor/s**

The Contractor shall not subcontract the whole of the Works.

The Contractor shall be responsible for the acts or defaults of any Subcontractor/s, his agents or employees or consultants, as if they were the acts or defaults of the Contractor. The Contractor shall give the Employer not less than 28 (Twenty eight) days' notice of:

- (a) the intended appointment of the Subcontractor/s;
- (b) the intended commencement of the Subcontractor/s work; and
- (c) the intended commencement of the Subcontractor/s work on the Site/s.

4.5 **Nominated Subcontractor/s**

In this Sub-Clause, "Nominated Subcontractor/s" means Subcontractor/s whom the Employer, under Clause 13 [*Variations and Adjustments*], may instruct the Contractor to employ as a Subcontractor. The Contractor shall not be under any obligation to employ a Nominated Subcontractor against whom the Contractor raises reasonable objection by notice to the Employer as soon as practicable, with supporting particulars.

4.6 **Co-operation**

The Contractor shall co-operate with and provide reasonable assistance to:

- (a) the Employer/s Personnel,
- (b) any other contractors employed by the Employer/s,
- (c) the personnel of any legally constituted public authorities,
- (d) the O&M Contractor/s and its/their representatives,

to facilitate the fulfilment of their respective obligations in relation to the Works.

4.7 **Setting Out**

The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contract. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.

4.8 **Safety Procedures**

The Contractor shall:

- (a) comply with Laws, including all applicable safety regulations,
- (b) take care for the safety of all persons entitled to be on the Site/s,
- (c) use reasonable efforts to keep the Site/s and Works clear of unnecessary obstruction so as to avoid danger to these persons,
- (d) provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause 10 [*Employer's Taking Over*], and
- (e) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

4.8 **CDM (Construction Design and Management) Regulations**

The Employer/s appoint/s the Contractor to act as Principal Contractor for the Works.

The Contractor undertakes that, in relation to the Works and the Site/s, he will duly comply with the relevant Construction Design and Management (CDM) Regulations of 2015, or any amendments thereto. In particular, without limitation:

- (a) where the Contractor is and while he remains the Principal Designer, he shall comply with the duties of a Principal Designer and shall without charge prepare and deliver to the Employer/s, the health and safety file;
- (b) the Contractor shall comply with regulations 8 to 10 and 15 of the CDM Regulations and where he is Principal Contractor, with regulations 12 to 14 of the CDM Regulations;
- (c) whether or not the Contractor is Principal Contractor, compliance by the Contractor with his duties under the CDM Regulations, includes such duties as are referred to in regulation 15(3) thereof, shall be at the cost to the Employer/s and shall not entitle the Contractor to an extension of time.

The Contractor warrants that he is competent to fulfil the roles of designer, Principal Contractor and Principal Designer under the CDM Regulations.

4.9 **Quality Assurance**

The Contractor shall institute a suitable quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Employer/s and the financial institution providing the funding for the Project/s shall be entitled to audit any aspect of the system.

Details of all procedures and compliance documents shall be submitted to the Employer/s for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Employer/s, evidence of the prior approval by the Contractor himself shall be apparent on the document itself.

Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.

4.10 **Sufficiency of the Contract Price**

The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Contract Price.

Unless otherwise stated in the Contract, the Contract Price covers all the Contractor's obligations under the Contract (including those under Provisional Sums, if any) and all things necessary for the proper design, execution and completion of the Works and the remedying of any Defects.

4.11 **Unforeseeable Difficulties**

Except as otherwise stated in the Contract or in written amendments to this Contract signed by the Parties:

- (a) the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Works;
- (b) by signing the Contract, the Contractor accepts total responsibility for having foreseen all difficulties and costs of successfully completing the Works; and
- (c) the Contract Price may be adjusted to take account of any unforeseen difficulties or costs as agreed to between the Parties and the financial institution providing the funding for the Project/s in Addendum/s to this PPP Agreement.

4.12 **Rights of Way, Servitudes and Facilities**

The Contractor shall bear all costs and charges for special and/or temporary rights-of-way or Servitude/s which he may require, including those for access to and use of the Site/s. The Contractor shall also obtain, at his risk and cost, any additional facilities outside the Site/s which he may require for the purposes of the Works.

4.13 **Avoidance of Interference**

The Contractor shall not interfere unnecessarily or improperly with:

- (a) the convenience of the public, or
- (b) the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Employer/s or of others.

The Contractor shall indemnify and hold the Employer/s harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.

4.14 **Access Route**

The Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site/s. The Contractor shall use reasonable efforts to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. These efforts shall include the proper use of appropriate vehicles and routes.

Except as otherwise stated in these Conditions:

- (a) the Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes;
- (b) the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions;

- (c) the Employer/s shall not be responsible for any claims which may arise from the use or otherwise of any access route,
- (d) the Employer/s do/does not guarantee the suitability or availability of particular access routes, and
- (e) Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

4.15 **Transport of Goods**

Unless otherwise stated in the Employer's Requirements:

- (a) the Contractor shall give the Employer/s not less than 21 (Twenty one) days' notice of the date on which any Plant/s or a major item of other Goods will be delivered to the Site/s;
- (b) the Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works; and
- (c) the Contractor shall indemnify and hold the Employer/s harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of goods, and shall negotiate and pay all claims arising from their transport.

4.16 **Contractor's Equipment**

The Contractor shall be responsible for all Contractor's Equipment. When brought on to the Site/s, Contractor's Equipment shall be deemed to be exclusively intended for the execution of the Works.

4.17 **Protection of the Environment**

The Contractor shall take all reasonable steps to protect the environment (both on and off the Site/s) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.

The Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the values indicated in the Employer's Requirements, and shall not exceed the values prescribed by applicable Laws.

4.18 **Electricity, Water and Gas**

The Contractor shall, except as stated below, be responsible for the provision of all power, water and other services he may require.

The Contractor shall be entitled to use for the purposes of the Works such supplies of electricity, water, gas and other services as may be available on the Site/s and of which details and prices are given in the Employer's Requirements. The Contractor shall, at his risk and cost, provide any apparatus necessary for his use of these services and for measuring the quantities consumed.

The quantities consumed and the amounts due (at these prices) for such services shall be agreed or determined in accordance with Sub-Clause 3.5 [*Determinations*]. The Contractor shall pay these amounts to the Employer.

4.19 **Employer's Equipment and Free-Issue Material**

The Employer/s shall make the Employer's Equipment (if any) available for the use of the Contractor in the execution of the Works in accordance with the details, arrangements and prices stated in the Employer's Requirements which are in turn encapsulated in the attached Feasibility Study and Financial Model. Unless otherwise stated in the Employer's Requirements:

- (a) the Employer/s shall be responsible for the Employer's Equipment, except that
- (b) the Contractor shall be responsible for each item of Employer's Equipment whilst any of the Contractor's Personnel is operating it, driving it, directing it or in possession or control of it.

The appropriate quantities and the amounts due (at such stated prices) for the use of Employer's Equipment shall be agreed or determined in accordance with Sub-Clause 3.5 [*Determinations*]. The Contractor shall pay these amounts to the Employer/s.

The Employer/s shall supply, free of charge, the "free-issue materials" (if any) in accordance with the details stated in the Employer's Requirements or as agreed to between the Parties in separate Addendums to this PPP Agreement. The Employer/s shall, at his/their risk and cost, provide these materials at the time and place specified in the Contract and/or Addendum. The Contractor shall then visually inspect them and shall promptly give notice to the Employer/s of any shortage, defect or default in these materials. Unless otherwise agreed by both Parties, the Employer/s shall immediately rectify the notified shortage, defect or default.

After this visual inspection, the free-issue materials shall come under the care, custody and control of the Contractor. The Contractor's obligations of inspection, care, custody and control shall not relieve the Employer/s of liability for any shortage, defect or default not apparent from a visual inspection.

4.20 **Progress Reports**

Unless otherwise stated in the Employer's Requirements, monthly progress reports shall be prepared by the Contractor and submitted to the Employer and the financial institution providing the funding for the Project/s (in the format of electronic copies). The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 (Seven) days after the last day of the period to which it relates.

Reporting shall continue until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate/s for the various Site/s which constitute the Works of the Project/s.

Each report shall include:

- (a) charts and detailed descriptions of progress, including each stage of design, Contractor's Documents, procurement, manufacture, delivery to Site/s, construction, erection, testing, commissioning and trial operation;
- (b) photographs showing the status of installation progress and of progress in general on the Site/s;

- (c) if applicable, for the manufacture of each main item of Plant/s and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
 - (i) commencement of manufacture
 - (ii) Contractor's inspections
 - (iii) tests, and
 - (iv) shipment and arrival at the Site/s;
- (d) the details described in Sub-Clause 6.10 [*Records of Contractor's Personnel and Equipment*];
- (e) copies of quality assurance documents, test results and certificates of Materials;
- (f) list of Variations and notices given under Sub-Clause 25.1 [*Contractor's Claims*];
- (g) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
- (h) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.

4.21 **Security of the Site**

Unless otherwise stated in the Employer's Requirements:

- (a) the Contractor shall be responsible for keeping unauthorised persons off the Site/s, and
- (b) authorised persons shall be limited to the Contractor's Personnel and the Employer's Personnel; and to any other personnel notified to the Contractor, by (or on behalf of) the Employer/s, as authorised personnel of the Employer's other contractors on the Site/s.

4.22 **Contractor's Operations on Site/s**

The Contractor shall confine his operations to the Site/s, and to any additional areas which may be obtained by the Contractor and agreed by the Employer/s as working areas. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the Site/s and these additional areas, and to keep them off adjacent land.

During the execution of the Works, the Contractor shall keep the Site/s free from all unnecessary obstruction and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site/s any wreckage, rubbish and Temporary Works which are no longer required.

Upon the issue of the Taking-Over Certificate/s for the Works at the various Site/s of the Project/s, the Contractor shall clear away and remove all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works and remediate any damage to the relevant Building/s or other property on the Site/s resulting from the performance of the Works. The Contractor shall leave the Site/s and the Works in a clean and safe condition. However, the Contractor may retain on Site/s, during the Defects Notification Period and

during the ensuing management period, such Goods as are required for the Contractor to fulfil obligations under the Contract.

4.23 **Contractor Warranties**

Without prejudice to any other obligation of the Contractor the Contractor warrants that:

- (a) all Goods supplied to the Employer/s by the Contractor pursuant to or in connection with the Contract will:
 - (i) comply with the applicable Specification and any sample product provided by or on behalf of the Contractor;
 - (ii) be of satisfactory quality and fit for any purpose:
 - (1) held out by the Contractor; or
 - (iii) be free from defects in design, material and workmanship; and
 - (iv) comply with all applicable statutory and regulatory requirements including those relating to the manufacture, labelling, packaging, storage, handling, sale and delivery of the Goods.

5. **DESIGN**

5.1 **General Design Obligations**

- (a) The Contractor shall be deemed to have scrutinised, prior to the Commencement Date, the Employer's Requirements (including design criteria and calculations, if any). The Contractor shall be responsible for the design of the Works and for the accuracy of the Employer's Requirements (including design criteria and calculations whether performed or procured by the Employer/s or others), except as expressly set out in clause 5.1(c) below.
- (b) The Employer shall not be responsible for any error, inaccuracy or omission of any kind in the Employer's Requirements as originally included in the Contract and shall not be deemed to have given any representation of accuracy or completeness of any data or information, except as stated below. Any data or information received by the Contractor, from the Employer/s or otherwise, shall not relieve the Contractor from his responsibility for the design and execution of the Works.
- (c) However, the Employer/s shall be responsible for the correctness of the following portions of the Employer's Requirements:
 - (i) definitions of intended purposes of the Works or any parts thereof,
 - (ii) criteria for the testing and performance of the completed Works.

5.2 **Contractor's Documents**

The Contractor's Documents shall comprise the technical documents specified in the Employer's Requirements, all of the Contractor's Proposal documents required to satisfy all regulatory approvals, and the documents described in Sub-Clause 5.6 [*As-Built Documents*] and Sub-Clause 5.7 [*Operation and Maintenance Manuals*]. Unless otherwise stated in the Employer's Requirements, the Contractor's Documents shall be written in the language for communications defined in Sub-Clause 1.5 [*Law and Language*].

The Contractor shall prepare all Contractor's Documents and shall also prepare any other documents necessary to instruct the Contractor's Personnel.

If the Employer's Requirements describe the Contractor's Documents which are to be submitted to the Employer/s and the financial institution providing the funding for the Project/s for review, they shall be submitted accordingly, together with a notice as described below. In the following provisions of this Sub-Clause, (i) "review period" means the period required by the Employer for review, and (ii) "Contractor's Documents" exclude any documents which are not specified as being required to be submitted for review.

Unless otherwise stated in the Employer's Requirements, each review period shall not exceed 21 (Twenty one) days, calculated from the date on which the Employer/s receive/s a Contractor's Document and the Contractor's notice. This notice shall state that the Contractor's Document is considered ready, both for review in accordance with this Sub-Clause and for use. The notice shall also state that the Contractor's Document complies with the Contract, or the extent to which it does not comply.

