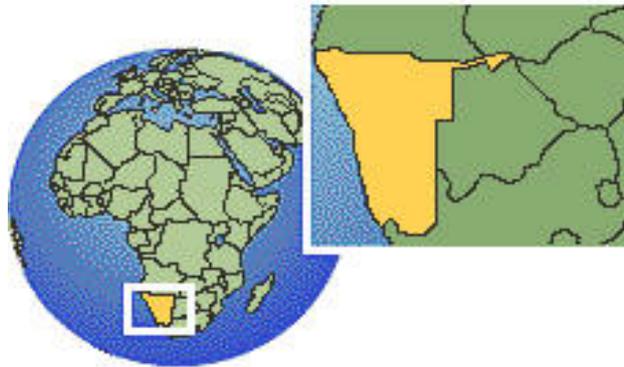




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Market Framework Technical Assistance**
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Volume II: Annex 11
MODEL PPA FOR SMALL SCALE IPPs



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**STANDARDIZED AGREEMENT FOR PURCHASE OF
ELECTRICAL ENERGY
MODEL TEMPLATE – A GUIDE ONLY
BASED ON THE SPPA BEING USED BY THE GOVERNMENT OF
SRI LANKA**

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**STANDARDIZED AGREEMENT FOR SMALL SCALE IPP
FOR SUPPLY OF ELECTRICAL ENERGY**

This Agreement is made and entered into at Windhoek this [] day of [] [20], by and between the Electricity Control Board, Namibia, a body corporate duly constituted by Act No. -----and having its head office at -----, Windhoek, Namibia (hereafter referred to as “ECB”), and [] a private company with its registered office at [] (hereafter referred to as “Seller” which term or expression where the context so requires means and includes the said [] and its successors and assigns, as permitted hereby)

WHEREAS, the Seller had submitted a proposal for sale to the Buyer of electrical energy from a small power production facility in Namibia; and

WHEREAS, the Seller’s project and tender of electrical energy for sale qualifies under the Small Power Producer Procurement Scheme of ECB, which is approved by the Government; and

WHEREAS the Buyer may purchase electrical energy under applicable law and regulations of the Democratic Socialist Republic of Namibia; and

WHEREAS, the Seller is a company duly incorporated and validly existing under the laws of the Democratic Socialist Republic of Namibia, has all requisite corporate and legal authority to execute this Agreement, and is permitted by applicable laws and regulations to sell independently produced power; and

WHEREAS, the SELLER wishes to sell and to deliver, and ECB wishes to grant a license to the Seller to produce and sell electrical energy to be produced by the Seller from the Facility described at Appendix B, all pursuant to the terms and conditions as set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the Seller and ECB hereby agree as follows:

ARTICLE 1 DEFINITIONS

When used with initial capitalization, whether in the singular or in the plural, the following terms shall have the following meaning:

“Agreement” means this document, including its appendices and all documents, regulations, or standards incorporated by reference, as such may be amended from time to time.

“Agreement A” means the appendix to this document defining the tariff applicable in the base year of -----for sale of energy output to the Buyer by the Small Power Producers and the methodology for calculating the applicable tariff for the years thereafter.

“Agreement B” means the appendix to this document setting out key specifications of the Seller’s Facility

“Agreement C” means the appendix to this document defining the technical standards for testing the Facility for the purpose of demonstrating whether or not the Facility satisfies the grid connection requirements of ECB.

“Commercial Operation Date” means the first day of the succeeding month following the day on which:

- (1) Subject to Section 4.4, the Seller notified ECB that electrical energy deliveries can commence, or
- (2) The Seller has commenced deliveries of electrical energy to the Buyer.

“Contract Year” means the twelve-month period beginning with the Commercial Operation Date and each succeeding twelve-month period.

“Due Date” means thirty (30) days after the date on which Buyer reads its meters installed at the Metering Point for the purpose of determining the amount of Energy Output of the Facility for the prior period, which reading shall occur pursuant to Article 5.2(a).

“Emergency” means a condition or situation, which is likely to result in disruption of service to the Buyer’s customers, or is likely to endanger life or property.

“Energy Output” means the amount of electrical energy generated by the facility and delivered to the Buyer.

“Facility” means all the Seller’s equipment and appurtenant land at a single site or parcel of land utilized to produce and deliver Energy Output, including but not limited to Seller’s generating, metering, and protective equipment.

“Government” means the Government of Namibia.