The Employer/s may, within the review period, give notice to the Contractor that in its opinion a Contractor's Document fails (to the extent stated) to comply with the Contract. If a Contractor's Document so fails to comply, and is verified by the financial institution providing the funding for the Project/s concurs in writing that it does not comply, it shall be rectified, resubmitted and reviewed in accordance with this Sub-Clause, at the Contractor's cost.

For each part of the Works, and except to the extent that the Parties otherwise agree:

- (a) execution of such part of the Works shall not commence prior to the expiry of the review periods for all the Contractor's Documents which are relevant to its design and execution;
- (b) execution of such part of the Works shall be in accordance with these Contractor's Documents, as submitted for review; and
- (c) if the Contractor wishes to modify any design or document which has previously been submitted for review, the Contractor shall immediately give notice to the Employer/s and the financial institution providing the funding for the Project/s. Thereafter, the Contractor shall submit revised documents to the Employer/s with notice to the financial institution providing the funding for the Project/s in accordance with the above procedure.

Any such agreement (under the preceding paragraph) or any review (under this Sub-Clause or otherwise) shall not relieve the Contractor from any obligation or responsibility.

5.3 **Contractor's Undertaking**

The Contractor undertakes that the design, the Contractor's Documents, the execution and the completed Works will be in accordance with:

- (a) the Laws of South Africa, and
- (b) the documents forming the Contract, as altered or modified by Variations.

5.4 **Technical Standards and Regulations**

The design, the Contractor's Documents, the execution and the completed Works shall comply with South Africa's technical standards, building, construction and environmental

Laws, Laws applicable to the product being produced from the Works, and other standards specified in the Employer's Requirements, as reflected in the attached Feasibility Model and Financial Model, applicable to the Works, or defined by the applicable Laws.

All these Laws shall, in respect of the Works and each Section, be those prevailing when the Works or Section are taken over by the Employer under Clause 10 [*Employer's Taking Over*]. References in the Contract to published standards shall be understood to be references to the edition applicable on the Effective Date, unless stated otherwise.

If changed or new applicable standards come into force in the Country after the Effective Date, the Contractor shall give notice to the Employer and (if appropriate) submit proposals for compliance. In the event that:

- (a) the Employer determines that compliance is required, and
- (b) the proposals for compliance constitute a variation,

then the Employer shall initiate a Variation in accordance with Clause 13 [*Variations and Adjustments*].

5.5 **Training**

The Contractor shall carry out the training of the O&M Contractor (which is understood to include the possibility of the Contractor itself being the O&M Contractor) and the Employer's Personnel in the operation and maintenance of the Works to the extent specified in the Employer's Requirements. If the Contract specifies training which is to be carried out before Taking-Over, the Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [*Taking Over of the Works and Sections*] until this training has been completed.

5.6 **As-Built Documents**

The Contractor shall prepare, and keep up-to-date, a complete set of "as-built" records of the execution of the Works, showing the exact as-built locations, sizes and details of the work as executed. These records shall be kept on the Site/s and shall be used exclusively for the purposes of this Sub-Clause. Two (2) copies shall be supplied to the Employer/s prior to the commencement of the Tests on Completion.

In addition, the Contractor shall supply to the Employer/s as-built drawings of the Works, showing all Works as executed, and submit them to the Employer for review under Sub-Clause 5.2 [*Contractor's Documents*]. The Contractor shall obtain the consent of the Employer as to their size, the referencing system, and other relevant details.

Prior to the issue of any Taking-Over Certificate/s, the Contractor shall supply to the Employer the specified numbers and types of copies of the relevant as-built drawings, in accordance with the Employer's Requirements. The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [*Taking Over of the Works and Sections*] until the Employer/s has/have received these documents.

5.7 **Operation and Maintenance Manuals**

Prior to commencement of the Tests on Completion, the Contractor shall supply to the Employer/s provisional operation and maintenance manuals in sufficient detail for the Employer/s, assisted by the Contractor, to operate, maintain, dismantle, reassemble, adjust and repair the Plant/s.

The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [*Taking Over of the Works and Sections*] until the Employer/s has/have received final operation and maintenance manuals in such detail, and any other manuals specified in the Employer's Requirements for these purposes.

5.8 **Design Error**

If errors, omissions, ambiguities, inconsistencies, inadequacies or other Defects are found in the Contractor's Documents, they and the Works shall be corrected at the Contractor's cost, notwithstanding any consent or approval under this Clause.

6. **STAFF AND LABOUR**

6.1 **Engagement of Staff and Labour**

Except as otherwise stated in the Employer's Requirements, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport.

6.2 **Rates of Wages and Conditions of Labour**

The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.

6.3 **Persons in the Service of Others**

The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer's Personnel unless the Employer specifically requests the Contractor to do so.

6.4 **Labour Laws**

The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

The Contractor shall require his employees to obey all applicable Laws, including those concerning safety at work.

6.5 **Working Hours**

No work shall be carried out on the Site/s on locally recognised days of rest, or outside normal working hours, unless:

- (a) otherwise stated in the Contract,
- (b) the Employer/s gives written consent, or
- (c) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Employer/s.

6.6 **Facilities for Staff and Labour**

Except as otherwise stated in the Employer's Requirements, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Employer's Requirements.

The Contractor shall not permit any of the Contractor's Personnel to maintain any permanent living quarters within the structures forming part of the Permanent Works unless they are suitable therefore.

6.7 **Health and Safety**

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site/s and at any accommodation for Contractor's and Employer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor shall appoint an accident prevention officer/s at the Site/s, responsible for maintaining safety and protection against accidents. This/these person/s shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide whatever is required by this/these person/s to exercise this responsibility and authority.

The Contractor shall send to the Employer/s details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Employer/s may reasonably require.

6.8 **Contractor's Superintendence**

Throughout the design and execution of the Works, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the Works.

Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in Sub-Clause 1.5 [*Law and Language*]) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

6.9 **Contractor's Personnel**

The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Employer/s may require the Contractor to remove (or cause to be removed) any person employed on the Site/s or Works, including the Contractor's Representative if applicable, who:

- (a) persists in any misconduct or lack of care,
- (b) carries out duties incompetently or negligently,
- (c) fails to conform with any provisions of the Contract, or

- (d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person.

6.10 **Records of Contractor's Personnel and Equipment**

The Contractor shall submit, to the Employer/s, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site/s. Details shall be submitted each calendar month, in a form approved by the Employer/s, until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate/s for the various Site/s for the Works.

6.11 **Disorderly Conduct**

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel, and to preserve peace and protection of persons and property on and near the Site/s.

7. **PLANT, MATERIALS AND WORKMANSHIP**

7.1 **Manner of Execution**

The Contractor shall carry out the manufacture or assembly of Plant/s, the production and manufacture of Materials, if applicable, and all other execution of the Works at the various relevant Site/s:

- (a) in the manner (if any) specified in the Contract,
- (b) in a proper workmanlike and careful manner, in accordance with recognised good practice and comply with most recent editions of relevant industry standards and codes of practice,
- (c) with properly equipped facilities and non-hazardous Materials; and
- (d) using Plant/s and Materials that are of sound and satisfactory quality.

7.2 **Samples**

The Contractor shall, if requested in writing, submit samples to the Employer/s, for review in accordance with the procedures for Contractor's Documents described in Sub-Clause 5.2 [*Contractor's Documents*], as specified in the Contract and at the Contractor's cost. Each sample shall be labelled as to origin and intended use in the Works.

7.3 **Inspection**

The financial institution providing the funding for the Project/s, as well as the Employer's Personnel and any person authorised in writing by the aforementioned and/or the Employer/s shall at all reasonable times:

- (a) have full access to all parts of the Site/s and to all places from which natural Materials are being obtained, and
- (b) during production, manufacture and construction (at the Site/s and, to the extent specified in the Contract, elsewhere), be entitled to examine, inspect, measure and

test the materials and workmanship, and to check the progress of manufacture of Plant/s and production and manufacture and/or assembly of Materials.

The Contractor shall give the financial institution providing the funding for the Project/s and the Employer's Personnel and any person authorised in writing by the aforementioned and/or the Employer/s full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.

In respect of the work which the financial institution providing the funding for the Project/s and/or the Employer's Personnel and any person authorised in writing by the aforementioned and/or the Employer/s are entitled to examine, inspect, measure and/or test, the Contractor shall give notice to the financial institution providing the funding for the Project/s and/or the Employer/s whenever any such work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The financial institution providing the funding for the Project/s and/or the Employer/s shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the financial institution providing the funding for the Project/s and/or the Employer/s do/does not require to do so. If the Contractor fails to give the notice, he shall, if and when required by the financial institution providing the funding for the Project/s and/or the Employer/s, uncover the work and thereafter reinstate and make good, all at the Contractor's cost.

7.4 Testing

This Sub-Clause shall apply to all tests specified in the Contract.

The Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Employer/s and the financial institution providing the funding for the Project/s, the time and place for the specified testing of any Plant/s, Materials and other parts of the Works.

The Employer/s may, under Clause 13 [*Variations and Adjustments*], vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant/s, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor, notwithstanding other provisions of the Contract.

The Employer/s shall give the Contractor not less than 24 (Twenty four) hours' notice of the Employer's intention to attend the tests. The Employer's Personnel, and any person authorised in writing by the Employer/s shall be entitled to attend the tests (each such party bearing its own costs in relation thereto). If the Employer/s do/does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Employer/s, and the tests shall then be deemed to have been made in the Employer's presence.

If the Contractor suffers delay and/or incurs Cost from complying with these instructions or as a result of a delay for which the Employer/s is/are responsible, the Contractor shall give notice to the Employer/s and the financial institution providing the funding for the Project/s and shall be entitled subject to Sub-Clause 25.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and

- (b) payment of any such Cost-plus reasonable profit, which shall be added to the Contract Price for approval by the financial institution providing the funding for the Project/s.

After receiving this notice, the Employer/s shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

The Contractor shall promptly forward to the Employer/s and the financial institution providing the funding for the Project/s duly certified reports of the tests. When the specified tests have been passed, the Employer/s shall endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If the Employer/s has/have not attended the tests, he shall be deemed to have accepted the readings as accurate.

7.5 **Rejection**

If, as a result of an examination, inspection, measurement or testing, any Plant/s, Materials, design or workmanship is found to be defective or otherwise not in accordance with the Contract, the Employer/s may reject the Plant/s, Materials, design or workmanship by giving notice to the Contractor and the financial institution providing the funding for the Project/s, with reasons. The Contractor shall then promptly make good the Defect and ensure that the rejected item complies with the Contract.

If the Employer/s require/s this Plant/s, Materials, design or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Employer/s to incur additional costs, the Contractor shall arrange to pay these costs to the Employer/s and/or deduct them from the Contract Price.

7.6 **Remedial Work**

Notwithstanding any previous test or certification, the Employer/s may instruct the Contractor to:

- (a) remove from the Site/s and replace any Plant/s or Materials which is/are not in accordance with the Contract;
- (b) remove and re-execute any other work which is not in accordance with the Contract; and
- (c) execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

If the Contractor fails to comply with any such instruction, which complies with Sub-Clause 3.4 [*Instructions*], the Employer/s shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall pay to the Employer/s all costs arising from this failure or deduct these costs from the Contract Price.

7.7 **Ownership of Plant/s and Materials**

Each item of Plant/s and Materials shall, to the extent consistent with the Laws of South Africa, not become the property of the Employer/s unless and until the period of 25 (Twenty Five) years from the date of the Take Over of the Project, fully commissioned, to the Employer/s, under the management of the Contractor, has passed, or until and when the Contractor has received payment of the value of the Plant/s and Materials under Sub-Clause 8.11 [*Payment for Plant and Materials in Event of Suspension*].

The Contractor indemnifies and holds the Employer/s harmless from and against all claims, losses, expenses, damages, costs and liabilities that the Employer/s may suffer or incur howsoever arising in connection with those items of Plant/s and Materials to which this Sub-Clause 7.7 applies. The Contractor shall ensure that at the time when an item of Plant/s and Material becomes the property of the Employer/s, the relevant item is free from all Liens and shall, upon request of the Employer's Representative, provide documentary evidence that demonstrates that the relevant Plant/s and Materials are free from Liens.

The Contractor shall ensure, by including appropriate provisions in each relevant Sub-contract, contract of sale and/or supply agreement with its suppliers that the property in all Plant/s and Materials ordered in the performance of the Works passes to the Employer at some time in the future under this Contract.

The Contractor shall provide to the Employer/s satisfactory evidence in the form of a vesting certificate (in a form approved in writing by the Employer/s and the financial institution providing the funding for the Project/s) that ownership in such Materials and Goods shall pass to the Employer/s at some time in the future in accordance with this Contract.

7.8 **Royalties**

Unless otherwise stated in the Employer's Requirements, the Contractor shall pay all required royalties, rents and other payments for:

- (a) natural Materials obtained from outside the Site/s, and
- (b) the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site/s are specified in the Contract.

8. **COMMENCEMENT, DELAYS AND SUSPENSION**

8.1 **Commencement of Works**

- (a) The Contractor shall commence the design and execution of the Works as soon as is reasonably practicable after the Commencement Date and shall then proceed with the Works with due expedition and without delay.
- (b) The Contractor shall procure delivery to a location/s alternative to the Site/s if it should in its discretion, determine that this action is justified and required in order to competently complete the Works and the Project/s .

8.2 **Time/s for Completion**

The Contractor shall:

- (a) deliver and unload the Energy Vault/s, and in due course the Water Vault/s and ICT System/s and the Balance of Plant/s to the Site/s or such other location/s agreed to with the Employer/s and the financial institution providing the funding for the Project/s by the date/s for delivery as set out in the program or such other date/s as agreed to with the Employer/s and the financial institution providing the funding for the Project/s in writing;
- (b) complete the whole of the Works, and each Section (if any), within the Time/s for Completion for the Works or Section (as the case may be), including:
 - (i) achieving the passing of the Tests on Completion, and

- (ii) completing all work which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purposes of Taking-over under Sub-Clause 10.1 [*Taking Over of the Works and Sections*].

8.3 Program

The Contractor shall submit a time program to the Employer/s and the financial institution providing the funding for the Project/s within 28 (Twenty eight) days after the Commencement Date. The Contractor shall also submit a revised program whenever the previous program is inconsistent with actual progress or with the Contractor's obligations. Unless otherwise stated in the Contract, each program shall include:

- (a) the order in which the Contractor intends to carry out the Works, including the anticipated timing of each major stage of the Works,
- (b) the periods for reviews under Sub-Clause 5.2 [*Contractor's Documents*],
- (c) the sequence and timing of inspections and tests specified in the Contract, and
- (d) a supporting report which includes:
 - (i) a general description of the methods which the Contractor intends to adopt for the execution of each major stage of the Works, and
 - (ii) the approximate number of each class of Contractor's Personnel and of each type of Contractor's Equipment for each major stage.

Unless the Employer/s, within 21 (Twenty one) days after receiving a program, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the program, subject to his other obligations under the Contract. The Employer's Personnel shall be entitled to rely upon the program when planning their activities.

The Contractor shall promptly give notice to the Employer of specific probable future events or circumstances which may adversely affect or delay the execution of the Works. In this event, or if the Employer/s gives notice to the Contractor that a program fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised program to the Employer and the financial institution providing the funding for the Project/s in accordance with this Sub-Clause.

8.4 Extension of Time for Completion

The Contractor shall be entitled subject to Sub-Clause 25.1 [*Contractor's Claims*] and Sub-Clause 8.5 [*Extension of Time Provisions*] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [*Taking Over of the Works and Sections*] is or will be delayed by any of the following causes:

- (a) a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.4 [*Variation Procedure*]),
- (b) a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions, or

- (c) any delay, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Employer's other contractors on the Site/s.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Employer and the financial institution providing the funding for the Project in accordance with Sub-Clause 25.1 [*Contractor's Claims*]. When determining each extension of time under Sub-Clause 25.1, the Employer/s shall review previous determinations and may increase, but shall not decrease, the total extension of time and shall grant extensions to the Time/s for Completion as shall be reasonable in the circumstances.

Without prejudice to this Sub-Clause, the Employer/s shall be entitled, at the Employer's absolute discretion, to grant an extension of time to the Contractor.

8.5 The Contractor will not be entitled to an extension of time in respect of a cause of delay:

- (a) to the extent that a cause of delay is concurrent with another delay for which the Contractor is responsible;
- (b) if the Contractor has not given the notices and claims required by Sub-Clause 25.1 [*Contractor's Claims*], including within the time frames and setting out all the information required by that Sub-Clause;
- (c) to the extent that the delay has been caused or contributed to by an act, omission or default of the Contractor, or any person for whom the Contractor is responsible in accordance with the Contract (including any of the Contractor's Personnel) or breach of this Contract by the Contractor;
- (d) to the extent that the delay could have been reduced if the Contractor had at all times used all reasonable endeavours to prevent, mitigate or minimise the delay,

8.6 **Delays Caused by Authorities**

If the following conditions apply, namely:

- (a) the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in South Africa;
- (b) authorities delay or disrupt the Contractor's work;
- (c) the delay or disruption was not reasonably foreseeable by an experienced contractor at the date of the Contract,

then this delay or disruption will be considered as a cause of delay under sub-paragraph (b) of Sub-Clause 8.4 [*Extension of Time for Completion*].

8.7 **Rate of Progress**

If, at any time:

- (a) actual progress is too slow to complete within the Time/s for Completion, and/or
- (b) progress has fallen (or will fall) behind the current programme under Sub-Clause 8.3 [*Program*],

other than as a result of a cause listed in Sub-Clause 8.4 [*Extension of Time for Completion*], then the Employer/s may instruct the Contractor to submit, under Sub-Clause

8.3 [*Program*], a revised program and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time/s for Completion.

Unless the Employer/s notify/ies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause the Employer/s to incur additional costs, the Contractor shall pay these costs to the Employer/s, in addition to delay damages (if any) under Sub-Clause 8.8 below.

8.8 Delay Damages

If the Contractor fails to comply with Sub-Clause 8.2 [*Time for Completion*], the Contractor shall pay Delay Damages to the Employer/s for this default or deduct the cost of the Delay Damages from the Contract Price. These Delay Damages shall be the sum as agreed to between the Contractor, the Employer/s and the financial institution providing the funding for the Project/s in a separate Addendum to this PPP Agreement, which shall be paid for every day which shall elapse between the relevant Time/s for Completion and the date stated in the Taking-Over Certificate and thus deducted from the Contract Price.

These Delay Damages shall be the only damages due from the Contractor for such default, other than in the event of termination under Sub-Clause 20.2 [*Termination by Employer*] prior to completion of the Works. These damages shall not relieve the Contractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Contract.

The Employer/s may inform the financial institution providing the funding for the Project/s that such Delay Damages should be deducted from any sums due or which become due to the Contractor for the Contract Price.

If the Contractor is granted an extension of time under Sub-Clause 8.4 [*Extension of Time for Completion*] after Delay Damages have been paid or deducted under this Sub-Clause, the Employer/s shall request the financial institution providing the funding for the Project/s to pay or repay to the Contractor any amounts paid or deducted for the period up to the Time/s for Completion as extended.

All amounts of such Delay Damages for which the Contractor may become liable are agreed as a genuine pre-estimate of the losses which may be sustained by the Employer/s in the event that the Contractor fails to comply with Sub-Clause 8.2 [*Time for Completion*] and not a penalty provided always that, notwithstanding any other provisions of the Contract, in circumstances where the level of any Delay Damages payable pursuant to this Sub-Clause is successfully challenged (or otherwise deemed unenforceable in any judicial proceedings) as constituting a penalty or otherwise cannot be enforced against the Contractor, the Employer/s shall be entitled to recover all actual damages suffered by the Employer/s as a result of the Contractor's failure.

8.9 Suspension of Work

Subject to good cause along with corroborating proof thereof, the Employer/s may with due and fair written notice, after notice has been provided to the financial institution providing the funding for the Project/s, instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.

If and to the extent that the cause of the suspension of work is notified and is the responsibility of the Contractor, the following Sub-Clauses 8.10, 8.11 and 8.12 shall not apply.

8.10 **Consequences of Suspension**

If the Contractor suffers delay and/or incurs Cost from complying with the Employer's instructions under Sub-Clause 8.9 [*Suspension of Work*] and/or from resuming the work, the Contractor shall give notice to the Employer/s and the financial institution providing the funding for the Project/s and shall be entitled subject to Sub-Clause 25.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost, which shall be added to the Contract Price upon notice to the financial institution providing the funding for the Project/s.

After receiving this notice, the Employer/s shall notify the financial institution providing the funding for the Project/s and proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with Sub-Clause 8.9 [*Suspension of Work*]

8.11 **Payment for Plant/s and Materials in Event of Suspension**

The Contractor shall be entitled to payment of the value (as at the date of suspension) by the financial institution providing the funding for the Project/s of Plant/s and/or Materials which have not been delivered to Site/s, if:

- (a) the work on Plant/s or delivery of Plant/s and/or Materials has been suspended for more than 28 (Twenty eight) days, and
- (b) the Contractor has marked the Plant/s and/or Materials as the Employer's property in accordance with the Employer's instructions; and
- (c) the Plant/s and Materials are free from Liens.

8.12 **Prolonged Suspension**

If the suspension under Sub-Clause 8.9 [*Suspension of Work*] has continued for more than 60 (Sixty) days, the Contractor may request the Employer's and the financial institution providing the funding for the Project/s permission to proceed. If the Employer and the financial institution providing the funding for the Project/s do/does not give permission within 28 (Twenty eight) days after being requested to do so, the Contractor may, by giving notice to the Employer/s and the financial institution providing the funding for the Project/s, treat the suspension as an omission under Clause 13 [*Variations and Adjustments*] of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 21.2 [*Termination by Contractor*].

8.13 Resumption of Work

After the permission or instruction to proceed is given, the Parties and the financial institution providing the funding for the Project/s shall jointly examine the Works and the Plant/s and Materials affected by the suspension. The Contractor shall make good any deterioration or Defect in or loss of the Works or Plant/s or Materials, which has occurred during the suspension.

9. TESTS ON COMPLETION

9.1 Contractor's Obligations

The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 9, [*Testing*] and all other requirements specified in the Employer's Requirements as amplified in the attached Feasibility Study and Financial Model after providing the documents in accordance with Sub-Clause 5.6 [*As-Built Documents*] and Sub-Clause 5.7 [*Operation and Maintenance Manuals*].

The Contractor shall give to the Employer/s and the financial institution providing the funding for the Project/s, not less than 21 (Twenty one) days' notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within 14 (Fourteen) days after this date, on such day or days as the Employer/s shall instruct. The financial institution providing the funding for the Project/s and the Employer, the Employer's Personnel, and any person authorised in writing by the Employer/s or the financial institution providing the funding for the Project/s, are entitled to attend any or all of the Tests on Completion (including any delayed or repeated tests).

Unless otherwise stated in the Employer's Requirements and amplified in the Feasibility Study and Financial Model attached, the Tests on Completion shall be carried out in the following sequence:

- (a) pre-commissioning tests, which shall include the appropriate inspections and functional tests to demonstrate that each item of Plant/s of the Works at the Site/s can safely under-take the next stage;
- (b) commissioning tests, which shall include the specified operational tests to demonstrate that the Works or Section at the Site/s can be operated safely and as specified, under all available operating conditions; and
- (c) trial operation, which shall demonstrate that the Works or Section at the Site/s perform reliably and in accordance with the Contract.

During trial operation, when the Works are operating under stable conditions, the Contractor shall give notice to the Employer/s and the financial institution providing the funding for the Project/s that the Works are ready for any other Tests on Completion, including performance tests to demonstrate whether the Works conform with criteria specified in the Employer's Requirements as amplified by the Feasibility Study and Financial Model and with the Performance Guarantees, if applicable.

Trial operation shall not constitute a Taking-over under Clause 10 [*Employer's Taking Over*]. Unless otherwise stated in the Employer's Requirements, any product produced by the Works during trial operation shall be the property of the Contractor until such time as the Energy management and administration period of 25 (Twenty five) years, operated in accordance with the terms and conditions of the attached Feasibility Study and Financial

Model post Take Over, or any extensions thereof, and in due course Water and ICT management and administration activities, has expired.

In considering the results of the Tests on Completion, appropriate allowances shall be made for the effect of any use of the Works by the Employer/s on the performance or other characteristics of the Works. As soon as the Works, or a Section, have passed each of the Tests on Completion described in sub-paragraph (a), (b) or (c), the Contractor shall submit a certified report of the results of these Tests to the Employer/s and the financial institution providing the funding for the Project/s.

9.2 **Delayed Tests**

If the Tests on Completion are being unduly delayed by the Employer/s, Sub-Clause 7.4 [*Testing*] (fifth paragraph) and/or Sub-Clause 10.3 [*Interference with Tests on Completion*] shall be applicable.

If the Tests on Completion are being unduly delayed by the Contractor, the Employer/s, in conjunction with the financial institution providing the funding for the Project/s may by notice require the Contractor to carry out the Tests within 21 (Twenty one) days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Employer and the financial institution providing the funding for the Project/s.

If the Contractor fails to carry out the Tests on Completion within the period of 21 (Twenty one) days, the Employer's Personnel may proceed with the Tests at the risk and cost of the Contractor. These Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

9.3 **Retesting**

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [*Rejection*] shall apply, and the Employer/s or the Contractor may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

9.4 **Failure to Pass Tests on Completion**

The Works will pass the Tests on Completion where they meet the Performance Guarantees, if applicable, the Minimum Performance Levels and other criteria stated in the Employer's Requirements as amplified in the attached Feasibility Study and Financial Model. If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [*Retesting*], the Employer/s, in conjunction with the financial institution providing the funding for the Project/s, shall be entitled to:

- (a) order further repetition of Tests on Completion under Sub-Clause 9.3;
- (b) levy Performance Damages in respect of any failure to meet Required Testing Performance, if the failure deprives the Employer/s of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Employer/s shall have the same remedies as are provided in sub-paragraph (c) of Sub-Clause 11.4 [*Failure to Remedy Defects*]; or
- (c) issue a Taking-Over Certificate/s.

In the event of sub-paragraph (c), the Contractor shall proceed in accordance with all other obligations under the Contract post Take Over in terms of the Energy management and

administration activities and in due course Water and ICT management and administration activities.