“Grid Point” means the relevant standards published by International Electrotechnical Commission of No. 3, rue de Varembé, P.O. BOX 131, CH-1211 Geneva, Switzerland.

“IEC Standards” means the relevant standards published by International practices, standards and engineering and operational considerations, including but not limited to, manufacturers’ recommendations and the exercise of reasonable skill, diligence, foresight, and prudence that would be exercised or generally followed in the operation and maintenance of facilities similar to the Facility.

“Prudent Utility Practices” means accepted international practices, standards and engineering and operational considerations, including but not limited to, manufacturers’ recommendations and the exercise of reasonable skill, diligence, foresight, and prudence that would be exercised or generally followed in the operation and maintenance of facilities similar to Facility.

“Interconnection Guidelines” means the G.59/1 engineering recommendation of the British Electricity Association, “Recommendations on the Connection of the Embedded Generating Plant to the Regional Electricity Companies; Distribution Systems (1991), or any subsequent version of this or a reasonable and prudent substitute guidance or standard adopted by ECB to apply to small power production facility interconnection.

“Metering Point” mean the point where Buyer metering of Seller’s Energy Output initially takes place and where title to electricity delivered by Seller passes to the Buyer.

“Must Run Facility” means the Seller has operating control over the amount and timing of electrical energy to be generated by the Facility, subject only to Emergencies and such directions as may be issued by ECB for the protection of its electrical system.

“MW” means a megawatt or 1000 kilowatts.

“Month” or “month’ means a calendar month.

“Party” means the Seller or Buyer and ECB

“Prime Rate” means the prime rate as announced from time to time by the Central Bank of Namibia for Rupee amounts, and in force on such date and, for the purpose of this Agreement, a change in any such rate shall be effective on, or from date on which it is announced or, if such announcement provides for such change to come into effect on later date, on and from such later date.

“Regulator” means the Electricity Control Board of Namibia, or his delegate, should one be created.

“Schedule Outage” means the owner or operator of a waste or renewable energy electrical generation or cogeneration facility that enters this agreement for the sale of the Energy Output from not more than 10MW of the installed electric generated by the Facility.

“Unscheduled Outage” means and outage, which is not a Scheduled Outage.

ARTICLE 2 SALE AND PURCHASE OF ENERGY OUTPUT

2.1 Sale and purchase of Energy Output The Seller shall deliver and sell, and the Buyer shall accept and purchase the electrical Energy Output generated by the Facility of the Seller, which Seller shall maintain its status as a Small Power Producer and which Energy Output shall be as specified in Appendix B for Quality of Electrical Energy at the Termination Point.

2.2 Obligations of the Seller

- (a) The Seller shall notify the Buyer and ECB in writing at least 30 days prior to synchronizing or operating the Seller’s generators in parallel with the Buyer’s grid system, and co-ordinate such commencement of operation with the Buyer.
- (b) Prior to the Commercial Operation Date and thereafter on or before 1st December of each subsequent Year, the Seller shall furnish to the Buyer and ECB an annual forecast that includes the following: (i) anticipated monthly generation availability, and (ii) Schedule Outages for each year; provided, however, the Seller shall have no liability to the Buyer and shall be subject to no penalty in the event that the actual amount of electrical energy delivered to Buyer, or the times of said delivery, differ from the amounts or times shown in said forecasts.
- (c) The Seller shall notify the Buyer and ECB on month in advance of Scheduled Outages, including a non-binding estimate of expected length, and as soon as possible, of any Unscheduled Outages, including a non-binding estimate of expected length.

- (d) Notwithstanding that the Seller Facility is a Must Run Facility, whenever the Buyer's system with which it is directly interconnected experience an Emergency, or whenever it is necessary to aid in the restoration of service on the Buyer's system or on the systems with which it is directly or indirectly interconnected, the Buyer may, in its sole discretion, curtail or interrupt the taking of all or a portion of Energy Output hereunder, provided such curtailment or interruption shall continue only for so long as it reasonably necessary under Prudent Utility Practices.
- (e) The Seller shall comply strictly with interconnection Guidelines and all ECB Standards applicable to interconnection of similar facilities. The Seller shall make all arrangements at its own expense necessary to make available the Energy Output to the Buyer at the Grid Point. The Buyer shall cooperate with the Seller in these arrangements.
- (f) The Seller shall obtain all the necessary permission, clearances for construction and operation of the facility.