10. EMPLOYER'S "TAKING OVER"

10.1 Taking Over of the Works and Sections

Except as stated in Sub-Clause 9.4 [*Failure to Pass Tests on Completion*], the Works shall be "Taken Over" by the Employer/s when (i) the Works have been completed in accordance with the Contract, including the matters described in Sub-Clause 8.2 [*Time for Completion*] and except as allowed in sub-paragraph (a) below, and (ii) Taking-Over Certificate/s for the Works has/have been issued, or is deemed to have been issued in accordance with this Sub-Clause. It is understood between the Parties that "Take Over" is understood to mean that the Employer/s is from date of "Take Over" responsible for the Project/s and Works, but that the Contractor continues to manage the Project/s and Works in all aspects as the O&M contractor or by employing other O&M operator/s in terms of the Energy management and administration activities and in due course Water and ICT management and administration activities as set out in the attached Feasibility Study and Financial Model.

The Contractor may apply by notice to the Employer/s and the financial institution providing the funding for the Project/s for Taking-Over Certificate/s not earlier than 14 (Fourteen) days before the Works will, in the Contractor's opinion, be complete and ready for Taking Over. If the Works are divided into Sections, the Contractor may similarly apply for a Taking-Over Certificate for each Section.

The Employer/s shall, within 28 (Twenty eight) days after receiving the Contractor's application:

- (a) issue the Taking-Over Certificate/s to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and Defects which will not substantially affect the use of the Works or Section for their intended purpose (either until or whilst this work is completed and these Defects are remedied); or
- (b) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate/s to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub-Clause.

If the Employer/s fail/s either to issue the relevant Taking-Over Certificate/s or to reject the Contractor's application within the period of 28 (Twenty eight) days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the relevant Taking-Over Certificate/s shall be deemed to have been issued on the last day of that period.

10.2 Taking Over of Parts of the Works

Parts of the Works (other than Sections) shall not be taken over or used by the Employer/s, except as may be stated in the Contract or as may be agreed by both Parties in writing in any Addendum.

10.3 Interference with Tests on Completion

If the Contractor is prevented, for more than 14 (Fourteen) days, from carrying out the Tests on Completion by a cause for which the Employer/s is/are responsible, the Contractor shall carry out the Tests on Completion as soon as practicable.

If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Employer/s and the financial institution providing the funding for the Project/s and shall be entitled, subject to Sub-Clause 25.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost-plus reasonable profit, which shall be added to the Contract Price, upon notice to the financial institution providing the funding for the Project/s.

After receiving this notice, the Employer/s shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

11. DEFECTS LIABILITY

11.1 Completion of Outstanding Work and Remedying Defects

In order that the Works and Contractor's Documents, and each Section, shall be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the relevant Defects Notification Period or as soon as practicable thereafter, the Contractor shall:

- (a) complete any work which is outstanding on the date stated in a Taking-Over Certificate/s, within such reasonable time as is instructed by the Employer/s, and
- (b) execute all work required to remedy Defects or damage, as may be notified by the Employer/s on or before the expiry date of the Defects Notification Period for the Works or Section (as the case may be).

If a Defect appears or damage occurs, the Employer/s shall notify the Contractor accordingly as soon as reasonably practicable. The Contractor shall use all reasonable endeavours to rectify all defects and damage immediately after each notification.

11.2 Cost of Remedying Defects

All work referred to in sub-paragraph (b) of Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*] shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:

- (a) the design of the Works;
- (b) Plant/s, Materials or workmanship not being in accordance with the Contract;
- (c) improper operation or maintenance which was attributable to matters for which the Contractor is responsible; or
- (d) failure by the Contractor to comply with any other obligation.

If and to the extent that such work is attributable to any other cause, the Employer shall give notice to the Contractor accordingly, and Sub-Clause 13.4 [*Variation Procedure*] shall apply.

11.3 Extension of Defects Notification Period

The Employer/s shall be entitled to an extension of the Defects Notification Period for the Works or a Section if and to the extent that the Works, Section or a major item of Plant/s (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a Defect or damage.

11.4 Failure to Remedy Defects

If the Contractor fails to remedy any Defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the Employer/s, with notice to the financial institution providing the funding for the Project/s, on or by which the Defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.

If the Contractor fails to remedy the Defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor under Sub-Clause 11.2 [*Cost of Remedying Defects*], the Employer/s may (at his/their option):

- (a) carry out the work himself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work; and the Contractor shall pay to the Employer/s the costs reasonably incurred by the Employer/s in remedying the Defect or damage or deduct it from the Contract Price;
- (b) agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.5 [*Determinations*]; or
- (c) if the Defect or damage deprives the Employer/s of substantially the whole benefit of the Works or any major part of the Works, after due notice to the financial institution providing the funding for the Project/s, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use.

Without prejudice to any other rights, under the Contract or otherwise, the Employer/s shall be entitled to recover all sums paid by the Employer/s for the Works, if any, or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site/s and returning Plant/s and Materials to the Contractor.

11.5 Removal of Defective Work

If the Defect or damage cannot be remedied expeditiously on the Site and the financial institution providing the funding for the Project/s and the Employer/s give/s consent, the Contractor may remove from the Site/s for the purposes of repair such items of Plant/s as are subject to the Defect or damaged. This consent may require the Contractor to increase the amount of the Performance Security, if applicable, by the full replacement cost of these items, or to provide other appropriate security.

11.6 Further Tests

If the work of remedying of any Defect or damage may affect the performance of the Works, the Employer/s may require the repetition of any of the tests described in the Contract, including Tests on Completion. The requirement shall be made by notice within 28 (Twenty eight) days after the Defect or damage is remedied.

These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Sub-Clause 11.2 [*Cost of Remedying Defects*], for the cost of the remedial work.

11.7 **Right of Access**

Until the Making Good Defects Certificate/s has/have been issued, and thereafter in terms of the O&M activities of the Contractor and/or its Subcontractor/s, the Contractor, in addition to the rights afforded by the Servitude/s applicable, shall have the right of access to all parts of the Works and to records of the operation and performance of the Works, except as may be inconsistent with the Employer's reasonable security restrictions.

11.8 **Contractor to Search**

The Contractor shall, if required by the Employer and/or the financial institution providing the funding for the Project/s, search for the cause of any Defect, under the direction of the Employer/s, if applicable. Unless the Defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 [*Cost of Remedying Defects*], the Cost of the search plus reasonable profit shall be agreed or determined in accordance with Sub-Clause 3.5 [*Determinations*] and shall be added to the Contract Price, upon due notice to the financial institution providing the funding for the Project/s.

11.9 **Making Good Defects Certificate/s**

The Employer/s shall issue the Making Good Defects Certificate/s within 14 (Fourteen) days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works, including remedying any Defects. If the Employer/s fail/s to issue the Making Good Defects Certificate/s accordingly:

- (a) the Making Good Defects Certificate shall be deemed to have been issued on the date 14 (Fourteen) days after the date on which it should have been issued, as required by this Sub-Clause, and
- (b) Sub-Clause 11.11 [*Clearance of Site*] and sub-paragraph (a) of Sub-Clause 14.10 [*Cessation of Employer's Liability*] shall be inapplicable.

11.10 **Unfulfilled Obligations**

After the Making Good Defects Certificate/s and Performance Certificate/s has/have been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force. Neither the expiry of the Defects Notification Period nor the issue of the Making Good Defects Certificate/s nor the issue of the Performance Certificate/s shall prejudice any liability of the Contractor in respect of any breach of this Contract.

11.11 **Clearance of Site**

Upon receiving the Making Good Defects Certificate/s, the Contractor shall, at its own discretion and taking into account that it shall continue to manage the Site/s on behalf of the Employer/s in terms of the Energy management and administration activities, and in due course water and ICT management and administration activities, remove any remaining superfluous Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site/s besides those required for the management activities in question.

12. PERFORMANCE

- 12.1 Notwithstanding the issue of the Taking-Over Certificate/s, the Employer/s shall on the expiry of the Defects Notification Period, and in conjunction with the financial institution providing the funding for the Project/s, determine the Average Actual Performance of the Energy Vault/s and in due course the Water Vault/s and/or ICT Systems and the Balance of Plant/s, as set out in the Feasibility Study and Financial Model or in any later Addenda added to this PPP Agreement for such purposes.
- 12.2 Where the Average Actual Performance for the Energy Vault/s and in due course the Water Vault/s and/or ICT Systems and the Balance of Plant/s for all of the Performance Criteria is at or above Required Performance, the Employer shall issue a Performance Certificate/s.
- 12.3 Where the Average Actual Performance for the Energy Vault/s and in due course the Water Vault/s and/or ICT Systems and the Balance of Plant/s for any of the Performance Criterion is below Required Performance, the Employer/s may do any or all of the following:
- (a) allow such additional time to allow further work to be undertaken in relation to the relevant Plant/s and the Balance of Plant/s and set a date for future determination of the Average Actual Performance; and
 - (b) require the Contractor to indemnify the financial institution providing the funding for the Project/s in conjunction with the Employer/s for the Performance Damages in respect of such failure within 14 (Fourteen) days (which the Employer/s may request be taken into account with the financial institution providing the funding for the Project/s as debt due); or
 - (c) treat the failure as a Defect and exercise its rights under clause 11.4.
- 12.4 If the Employer/s, in conjunction with the financial institution providing the funding for the Project/s allows additional time as provided in clause 12.3(a), the procedure in this clause 12 shall be repeated at the end of such period and the actions and remedies in this clause 12 shall be available to the Employer/s at such time.

13. VARIATIONS AND ADJUSTMENTS

13.1 Right to Vary

- 13.2 Variations may be initiated by the Employer/s or the financial institution providing the funding for the Project/s at any time prior to issuing the Taking-Over Certificate/s for the Works, either by an instruction or by a request for the Contractor to submit a proposal. A Variation shall not comprise the omission of any work which is to be carried out by others.

The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Employer/s and the financial institution providing the funding for the Project/s stating (with supporting particulars) that (i) the Contractor cannot readily obtain the Goods required for the Variation, (ii) it will reduce the safety or suitability of the Works, or (iii) it will have an adverse impact on the achievement of the Performance Guarantees, if applicable. Upon receiving this notice, the Employer/s shall cancel, confirm or vary the instruction and inform the financial institution providing the funding for the Project/s thereof.

13.3 Value Engineering

The Contractor may, at any time, submit to the Employer/s and the financial institution providing the funding for the Project/s, a written proposal which (in the Contractor's opinion)

will, if adopted, (i) accelerate completion, (ii) reduce the cost of executing, maintaining or operating the Works, (iii) improve the efficiency or value of the completed Works, or (iv) otherwise be of benefit to the Employer/s.

The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause 13.4 [*Variation Procedure*].

13.4 **Variation Procedure**

If the Employer/s request/s a proposal, prior to instructing a Variation, the Contractor shall advise the financial institution providing the funding for the Project/s and respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:

- (a) a description of the proposed design and/or work to be performed and a program for its execution;
- (b) the Contractor's proposal for any necessary modifications to the program according to Sub-Clause 8.3 [*Program*] and to the Installation Dates and the Time/s for Completion; and
- (c) the Contractor's proposal for adjustment to the Contract Price.

The Employer shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.3 [*Value Engineering*] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.

Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Employer/s to the Contractor, who shall acknowledge receipt.

Upon instructing or approving a Variation, the Employer/s shall proceed, upon notice to the financial institution providing the funding for the Project/s, and in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine adjustments to the Contract Price and the Schedule of Payments. These adjustments shall include reasonable profit, and shall take account of the Contractor's submissions under Sub-Clause 13.3 [*Value Engineering*] if applicable

13.5 **Payment in Applicable Currencies**

If the Contract provides for payment of the Contract Price in more than one currency, then whenever an adjustment is agreed, approved or determined as stated above, the amount payable in each of the applicable currencies shall be specified. For this purpose, reference shall be made to the actual or expected currency proportions of the Cost of the varied work, and to the proportions of various currencies specified for payment of the Contract Price.

13.6 **Provisional Sums**

Each Provisional Sum shall only be used, in whole or in part, in accordance with the financial institution providing the funding for the Project's instructions, and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include only such amounts, for the work, supplies or services to which the Provisional Sum relates, as the Employer shall have instructed. For each Provisional Sum, the financial institution providing the funding for the Project may instruct:

- (a) work to be executed (including Plant/s, Materials or services to be supplied) by the Contractor and valued under Sub-Clause 13.4 [*Variation Procedure*]; and/or

(b) Plant/s, Materials or services to be purchased by the Contractor, for which there shall be added to the Contract Price less the original Provisional Sums:

(i) the actual amounts paid (or due to be paid) by the Contractor, and

provided always that the amount payable with respect of the Plant/s, Materials or services shall not exceed the amount stated in the Contract in respect of the relevant Provisional Sum.

The Contractor shall, when required by the Employer/s and/or the financial institution providing the funding for the Project/s, produce quotations, invoices, vouchers and accounts or receipts in substantiation.

13.7 **Daywork**

For work of a minor or incidental nature, the Employer/s, with notice to the financial institution providing the funding for the Project/s, may instruct that a Variation shall be executed on a daywork basis. The work shall then be valued in accordance with the daywork schedule included in the Contract, and the following procedure shall apply. If a daywork schedule is not included in the Contract, this Sub-Clause shall not apply.

Before ordering Goods for the work, the Contractor shall submit binding quotations of its own choosing to the Employer/s and the financial institution providing the funding for the Project. When applying for payment, the Contractor shall submit invoices, vouchers and accounts or receipts for any Goods.

Except for any items for which the daywork schedule specifies that payment is not due, the Contractor shall deliver each day to the Employer/s and the financial institution providing the funding for the Project, accurate statements in duplicate which shall include the following details of the resources used in executing the previous day's work:

- (a) the names, occupations and time of Contractor's Personnel,
- (b) the identification, type and time of Contractor's Equipment and Temporary Works, and
- (c) the quantities and types of Plant/s and Materials used.

One copy of each statement will, if correct, or when agreed, be signed by the Employer/s and returned to the Contractor and the financial institution providing the funding for the Project/s. The Contractor shall then submit priced statements of these resources to the Employer/s and the financial institution providing the funding for the Project, prior to their inclusion in the next Statement under Sub-Clause 14.3 [*Application for Interim Payments*].

13.8 **Adjustments for Changes in Legislation**

The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of South Africa (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Effective Date, which affect the Contractor in the performance of obligations under the Contract.

If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the Effective Date, the Contractor shall give notice to the Employer/s and the financial institution

providing the funding for the Project/s and shall be entitled subject to Sub-Clause 25.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
- (b) payment of any such Cost, which shall be added to the Contract Price.

After receiving this notice, the Employer/s, upon notice to the financial institution providing the funding for the Project/s, shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

13.9 **Adjustments for Changes in Costs**

If the Contract Price is to be adjusted for rises or falls in the cost of labour, Goods and other inputs to the Works, the adjustments shall be calculated in accordance with the provisions in the Particular Conditions as amplified by the Feasibility Study and Financial Model as attached.

14. **CONTRACT PRICE AND PAYMENT**

14.1 **The Contract Price**

Unless otherwise stated in the Particular Conditions as amplified by the Feasibility Study and Financial Model as attached:

- (a) payment for the Works shall be made to the Contractor by the suitable financial institution providing the financing for the Project/s, being the Funder, as facilitated by the Contractor, on the basis of the Contract Price, subject to any adjustments in accordance with the Contract; and
- (b) the Contractor shall pay all Taxes, due howsoever arising in connection with the Works and the Contract Price shall not be adjusted for any of these costs, except as stated in Sub-Clause 13.8 [*Adjustments for Changes in Legislation*] or as agreed to in writing between the Contractor and the financial institution providing the funding for the Project/s.

14.2 **Advance Payment**

The Contractor shall be entitled to arrange an advance payment with the relevant financial institution loaning the monies for the Works and the further management thereof by the Contractor, as an amount for mobilisation and design activities. If the Particular Conditions as amplified in the Feasibility Study and Financial Model as attached do not state:

- (a) the amount of the advance payment, then this Sub-Clause shall not apply;
- (b) the number and timing of instalments, then there shall be only one;
- (c) the applicable currencies and proportions, then they shall be those in which the Contract Price is payable; and/or
- (d) the amortisation rate for repayments, then it shall be calculated as agreed to between the Contractor and the financial institution providing the funding for the Project/s as part of the Contract Price.

The Contractor shall be entitled to receive the first instalment upon providing to the Employer/s and the financial institution providing the funding for the Project/s (i) a

Statement (under Sub-Clause 14.3 [*Application for Interim Payments*]), (ii) the Performance Security in accordance with Sub-Clause 4.2 [*Performance Security*], if requested, and (iii) a guarantee in amounts and currencies equal to the advance payment, if requested. This guarantee, if required, shall be issued by an entity and from within a country (or other jurisdiction) approved by the financial institution providing the funding for the Project/s, and shall be in the form annexed to the Particular Conditions or in another form approved by the relevant financial institution providing the funding for the Project/s and included as an Addendum.

The Contractor shall ensure that the guarantee in question, if required by the financial institution providing the funding for the Project/s, is valid and enforceable until the advance payment has been repaid, but its amount may be progressively reduced by the amount repaid by the Contractor. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the date 28 (Twenty eight) days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.

The advance payment shall be repaid in the manner as the Contractor shall agree to with the financial institution providing the funding for the Project/s.

14.3 **Application for Interim Payments**

In relation to each interim payment, the Contractor shall submit a Statement to the financial institution providing the funding for the Project/s, with a copy thereof to the Employer/s, after the end of the relevant period of payment stated in the Contract (if not stated, after the end of each month), in a form approved by the financial institution providing the funding for the Project, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the relevant report on progress in accordance with Sub-Clause 4.20 [*Progress Reports*].

The Statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:

- (a) the estimated contract value of the Works executed and the Contractor's Documents produced up to the end of the month (including Variations but excluding items described in sub-paragraphs (b) to (f) below);
- (b) any amounts to be added and deducted for changes in Legislation and changes in cost, in accordance with Sub-Clause 13.8 [*Adjustments for Changes in Legislation*] and Sub-Clause 13.9 [*Adjustments for Changes in Cost*];
- (c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Particular Conditions or any other Schedule, Addendum or Annexure to this PPP Agreement, to the total of the above amounts, until the amount so retained by the financial institution providing the funding for the Project/s reaches the limit of Retention Money (if any) stated;
- (d) any amounts to be added and deducted for the advance payment and repayments in accordance with Sub-Clause 14.2 [*Advance Payment*];
- (e) any other additions or deductions which may have become due under the Contract or otherwise, including those under Clause 25 [*Claims, Disputes and Arbitration*]; and
- (f) the deduction of amounts included in previous Statements.

For each interim payment, the due date for payment to the Contractor will be the date of receipt by the financial institution providing the funding for the Project/s of the relevant Statement (the "Due Date") and the final date for payment shall be 14 (Fourteen) days from the Due Date (the "Final Date for Payment").

14.4 **Schedule of Payments**

If the Contract includes a Schedule of Payments specifying the instalments in which the Contract Price will be paid, then unless otherwise stated in this Schedule, the instalments quoted in the Schedule of Payments shall be the estimated contract values for the purposes of sub-paragraph (a) of Sub-Clause 14.3 [*Application for Interim Payments*]. If the Contract does not include a Schedule of Payments, the Contractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. If applicable, the first estimate shall be submitted within 14 (Fourteen) days after the Commencement Date. Revised estimates shall be submitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Works.

14.5 **Interim Payments**

No amount will be paid until the financial institution providing the funding for the Project/s has/have received and approved the Performance Security by the Contractor, if required. Thereafter, the financial institution providing the funding for the Project/ shall no later than 5 (Five) days after the Due Date issue a payment notice stating the amount that he considers to be due to the Contractor as at the Due Date and the basis on which the amount was calculated.

14.6 **Timing of Payments**

The financial institution providing the funding for the Project/s shall pay to the Contractor:

- (a) for each interim payment by the Final Date for Payment for that interim payment; and
- (b) the final amount due, within 14 (Fourteen) days after receiving the Final Statement and written discharge in accordance with Sub-Clause 14.9 [*Application for Final Payment*].

Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract, without any deductions.

14.7 **Final Payment Notice**

Not less than 2 (Two) days before the Final Date for Payment of any sum due under this Contract, the financial institution providing the funding for the Project/s may give written notice to the Contractor which shall specify the sum that last mentioned considers to be due to the Contractor on the date of that notice and the basis on which that sum has been calculated.

14.8 **Statement at Completion**

Within 30 (Thirty) days after receiving the Taking-Over Certificate/s for the Works at the various Site/s on the various Time/s, the Contractor shall submit to the financial institution providing the funding for the Project/s and the Employer, copies of a Statement at completion with supporting documents, in accordance with Sub-Clause 14.3 [*Application for Interim Payments*], showing:

- (c) the value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate/s for the Works;
- (d) any further sums which the Contractor considers to be due; and
- (e) an estimate of any other amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.

The financial institution providing the funding for the Project/s shall then give notice to the Contractor and the Employer/s in accordance with Sub-Clause 14.5 [*Interim Payments*] and make payment in accordance with Sub-Clause 14.6 [*Timing of Payments*].

14.9 Application for Final Payment

Within 14 (Fourteen) days after receiving the Making Good Defects Certificate/s, the Contractor shall submit, to the financial institution providing the funding for the Project/s and the Employer/s, copies of a draft final statement with supporting documents showing in detail:

- (a) the value of all work done in accordance with the Contract; and
- (b) any further sums which the Contractor considers to be due to him under the Contract or otherwise.

If the Employer/s and/or the financial institution providing the funding for the Project/s disagree/s with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Employer/s or the financial institution providing the funding for the Project/s may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Employer/s and the financial institution providing the funding for the Project/s the final statement as agreed. This agreed statement is referred to in these Conditions as the "Final Statement".

However if, following discussions between the Parties and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the financial institution providing the funding for the Project shall pay the agreed parts of the draft final statement in accordance with Sub-Clause 14.5 [*Interim Payments*] and Sub-Clause 14.6 [*Timing of Payments*]. Thereafter, if the dispute is finally resolved under Sub-Clause **Error! Reference source not found.** [*Board of Directors*] and Sub-Clause **Error! Reference source not found.** [*Due Legal Process*], the Contractor shall then prepare and submit to the financial institution providing the funding for the Project/s and the Employer/s a Final Statement.

14.10 Cessation of Employer's Liability

The Employer/s shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Contractor shall have included an amount expressly for it for payment by the financial institution providing the funding for the Project/s:

- (a) in the Final Statement and also
- (b) (except for matters or things arising after the issue of the Taking-Over Certificate/s for the Works) in the Statement at completion described in Sub-Clause 14.8 [*Statement at Completion*].

However, this Sub-Clause shall not limit the Employer's liability under his indemnification obligations, or the Employer's liability in any case of fraud, deliberate default or reckless misconduct by the Employer/s.

14.11 Currencies of Payment

The Contract Price shall be paid in a currency agreed to between the Contractor and the financial institution providing the funding for the Project/s. Unless otherwise stated in the Particular Conditions as amplified in the Feasibility Study and Financial Model, if more than one currency is so named, payments shall be made as follows:

- (a) if the Contract Price was expressed in Local Currency only:
 - (i) the proportions or amounts of the Local and Foreign Currencies, and the fixed rates of exchange to be used for calculating the payments, shall be as agreed between the Contractor and the financial institution providing the funding for the Project/s;
 - (ii) payments and deductions under Sub-Clause 13.6 [*Provisional Sums*] and Sub-Clause 13.8 [*Adjustments for Changes in Legislation*] shall be made in the applicable currencies and proportions; and
 - (iii) other payments and deductions under sub-paragraphs (a) to (d) of Sub-Clause 14.3 [*Application for Interim Payments*] shall be made in the currencies and proportions specified in sub-paragraph (a)(i) above;
- (b) payment of the damages specified in the Particular Conditions as amplified in the Feasibility Study and Financial Model or agreed to between the Parties in an Addendum, shall be made in the currencies and proportions specified in the Particular Conditions or Addendum;
- (c) other payments to the Employer by the Contractor shall be made in such currency as may be agreed by the Parties in writing;
- (d) if any amount payable by the Contractor to the Employer/s in a particular currency exceeds the sum payable by the financial institution providing the funding for the Project/s to the Contractor in that currency, the Employer/s may recover the balance of this amount from the sums otherwise payable to the Contractor in other currencies; and
- (e) if no rates of exchange are stated in the Contract, they shall be those prevailing on the Effective Date and determined by the Central Bank of South Africa.

15. ENERGY SECURITY MANAGEMENT AND ADMINISTRATIVE SERVICES

- 15.1 The Employer hereby appoints the Contractor for a term of 25 (Twenty five) years ("the Initial Period") to conduct Energy security management and administrative services with effect from the date on which the construction and commissioning of the Energy Vault/s is complete, being the Take Over date, on the financial terms as indicated in the Feasibility Study and Financial Model (as amended) attached to this PPP Agreement and marked as such, or as agreed to between the Parties in writing as an Addendum.
- 15.2 Provided that this Agreement has not been lawfully cancelled, the Contractor shall be entitled to renew the general terms of this PPP Agreement as they pertain to O&M matters and in terms of the fees for the management and administrative services, for a further period

of 10 (Ten) years by furnishing the Employer/s with written notice of its intention to do so not less than 12 (Twelve) months prior to the expiry of the initial period.

16. ADOPTION AND AMENDMENT OF AN ANNUAL BUDGET

16.1 Guided by the Feasibility Study and Financial Model attached to this PPP Agreement, the Contractor shall, annually, on behalf of and in consultation with the Employer/s, adopt an Operational Budget for the Project/s, which shall include, but is not limited to, all costs attributed to Services, for at least the next succeeding Fiscal Year.

17. GENERAL ADMINISTRATION

17.1 For matters that relate to general administration of this PPP Agreement or the methodology for adjusting costs associated with the Services and the ensuing management activities of the Contractor after Take Over, as set out in the attached Feasibility Study and Financial Model, the Contractor shall have the right to cast one (1) vote and the Employer one (1) vote. Decisions of the Parties at such meetings shall be effective only upon a majority vote. The Chairman of the meeting shall be chosen by the Contractor and his decision shall hold sway.