2.3 Buyer's obligation

- (a) Buyer's obligations to make payments as described herein, shall continue during the term of this Agreement, and shall only be excused in the event of Force Majeure arising under Article 6 herein.
- (b) Because the Seller's Facility is a Must Run Facility, Buyer shall use its best efforts to co-ordinate and to minimize any periods of interruption, reduction, refusal, or curtailment as provided for in this Article with the periods of previously Scheduled Outages at the Facility. Buyer shall, prior to initiating any interruption, reduction or refusal of Energy Output under this Article, use its best efforts to provide the Seller with a minimum of twenty-four (24) hours advance notice, such notice to include an explanation of the cause of the interruption, and an estimate of start and duration of the interruption.
- (c) Buyer shall not assert the Seller's liability for, and the Seller shall not be liable to the Buyer for, any direct damages resulting from the Seller's inadvertent or accidental and non-negligent failure in meeting the Energy Output. Without Buyer's prior written approval, the said limitation of the Seller's liability shall not apply where the Seller deliberately reduced Energy Output for the purposes of selling or attempting to sell electrical energy to any third party, or for the purpose of producing any other form of energy capable of being produced at the Facility.

2.4 Interruptions

- (a) Buyer may interrupt, reduce or refuse to purchase and accept delivery of all or a portion of Energy Output from the Facility, to the extent that such interruption, reduction or refusal is necessary, Buyer's sole discretion, under Emergencies or under Prudent Utility Practices, in order for Buyer to install equipment, make repairs, replacements, investigation or inspections of Buyer's electrical network.
- (b) Even though the Seller's Facility is a Must Run Facility, Buyer shall not be obligated to purchase to take Energy Output if the Facility is not operated and maintained in a manner consistent with Prudent Utility Practices in accordance with Article 4.

ARTICLE 3 TERM; TERMINATION

3.1 Term As of the date and when signed below by all Parties, this Agreement shall commence and, subject to the termination provisions set forth in this Agreement, shall continue for a period of 15 years, beginning on the Commercial Date. Notwithstanding the foregoing, the applicable provisions of this Agreement shall remain in effect after termination hereof to the extent necessary to provide for final billings, billing adjustments, payments, and effectuation of all rights hereunder.

3.2 Default

- (a) Events of Default hereunder shall be each or any of the following events:
- (i) The Seller fails to achieve the milestones set forth in Article 11(b).
 - (ii) The Seller fails to complete, abandons, or cancels construction of the Facility.
 - (iii) The adjudged bankruptcy, dissolution, or liquidation of either Party, in which case the bankrupt, dissolved, or liquidation Party shall be deemed to be the Party in default hereunder
 - (iv) Either Party fails to perform or observe any of the terms, conditions, or provisions of this Agreement and appendices hereto, and such failure shall not be rectified or cured within sixty (60) days after written notice thereof from the non-defaulting Party, provided, however, that if such failure cannot reasonably be cured within sixty (60) day period to effect such cure, provided that the defaulting Party commences within such sixty (60) day period to effect such cure and at all time thereafter proceeds diligently to complete such cure as quickly as possible, subject to the provisions of Article 6.
 - (v) Without reasonable excuse, the failure of any party to make an undisputed payment when due and non-payment continues for more than ninety (90) days.
 - (vi) The compulsory expropriation, acquisition or nationalization of the material assets or equity of the Seller by any instrumentality of Government, or the dissolution or reorganization of Buyer such that it cannot perform its obligations hereunder.
 - (vii) Either Party contests and denies the enforceability of this Agreement, in which case the Party contesting enforceability shall be deemed to be the Party in default hereunder.

(b) Termination Upon the occurrence of an Event of Default, in each and every case, the non-defaulting Party shall give 30 days written notice to the defaulting Party and may pursue any remedies provided for this Agreement or under law, and may terminate this Agreement by giving 60 days written notice to the other Party, provided that should Buyer claim and Event of Default against the Seller, it shall notify and afford the Seller's lenders reasonable time, access and opportunity to remedy the event giving rise to the default, and shall cooperate with the Seller's lenders to this end.

ARTICLE 4 CONSTRUCTION; INTERCONNECTION; OPERATION; METERING

4.1: Construction, Interconnection Operation and Metering

- (a) The Seller shall obtain and remain in compliance with all governmental and other environmental and other approvals, licenses, permits, and certificate necessary for the siting, construction, and operation of the Facility for the duration of this agreement.
- (b) The Seller shall obtain all licenses, permits, approvals and regulations necessary, imposed or required by the Government of Namibia and/or any other agency or any local authority in Namibia and shall comply with all legal requirements with this Agreement.
- (c) The Seller shall obtain all customs clearances and approvals for the importation and transportation of all equipment necessary for the design, and construction of the Facility.
- (d) The Seller shall obtain all necessary visas and work permits from Government agencies or departments in Namibia to enable the Seller's expatriate officers and staff to work in Namibia for the duration of their assignment.