18. POWER (ENERGY) MANAGEMENT AND ADMINISTRATIVE SERVICES FEES

18.1 Service level Fees associated with power management and administrative services shall be accounted for based on the relevant categories of the services established by the Contractor and the Employer/s post Take Over as set out in the attached Feasibility Study and Financial Model and shall be amplified in due course by agreement between the Parties in an Addendum after the commencement of this PPP agreement and more specifically during the installation period of the Works at the various Site/s for the Project/s.

19. OPERATIONS AND MANAGEMENT AFTER COMPLETION AND "TAKE OVER"

19.1 The Contractor shall submit an All Resources Account for payment of Fees on a monthly basis in accordance with methodologies and principles established by the Contractor and the Employer/s from time to time, as set forth in the Addenda and Annexures hereto, which shall be determined in greater detail between the Parties in an Addendum after the commencement of this PPP agreement and more specifically during the installation period of the Works at the various Site/s for the Project/s.

19.2 The Employer agrees to and acknowledges its obligation to pay the All Resources Account within 7 (Seven) days of receipt thereof subject to any applicable dispute resolution provisions or procedures.

20. TERMINATION BY EMPLOYER

20.1 Notice to Correct

If the Contractor fails to carry out any obligation under the Contract or its Schedules, Annexures and Addendums, now or in the future, the Employer/s may by notice require the Contractor to make good the failure and to remedy it within a specified reasonable time.

20.2 Termination by Employer/s

The Employer/s shall be entitled to terminate the Contract if the Contractor:

- (a) fails to comply with Sub-Clause 4.2 [*Performance Security*], if applicable, or with a notice under Sub-Clause 20.1 [*Notice to Correct*];

- (b) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract;
- (c) without reasonable excuse fails to proceed with the Works in accordance with Clause 8 [*Commencement, Delays and Suspension*];
- (d) subcontracts the whole of the Works or assigns the Contract without the required agreement;
- (e) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events;
- (f) is proven in a Court of Law to have given or offer to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
 - (i) for doing or forbearing to do any action in relation to the Contract, or
 - (ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract,or if any of the Contractor's Personnel, agents or Subcontractors is proven in a Court of Law to have given or offered to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination,
- (g) fails to complete the Works in accordance with the Contract and in accordance with Sub-Clause 8.2 [*Time for Completion*] by the date falling 12 (Twelve) months following the Time/s for Completion, or
- (h) accrues liability exceeding the Contractor's maximum liability under the Contract pursuant to Sub-Clause 22.6 [*Limitation of Liability*],

In any of these events or circumstances, the Employer/s may, upon giving 90 (Ninety) days' notice to the Contractor, terminate the Contract and expel the Contractor from the Site/s.

The Employer's election to terminate the Contract shall not prejudice any other rights of the Employer/s, under the Contract or otherwise.

The Contractor shall then leave the Site/s and deliver any required Goods, all Contractor's Documents, and other design documents made by or for him, to the Employer/s, unless they belong to the Contractor. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any Subcontract, and (ii) for the protection of life or property or for the safety of the Works.

After termination, the Employer/s may complete the Works and/or arrange for any other entities to do so. The Employer/s and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor, except those that are the property of the Contractor or which have not been paid for by the Employer. The Employer/s may choose not to complete the Works and in such circumstances, the Employer/s shall have the same remedies as are provided in sub-paragraph (c) of Sub-Clause 11.4 [*Failure to Remedy Defects*].

The Employer/s shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site/s. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Employer/s, these items may be sold by the Employer/s in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

20.3 Valuation at Date of Termination

As soon as practicable after a notice of termination under Sub-Clause 20.2 [*Termination by Employer*] has taken effect, the Employer/s shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.

20.4 Payment after Termination

After a notice of termination under Sub-Clause 20.2 [*Termination by Employer*] has taken effect, the Employer/s may:

- (a) withhold further payments to the Contractor until the costs of design, execution, completion and remedying of any Defects, damages for delay in completion (if any), and all other costs incurred by the Employer/s, have been established, and/or
- (b) recover from the Contractor any losses and damages incurred by the Employer/s and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 20.3 [*Valuation at Date of Termination*]. After recovering any such losses, damages and extra costs, the Employer/s shall pay any balance to the Contractor.

21. SUSPENSION AND TERMINATION BY CONTRACTOR

21.1 Contractor's Entitlement to Suspend Work

If the Employer/s fail/s to work in conjunction with the financial institution providing the funding for the Project/s as envisaged in Sub-Clause 14.6 [*Timing of Payments*], the Contractor may, after giving not less than 21 (Twenty one) days' notice to the Employer/s, suspend work (or reduce the rate of work) unless and until the Contractor has received the co-operation of the Employer/s with regard to the financial institution providing the funding for the Project/s and concomitant payment described in the notice.

The Contractor's action shall not prejudice his entitlements to financing charges and to termination under Sub-Clause 21.2 [*Termination by Contractor*].

If the Contractor subsequently receives such payment from the financial institution providing the funding for the Project/s pursuant to the co-operation of the Employer/s (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Employer/s and the financial institution providing the funding for the Project/s and shall be entitled subject to Sub-Clause 25.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and

- (b) payment of any such Cost-plus reasonable profit, which shall be added to the Contract Price and notified to the financial institution providing the funding for the Project/s.

After receiving this notice, the Employer/s shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

21.2 Termination by Contractor

The Contractor shall be entitled to terminate the Contract if:

- (a) the Contractor does not receive the amount due within 15 (Fifteen) days after the expiry of the time stated in Sub-Clause 14.6 [*Timing of Payments*] within which payment is to be made, or
- (b) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.12 [*Prolonged Suspension*],
- (c) the Employer/s become/s bankrupt or insolvent, go/goes into liquidation, has/have a receiving or administration order made against him/them, compounds with his/their creditors, or carries on business under a receiver, trustee or manager for the benefit of his/their creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

If any of these events or circumstances is not waived or by the Contractor in lieu of the fact that the payment for the Works shall be made by the financial institution providing the funding for the Project/s or alternatively remedied following the Contractor giving 14 (Fourteen) days' notice to the Employer/s requiring the same to be remedied, the Contractor may at his choice terminate the Contract. However, in the case of sub-paragraph c, should the occurrence of the events listed not be waived, the Contractor may at his choice by notice terminate the Contract immediately.

The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

21.3 Cessation of Work and Removal of Contractor's Equipment

After a notice of termination under Sub-Clause 20 [*Employer's Entitlement to Termination*], Sub-Clause 21.2 [*Termination by Contractor*] or Sub-Clause 24.6 [*Optional Termination, Payment and Release*] has taken effect, the Contractor shall promptly:

- (a) cease all further work, except for such work as may have been instructed by the Employer/s for the protection of life or property or for the safety of the Works,
- (b) if applicable, hand over Contractor's Documents, Plant/s, Materials and other work, for which the Contractor has received payment, with due cognisance that the equipment and in question belongs to the Contractor;
- (c) remove all other Goods from the Site/s, except as necessary for safety, and leave the Site/s.

21.4 Payment on Termination

After a notice of termination under Sub-Clause 21.2 [*Termination by Contractor*] has taken effect, the Employer/s shall promptly:

- (a) return the Performance Security to the Contractor, if applicable;
- (b) pay the Contractor in accordance with Sub-Clause 24.6 [*Optional Termination, Payment and Release*], and
- (c) pay to the Contractor the amount of any loss or damage sustained by the Contractor as a result of this termination.

22. RISK AND RESPONSIBILITY

22.1 Indemnities

The Contractor shall indemnify and hold harmless the Employer/s, the Employer's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

- (a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the design, execution and completion of the Works and the remedying of any Defects, unless attributable to any negligence, wilful act or breach of the Contract by the Employer/s, the Employer's Personnel, or any of their respective agents, and
- (b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss:
 - (i) arises out of or in the course of or by reason of the design, execution and completion of the Works and the remedying of any Defects, and
 - (ii) is not attributable to any negligence, wilful act or breach of the Contract by the Employer/s, the Employer's Personnel, their respective agents, or anyone directly or indirectly employed by any of them,
- (c) claims of third parties, to the extent not covered by paragraphs (a) and (b) above, to the extent caused by a breach of the Contract by the Contractor or such other act or omission of the Contractor.

The Employer/s shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, wilful act or breach of the Contract by the Employer/s, the Employer's Personnel, or any of their respective agents, and (2) the matters for which liability may be excluded from insurance cover, as described in sub-paragraphs (d)(i), (ii) and (iii) of Sub-Clause 23.3 [*Insurance Against Injury to Persons and Damage to Property*].

22.2 Contractor's Care of the Works

The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate/s is/are issued (or is deemed to be issued under Sub-Clause 10.1 [*Taking Over of the Works and Sections*]) for the Works, when responsibility for the care of the Works shall pass to the Employer/s. If a Taking-Over Certificate/s is/are issued (or is so deemed to be issued) for any Section of the Works, responsibility for the care of the Section shall then pass to the Employer/s, despite the fact that the Contractor shall still be managing the Project/s and all the Works at all the Site/s on behalf of the Employer/s and at the terms and conditions and for payments as more fully detailed in Schedules, Annexure/s or Addendum/s to this PPP Agreement, existing or

future, once the Parties have fully determined and/or amended the fair and reasonable post Taking Over management costs during the 25 (Twenty five) year management contract that this PPP Agreement establishes.

After responsibility has/have accordingly passed to the Employer/s, the Contractor shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate/s, until this outstanding work has been completed, following which it shall also be dealt with as described in the paragraph above.

If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause 22.3 [*Employer's Risks*], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.

The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after a Taking-Over Certificate/s has/have been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking-Over Certificate/s has/have been issued and which arose from a previous event for which the Contractor was liable.

22.3 **Employer's Risks**

The risks referred to in Sub-Clause 22.4 below are:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the Country,
- (c) riot, commotion or disorder within the Country by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors,
- (d) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
- (e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

22.4 **Consequences of Employer's Risks**

If and to the extent that any of the risks listed in Sub-Clause 22.3 above results in loss or damage to the Works, Goods or Contractor's Documents, the Contractor shall promptly give notice to the Employer/s and the financial institution providing the funding for the Project/s and shall rectify this loss or damage to the extent required by the Employer/s.

If the Contractor suffers delay and/or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to the Employer/s and the financial institution providing the funding for the Project/s and shall be entitled subject to Sub-Clause 25.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost, which shall be added to the Contract Price.

After receiving this further notice, the Employer shall proceed in accordance with Sub Clause 3.5 [*Determinations*] to agree or determine these matters.

22.5 Intellectual and Industrial Property Rights

In this Sub-Clause, "infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works, and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.

The Employer/s shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:

- (a) an unavoidable result of the Contractor's compliance with the Employer's Requirements;
- (b) or a result of any Works being used by the Employer/s:
 - (i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or
 - (ii) in conjunction with anything not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Effective Date or is stated in the Contract.

The Contractor shall indemnify and hold the Employer/s harmless against and from any other claim which arises out of or in relation to (i) the Contractor's design, manufacture, construction or execution of the Works, (ii) the use of Contractor's Equipment, or (iii) the proper use of the Works.

If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.

22.6 Limitation of Liability

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than under Sub-Clause 8.8 [*Delay Damages*], Sub-Clause 9.4 [*Failure to Pass Tests on Completion*], Sub-Clause 12.3 [*Performance*], Sub-Clause 21.4 [*Payment on Termination*] and Sub-Clause 22.1 [*Indemnities*].

The total liability of the Contractor to the Employer/s, under or in connection with the Contract other than under Sub-Clause 4.18 [*Electricity, Water and Gas*], Sub-Clause 8.8 [*Delay Damages*], 9.4 and 12 [*Performance Damages and rejection*], 11.2 [*Defects*], 21.4 [*Payment on Termination*], 22.1 [*Indemnities*] and Sub-Clause 22.5 [*Intellectual and Industrial Property Rights*], shall not exceed the combined total of the Contract Price hereunder (including any increase the Contract Price by way of variation or otherwise).

This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

23. INSURANCE

23.1 General Requirements for Insurances

In this Clause, "insuring Party" means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause as set out in Schedule 4.

Wherever the Contractor is the insuring Party, each insurance shall be effected with insurers and in terms chosen by the Contractor and approved by the financial institution providing the funding for the Project/s. These terms shall be consistent with any terms agreed by both Parties before they signed the PPP Agreement, if any. This agreement of terms shall take precedence over the provisions of this Clause.

Wherever the Employer/s is/are the insuring Party, each insurance shall be effected with insurers and in terms consistent with the details as set out in Schedule 4 and the Employer/s will be deemed to have satisfied its obligations in respect of such insurance if the insurance is provided by reputable insurers, but only to the extent such insurances otherwise comply with the requirements of this Contract.

If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured and no act or omission on the part of one insured will prejudice the other insureds right to claim under such policy. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause, (i) the Contractor shall act under the policy on behalf of these additional joint insured except that the Employer/s shall act for Employer's Personnel, (ii) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer, and (iii) the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.

Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

The relevant insuring Party shall, on request of the other Party from time to time, submit to the other Party:

- (a) evidence that the insurances described in this Clause have been effected, and
- (b) copies of the policies for the insurances described in Sub-Clause 23.2 [*Insurance of Works and Contractor's Equipment*] and Sub-Clause 23.3 [*Insurance against Injury to Persons and Damage to Property*] and Sub-Clause 23.5 [*Professional Indemnity Insurance*].

When each premium is paid, the insuring Party shall submit evidence of payment to the other Party. Where the Employer/s is/are the insuring Party/ies, the Contractor shall be liable for and the Employer/s shall be entitled to recover any increase in the Employer's premiums that result from the Contractor's claims record or are otherwise attributable to the Contractor.

Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.

Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.

If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract, or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party, and the Contract Price shall be adjusted accordingly and the financial institution providing the finance for the Project/s informed.

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Employer/s, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or the Employer/s in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.

23.2 Insurance for Works and Contractor's Equipment

The Contractor shall insure the Works, Plant/s, Materials and Contractor's Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit. This insurance shall be effective from the date by which the evidence is to be submitted under sub-paragraph (a) of Sub-Clause 23.1 [*General Requirements for Insurances*], until the date of issue of the Taking-Over Certificate/s for the Works, after which date and under the management activities of the Contractor, the Project and the Works at all its Site/s, shall receive the proper and suitable insurance for all aspects of the operation of the Energy Vault and in due course the Water Vault/s, as well as the ICT Systems, and all concomitant systems and components and operations, and the Contractor shall continue with the premiums included in the calculation of the management costs as set out in the Feasibility Study and Financial Model attached to this PPP Agreement.

The insuring Party shall maintain this insurance to provide cover until the date of issue of the Making Good Defects Certificate/s, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate/s, and for loss or damage caused by the Contractor or Subcontractors in the course of any other operations (including those under Clause 11 [*Defects Liability*] and Clause 12 [*Performance*]).

The insuring Party shall insure the Contractor's Equipment for not less than the full replacement value, including delivery to Site/s. For each item of Contractor's Equipment, the insurance shall be effective while it is being transported to the Site/s and until it is no longer required as Contractor's Equipment.

Unless otherwise stated in the Particular Conditions as amplified in the attached Feasibility Study and Financial Model or Schedule 4, insurances under this Sub-Clause:

- (a) shall be effected and maintained by the Contractor as insuring Party;

- (b) shall be in the name of the Contractor, who shall be entitled to receive payments from the insurers, payments being held for the sole purpose of rectifying the loss or damage;
- (c) shall cover all loss and damage from any cause not listed in Sub-Clause 22.3 [*Employer's Risks*],
- (d) shall also cover loss or damage from the risks listed in Sub-Clause 22.3 [*Employer's Risks*], with deductibles per occurrence of not more than the amount stated in the Particular Conditions as amplified in the Feasibility Study and Financial Model (if an amount is not so stated, this sub-paragraph shall not apply), and
- (e) may however exclude loss of, damage to, and reinstatement of:
 - (i) a part of the Works which is in a defective condition due to a Defect in its design, materials or workmanship (but cover shall include any other parts which are lost or damaged as a direct result of this defective condition and not as described in sub-paragraph (ii) below),
 - (ii) a part of the Works which is lost or damaged in order to reinstate any other part of the Works if this other part is in a defective condition due to a Defect in its design, materials or workmanship,
 - (iii) a part of the Works which has been Taken Over by the Employer/s, except to the extent that the Contractor is liable for the loss or damage, and
 - (iv) Goods while they are not in the Country.

If, more than one year after the Effective Date, the cover described in sub-paragraph (d) above ceases to be available at commercially reasonable terms, the Contractor shall (as insuring Party) give notice to the Employer/s, with supporting particulars. The Employer/s shall then (i) be entitled subject to payment of an amount equivalent to such commercially reasonable terms as the Contractor should have expected to have paid for such cover, and (ii) be deemed, unless he obtains the cover at commercially reasonable terms, to have approved the omission under Sub-Clause 23.1 [*General Requirements for Insurances*].

23.3 Insurance against Injury to Persons and Damage to Property

The insuring Party shall insure against each Party's liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 23.2 [*Insurance for Works and Contractor's Equipment*]) or to any person (except persons insured under Sub-Clause 23.4 [*Insurance for Contractor's Personnel*]), which may arise out of the Contractor's performance of the Contract and occurring before the issue of the Making Good Defects Certificate/s.

This insurance shall be for a limit per occurrence of not less than the amount stated in the Particular Conditions as amplified in the Feasibility Study and Financial Model, with no limit on the number of occurrences. If an amount is not stated in the Contract, this Sub-Clause shall not apply.

Unless otherwise stated in the Particular Conditions or Schedule 4 as amplified in the Feasibility Study and Financial Model, the insurances specified in this Sub-Clause:

- (a) shall be effected and maintained by the Contractor as insuring Party;
- (b) shall be in name of the Contractor;

- (c) shall be extended to cover liability for all loss and damage to the Employer's property (except things insured under Sub-Clause 23.2) arising out of the Contractor's performance of the Contract, and
- (d) may however exclude liability to the extent that it arises from:
 - (i) the Employer's right to have the Permanent Works executed on, over, under, in or through any land or building, and to occupy this land for the Permanent Works,
 - (ii) damage which is an unavoidable result of the Contractor's obligations to execute the Works and remedy any Defects, and
 - (iii) a cause listed in Sub-Clause 22.3 [*Employer's Risks*], except to the extent that cover is available at commercially reasonable terms.

23.4 Insurance for Contractor's Personnel

The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel.

The Employer shall also be indemnified under the policy of insurance, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Employer/s or of the Employer's Personnel.

The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a Subcontractor's employees, the insurance may be effected by the Subcontractor/s, but the Contractor shall be responsible for compliance with this Clause.

23.5 Product Liability Insurance

The Contractor shall effect and maintain product liability insurance with a limit of indemnity and on reasonable terms determined and agreed to between the Parties in respect of each and every claim to cover any claims made against the Contractor in relation to his obligations relating to the design of the Works, provided that such insurance is available in the market. The insurance will be maintained for the period commencing on the Commencement Date and ending 15 (Fifteen) years following the date of the Taking Over Certificate/s for the Works.

24. FORCE MAJEURE

24.1 Definition of Force Majeure

In this **Clause**, "Force Majeure" **means** an exceptional event or circumstance:

- (a) which is beyond a Party's control;
- (b) which such Party could not reasonably have provided against before entering into the Contract;
- (c) which, having arisen, such Party could not reasonably have avoided or overcome; and
- (d) which is not substantially attributable to the other Party.

Force Majeure is limited to, the exceptional events or circumstances listed below, to the extent conditions (a) to (d) above are satisfied:

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;
- (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors;
- (iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity; and
- (v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity, if applicable.

24.2 **Notice of Force Majeure**

If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 (Fourteen) days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

24.3 **Duty to Minimise Delay**

Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

24.4 **Consequences of Force Majeure**

If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 24.2 [*Notice of Force Majeure*], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 25.1 [*Contractor's Claims*] to an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*].

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

24.5 **Force Majeure Affecting Subcontractor/s**

If any Subcontractor/s is/are entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

24.6 **Optional Termination, Payment and Release**

If the execution of substantially all the Works in progress is prevented for a continuous period of 90 (Ninety) days by reason of Force Majeure of which notice has been given under Sub-Clause 24.2 [*Notice of Force Majeure*], or for multiple periods which total more than 120 (One hundred and twenty) days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 (Seven) days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 21.3 [*Cessation of Work and Removal of Contractor's Equipment*].

Upon such termination, the Employer/s shall notify the financial institution providing the funding for the Project/s to that it may pay to the Contractor:

- (a) the amounts payable for any work carried out pursuant to this Contract for which a price is stated in the Contract;
- (b) the Cost of Plant/s and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this/these Plant/s and Materials shall remain the property of (and be at the risk of) the Contractor;
- (c) any other Cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works; and
- (d) if applicable, the Cost of removal of Temporary Works and Contractor's Equipment from the Site/s and the return of these items to the Contractor's works in his country or Head Office (or to any other destination at no greater cost).

25. **CLAIMS, DISPUTES AND ARBITRATION**

25.1 **Contractor's Claims**

If the Contractor considers himself to be entitled to any extension of the Time/s for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Employer/s and the financial institution providing the funding for the Project/s, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 (Twenty eight) days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 (Twenty eight) days, the Time/s for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer/s shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site/s or at another location acceptable to the Employer/s. Without admitting liability, the Employer/s may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Employer/s and the financial institution providing the funding for the Project/s to inspect all these records, and shall (if instructed) submit copies to the Employer/s and/or the financial institution providing the funding for the Project/s.

Within 60 (Sixty) days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Employer/s in conjunction with the financial institution providing the funding for the Project/s, the Contractor shall send to the Employer/s and the financial institution providing the funding for the Project/s, a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) this fully detailed claim shall be considered as interim;
- (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the financial institution providing the funding for the Project/s in conjunction with the Employer/s may reasonably require; and
- (c) the Contractor shall send a final claim within 28 (Twenty eight) days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the financial institution providing the funding for the Project/s in conjunction with the Employer/s.

Within 60 (Sixty) days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Employer/s and approved by the Contractor, the financial institution providing the funding for the Project/s in conjunction with the Employer/s shall respond with approval, or with disapproval and detailed comments. He/they may also request any necessary further particulars, but shall nevertheless give his /their response on the principles of the claim within such time.

Each interim payment shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

The financial institution providing the funding for the Project/s in conjunction with the Employer/s shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine (i) the extension (if any) of the Time/s for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [*Extension of Time for Completion*], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

25.2 Resolution by Contractor Board

All disputes and breached of contract connected with this PPP Agreement shall be submitted to the General Manager of the Contractor and the Commissioner for the Employer for discussion and resolution.

Any disputes that cannot be resolved by the General Manager and the Commissioner shall be submitted to the Board of Directors of the Contractor.

The Contractor's board of directors shall consider the matter at its next regular meeting held not less than thirty (30) Calendar Days after the submission of the matter to it. If the Board of directors of the Contractor cannot resolve a dispute within thirty (30) Calendar Days after said meeting, any Party to the dispute may commence with legal action after providing the relevant Party/ies with 14 (Fourteen) days written notice of the intention to do so and describing the breach of contract.

The Parties shall make their best efforts to resolve all disputes submitted to them through discussion and negotiations.

25.3. Due Legal Process

Any dispute, controversy or claim arising out of or relating to this PPP Agreement and the Contract, or the breach thereof, which is not resolved by expedited dispute resolution as provided in clause 25.2 above, shall be settled by means of recourse to the Supreme Court of South Africa as set forth in this clause 25.3. Provided, however, that the provisions of this clause 25.3 may be invoked by a Party only following the exhaustion of the remedies provided in clause 25.2 above, and any dispute, controversies or claims not raised in the manner provided therein are deemed waived.

Unless otherwise agreed, if the disputing Party fails to commence Supreme Court action within ninety (90) Calendar Days after the Contractor's Board of Directors referral process fails, as provided for in clause 25.2 above, the disputing Party shall be deemed to have waived all claims with respect to such dispute.

A Party (the "Initiating Party") may commence Supreme Court action by serving written notice of its intent to commence such upon the other Party/s. The written notice shall express the Initiating Party's intent to institute action under this PPP Agreement or the Contract, and the remedy to be sought by such action.

The litigating Parties may settle the dispute at any time before the conclusion of the Supreme Court action.

IN WITNESS WHEREOF, the Contractor and the Employer as First and Second Parties, and any Participating Municipality as Further Party/ies, have, by the signature of its / their duly authorized representative shown below, executed and delivered a counterpart of this PPP Agreement and its Addenda and Annexures.

First Party:

INOVASURE (PTY) LIMITED

263 Oak Avenue, Randburg, Johannesburg, South Africa

Tel: [+27 83 700 5059](tel:+27837005059) Email: max@inovasure.com

Name: SJ de la Rouviere. Designation: Chairman. Date: _____

(Signature)

Second Party:

KANNALAND LOCAL MUNICIPALITY:

Address: _____

Tel: _____ Email: _____

Name: _____ Designation: _____

Date: _____

Further Parties (Participating Municipalities)

To be incorporated into the InovaSure Energy Vault Program by means of concluding similar PPP Agreement/s with the Participating Municipality/ies along with the duly authorised Resolution/s of the relevant Municipal Council/s.

SCHEDULE 1

Particular Conditions

As set out in the attached Feasibility Study and Financial Model (as amended) or amplified by the Parties in separate Addenda

SCHEDULE 2

Schedule of Payments to a bank account/s of the Contractor's choosing, free of exchange or deductions, by the Financial Institution providing the funding for the Project/s

As determined and set out in the final Loan Terms Agreement between the Funding Agency/ies and Contractor.

SCHEDULE 3

Performance Security

An advance payment bond or other similar instrument/s in the format as may be required by the financial institution providing the funding for the Project/s, a copy of which shall be provided to the Employer/s if and when finalised and attached to the relevant PPP Agreement as an Addendum.

SCHEDULE 4

Insurance Requirements

Insurances to be maintained by the Employer

Construction All Risks for the full value of the Works.

Public Liability Insurance up to a minimum limit of R50 million, such insurance to extend to claims resulting from the Works including damage to the land or building/s or arising out of the Works or the performance of this Contract.

Insurances to be maintained by the Contractor

The Contractor will take out all statutory insurances.

The Contractor will take out and maintain product liability insurance in the amount of R1 billion until the expiry of 10 (Ten) years from the date of issue of the Making Good Defects Certificate and material damage insurance in respect of its own temporary buildings, plant and equipment.

The Contractor will take out and maintain suitable operational insurance for the duration of the existence of the PPP Agreement.

Insurances to be maintained by both Parties

Each Party to maintain material damage insurance for its own property.

And any other insurances required under this Contract.

APPENDIX 1

Employers Requirements

See Feasibility Study and Financial Model (as amended) attached hereto on a USB storage device.

APPENDIX 2

See Feasibility Study and Financial Model (as amended) attached hereto on a USB storage device and marked as such

APPENDIX 3

Contractor's Proposals and Financial Model

See Feasibility Study as published: <https://www.kannaland.gov.za/inovasure-energy-project-kannaland-municipality> and/or as attached hereto on a USB storage device

APPENDIX 4

Before and After Comparison of the InovaSure Energy Vault/s with reference to the Kannaland Local Municipality as the Pilot Implementation Project but applicable to any further Participating Municipality

| THE INOVASURE ENERGY VAULT IMPLEMENTATION: COMPARISON OF THE STATE OF AFFAIRS PRIOR TO THE IMPLEMENTATION VERSUS THE SITUATION AFTER IMPLEMENTATION | | |
|--|---|--|
| Before | After | Comments |
| Power Factor | Power Factor | Power Factor |
| The current Power Factor (PF) of the Municipalities vary from 0.6 up to 0.82, view have any equipment installed to correct the PF. The nett effect is simple to calculate that the direct distribution loss is equal to $(1 - \text{current PF}) \times \text{Total energy acquired}$. | The proposed Public Private Partnership Agreement between InovaSure and the relevant Local Municipality will set the specific terms out as to how InovaSure will install specialised equipment to correct the PF in real time and guarantee the PF in the specific municipal distribution network at 0.97. The nett effect is simple to calculate that the direct distribution gain is equal to the $(\text{Guaranteed Inovasure PF} - \text{the Current PF}) \times \text{Total energy acquired}$. | Excessively low power factor increases the required rating of electrical equipment relative to the load supported. |
| Peak Demand Management | Peak Demand Management | Peak Demand Management |
| The Municipality has to manage and predict accurately the peak demand in terms of the supply agreement with ESKOM. Failure to comply with the projections attracts very harsh penalties in terms of which a single transgression will attract penalties for a 12-month period after the transgression. Most Municipalities are currently paying approximately 30% of total tariff toward penalties. It is important to note that a single transgression will attract twelve months of penalties. | The Public Private Partnership Agreement between InovaSure and the relevant Local Municipality will set the specific terms out as to how InovaSure will install sophisticated equipment to accurately control the injection of energy into the distribution network to ensure balance between the demand and the supply and in addition to accurately control the cost benefit of limiting the acquisition of energy in time to ensure optimal cost of acquisition. This rules-based equipment and software can ensure that the peak demand projections be complied with exactly. This will ensure that transgressions are not possible which is an assurance that penalties will not be paid. | The value of this assurance is approximately $0.3 \times \text{Total energy acquired} \times 12$ as a maximum possible liability for a single transgression. Apart from limiting the exceedance of Nominated Maximum Demand (NMD), this typically happens during Peak Periods, therefore also indirectly supporting the grid during peak periods – so it is a win-win situation for both parties. |

| Dynamic Tariff Shifting | Dynamic Tariff Shifting | Dynamic Tariff Shifting |
|---|---|---|
| <p>Municipalities acquire energy against dynamic tariffs issued by ESKOM. The Tariff structures are complex and time based. The infrastructure of the post and pre-paid meters in this country does not allow the Municipality to pass the dynamic nature of the cost of acquisition on to the consumer.</p> | <p>InovaSure will deal with this issue in four ways. 1) Dynamic Tariff Shifting, 2) Intelligent Distribution Devices, 3) Incidental Savings to ESKOM and 4) Incidental Savings in Distribution Capacity. The first step will be to install equipment to manipulate the demand in many respects. The proposed Public Private Partnership Agreement between the relevant Local Municipality and InovaSure will set out the specific terms of how InovaSure will store energy on behalf of the Municipality during off-peak times and at low tariff from 11pm up to about 5 am and release the power intelligently during on-peak tariff from 6am to 8am into the Distribution Network.</p> <p>This will protect the substation maximum capacity and minimising the cost of acquisition. The same equipment is then used to store energy produced by the Municipality (described in another section of this document) to prepare for the evening peak starting at 6 pm up to 10 pm -ensuring lowest cost of energy acquisition during peak tariff. The nett effect of both cycles is approximately a 40% saving in the cost of the yearly acquisition of energy.</p> | |
| Tariff Escalations | Tariff Escalations | Tariff Escalations |
| <p>Currently the ESKOM energy tariffs have escalated by 400% over the past 10 years. It poses significant challenges to any Municipality to deal with passing the cost on to the consumer. The tariff increases are dynamic time-based tariffs and the Municipalities only have a fixed base tariff as an exit.</p> | <p>InovaSure will install equipment to generate energy on behalf of the Municipality of which total production will be stored for the benefit of the supply during the evening peak. This means that the total production of energy by the Municipality is effectively replacing the cost of peak acquisition.</p> <p>This means that the nett present value of the equipment must be calculated against the future acquisition of peak energy. The current escalations in Peak approximate 18.78 % yearly and it is not anticipated that this will follow CPI in any way even by the own submissions of ESKOM. The 9</p> | <p>The terms of this agreement that will be detailed in the proposed Public Private Partnership Agreement between InovaSure and the relevant Local Municipality, is for the generation of 50 MW_p Energy for a period of 50 years. The energy is used to mitigate the risk of the tariff increases and is focussed on the cost of evening peak energy. The NPV discounted at 11% price escalations of CPI surpass the total</p> |

| | | |
|---|---|--|
| | month peak tariff is 2.84 RkWh and for 2 months per year over 3 RkWh. | InovaSure capital cost for the project. |
| | | |
| Incidental Savings to ESKOM | Incidental Savings to ESKOM | Incidental Savings to ESKOM |
| Dynamic Tariffs were introduced by ESKOM to pass the cost of generation on to the end user, at different time of the day as well as to entice the user to buy energy at other times of the day. | InovaSure installs equipment to use these tariffs and manipulate the time of use of energy to ensure that the Municipality benefits from these tariffs. The nett effect is, however, that ESKOM also benefits from this implementation. During the past years, ESKOM implemented a rebate for energy injection at Peak. It was abandoned for many reasons but the invitation to apply jointly for the reinstatement is under discussion between ESKOM and InovaSure under the advice of the Central Energy Fund group of companies. | The value in terms of the historical rebate is R 1.4 RkWh. |
| | | |
| Intelligent Distribution Devices | Intelligent Distribution Devices | Intelligent Distribution Devices |
| The Municipalities are currently selling energy through obsolete devices, which in most instances do not function properly anymore. | InovaSure will install state-of-the-art pre-paid Distribution Devices consisting of an open-source electrical meter, compliant with the standards in South Africa. The device is Internet compliant and has an accessible Operating System. The Device will include a router operating system which can router traffic between the onboard devices ie. WiFi, LTE, Meter, Smart devices. The Device will include several Radios for communication - a 300 MHz backup communication device as well as the 2.4 GHz and 5 GHz radios and a LTE broadband external communication device. The device has the capability to communicate with at least eight electrical switches to do demand management on behalf of the client to limit energy cost due to time of use tariffs. | These devices will allow the Municipality to reconcile (in real-time) the energy being acquired with the energy being sold. There is currently no Municipality in South Africa which can do this and the value is therefore extremely high. The real-time reconciliation is a powerful tool to determine the condition of the distribution network. Any illegal connections will be identified immediately. The ability to manipulate the demand in the selection of eight domains in the house gives the ability to manage cost against time of use tariffs. |
| | | |
| Incidental Savings toward investment in Distribution Capacity | Incidental Savings toward investment in Distribution Capacity | Incidental Savings toward investment in Distribution Capacity |
| Urbanisation did not stop or decrease over the past decade due to the poor performance of the | The InovaSure Energy Vault protects the substation against peak utilisation and will increase the total nett capacity by 30% and ensure | It could easily be argued that the nett effect of this assurance can be valued at 30% of the installed |

| | | |
|--|---|---|
| <p>economy. This resulted in many of the Substations in the various Municipal distribution networks being under-capacity.</p> <p>ESKOM's inability to further invest in the capacity resulted in Municipalities requesting financial aid from National Treasury. We are being informed that that is estimated to be approximately R115 Billion in total.</p> | <p>additional use in off-peak energy distribution and on-peak protection and energy injection.</p> | <p>capacity of each Energy Vault. The peak production is 10MW and the maximum off-peak acquisition is 10MW. If we assume a 50% difference between peak and off-peak, the capacity increase will be 40% on a typical 25MW peak substation.</p> |
| <p>InovaSure "eThin" Technologies</p> | <p>InovaSure "eThin" Technologies</p> | <p>InovaSure "eThin" Technologies</p> |
| <p>Some Municipalities have been actively pursuing the installation of a public Wi-Fi system to ensure public access to the Internet.</p> | <p>InovaSure will install broadband connections to each Distribution Device (pre-paid "Smart meter") in each house in each Energy Vault deployment area. This broadband connection will be used to access the server and cloud technologies developed by InovaSure. These technologies include the ability to connect to a cluster of servers from remote devices using a secure Virtual Private Network (VPN) with a high degree of (incretion) encryption and compression. This secure connection will be maintained to uniquely identify the user as well as to ensure privacy of the end user data and to protect the cluster of computers. InovaSure will maintain the integrity of the cluster and will create Geo-Clusters to ensure Redundancy. InovaSure has entered into a Joint Venture with various companies, including Rapid Blue, to obtain unique content inclusive of Movies, Books and Music - inclusive of customised and curated educational content which includes the CAPS curriculum. The InovaSure "eThin" devices will be used to access the content via the distribution devices and the custom devices. The final service is to connect the "eThin" device to a Virtual Computer which is then the Personal Computer of the home owners where the device has been installed and that stays with the dwelling for the extent of the service</p> | <p>InovaSure built this technology base to explore the possibility of curbing illegal connections as well as to counter the animosity towards metered electrical distribution. We have tested the outcome and the results were overwhelmingly positive. Home owners presented with the ability to stream entertainment content through the Distribution devices as well as access the Internet and educational content do not interfere with the operation of the Distribution devices.</p> |

| | | |
|---|--|---|
| | being offered. The operating systems of the Virtual Computer and the software installed on the computer may be pre-selected by the home owner. | |
| | | |
| Indigent Electrification, Water and Sanitation | Indigent Electrification, Water and Sanitation | Indigent Electrification, Water and Sanitation |
| The Municipalities have an obligation to supply services to all the people in the relevant Municipality / Municipal district. There are a lot of indigent informal settlements posing a significant challenge to the Municipality. The cost of reticulation is in most instances prohibitive. | InovaSure and its collaborators have been successful in the design and implementation of a DC electrification and telecommunications process for informal settlements and have deployed thousands of these systems already the so-called "LivPak" system. These systems have recently integrated-with the InovaSure "eThin" technologies and the first LivPak total solutions are being installed in Kannaland, Diepsloot, Mabopane and George. | It is widely accepted that the cost of reticulation to the indigent household is in the order of R38000. This cost is being mitigated in total since InovaSure does the electrification independently which is a relationship between the InovaSure LivPak Co-operative in each community, its collaborators and the Home Owner. The "eThin" technologies are contracted independently and operated within a Co-operative structure. |
| | | |
| InovaSure Collection Services | InovaSure Collection Services | InovaSure Collection Services |
| Municipalities employ a large number of personnel to read the meters, process the data and issue invoices. | Changing the current infrastructure with pre-paid distribution devices as well as sophisticated software, eliminates many inherent risks with the retail of energy and results in a 100% collection rate. | The value is relatively simple in understanding the current debtors book - looking at the age analysis and understanding the post implementation resulting sales since real time reconciliation is possible. |
| | | |
| InovaSure Securitisation Services | InovaSure Securitisation Services | InovaSure Securitisation Services |
| Municipalities purchase energy from ESKOM and in some instances struggle to pay for the energy in time or in part. | InovaSure will replace the infrastructure with Advanced Distribution Devices which will ensure detail control over every aspect of energy distribution. The aspects of the services delivered to the end-user includes energy distribution but has many other very popular aspects to it. The fact that the energy is bought from the supplier but has already been sold, makes for a very secure counter party risk portfolio from ESKOM's perspective. | It is conceivable that with this in hand, InovaSure could ensure the payments toward ESKOM in return for some preferential treatment in tariff. It is suggested by InovaSure that a structured Power Purchase Agreement be negotiated and the payments be assured to |

| | | |
|------------------------------|--|---|
| | | <p>create value in the balance sheet of ESKOM.</p> <p>This enhancement of the Municipal payment capability will have a profound impact on its liquidity as well as its credit rating.</p> |
| | | |
| InovaSure "Ensurance" | InovaSure "Ensurance" | InovaSure "Ensurance" |
| | <p>InovaSure will "ensure" all the equipment for the period of installation and operation as a form of back-to-back warranty in conjunction with each component supplier that makes up the Energy Vault.</p> | |