4.2 Standards

- (a) ECB's standards and requirements for equipment, transmission, and distribution including the Interconnection Guidelines shall apply to the Facility and to the Transmission Line.
- (b) The Facility shall be operated by the Seller in a manner consistent with Prudent Utility Practices.

4.3 Testing Upon completion of construction, the Facility shall be tested by and at the expense of the Seller as per with the technical standards set out in Appendix C hereof, and incorporated by reference herein. ECB and the Buyer shall be entitled to witness testing procedures. The parties shall meet and agree to the procedures, standards, protective settings and a program for the testing of the Facility in accordance with the Appendix C hereto. The Buyer undertakes to accept and pay for all electrical output generation during any such testing. The Seller shall certify in writing to the Buyer that the Facility conforms to the specifications for Quality of Electrical Energy at the Termination Pint set out in Appendix B and incorporated by reference.

4.4 Inspection of Seller's equipment Upon reasonable prior notice, The Buyer has the right to inspect the Seller's equipment of the Facility to ensure compliance with Prudent Utility Practices and the Interconnection Guidelines. Such access shall not interfere with the Seller's normal business operation. If, in the opinion of Buyer, the Sellers equipment is not being so operated and maintained, Buyer shall notify the Seller of any such discrepancies which the Seller shall correct promptly. Until such correction, Buyer is not required to accept and pay for Energy Output.

4.5 Induction type generators If the Seller's Facility includes an induction type generator(s), the Seller shall pay Buyer, at prevailing rates, the cost for all capacity and energy consumed from Buyer to excite the induction generators.

4.6 Meters

- (a) Buyer shall procure, own and maintain the primary metering equipment (“Metering Equipment”) employed for purposes of measurements and billing under this Agreement. The Metering Equipment shall be sealable. The Seller shall provide a lockable cubicle for the Metering Equipment as required by Buyer.
- (b) The Seller shall provide Buyer access to the Facility at all reasonable times upon reasonable prior notice for the purpose of reading
- (c) The metering Equipment shall be tested at least annually, at the Seller’s expense, in accordance with Prudent Utility Practices. At any reasonable time, either Party may request a test of the accuracy of any metering equipment. Each Party shall bear the cost of a test requested by it. The results of meter calibrations or tests shall be available for examination by the Parties at all reasonable times. If, at any time, any metering equipment is found to be inaccurate by more than two percent (2.0%), Buyer shall cause such metering equipment to be made accurate or replaced as soon as possible. Each party shall be present for breaking the seals, testing, recalibration and sealing of meters. If either Party believes that there has been a meter failure or stoppage, it shall immediately notify the other. Buyer shall then investigate and take corrective action if so required.
- (d) Testing and calibrating of meters, and any verification of meter accuracy, shall be performed pursuant to IEC Standards, by Buyer or a mutually agreed upon qualified independent third party. Calibration shall occur before use of the meters. All meters shall be sealed and locked by Buyer after calibration. The Seller shall be notified of calibration, and have the right to present at such testing and calibration.
- (e) Any supplemental electrical energy purchased by seller shall be pursuant to normal tariffs for that category and amount of power.

4.7 Transmission Line Buyer shall design and construct the Transmission Line per ECB technical standards and IEC Standards at the cost and expense of the Seller so as to be available to transmit the electrical energy generated by the Facility as of the Commercial Operation Date, or if ECB is not able to commit to construct the Transmission Line so as to be available to transmit the electrical energy generated by the Facility as of the Commercial Operation Date, or if the parties otherwise agree that it is preferable for Seller to construct the Transmission Line per ECB technical standards and IEC Standards at its own expenses, and Buyer shall cooperate with and assist Seller as necessary to obtain any necessary right of way or easements for the Transmission Line. The Transmission will be operated and maintained by the Buyer at its own cost and expense.

4.8 Protective Apparatus

- (a) Seller shall install at its own expense such protective apparatus as reasonable required by Buyer to protect from damage the Buyer system and the Transmission line from fluctuations or variations in voltage, power, current and frequency of the Energy Output, and so as to satisfy the Specification of the Seller’s Facility for quality of Electrical Energy at the Termination Point set out in Appendix B herein.

- (b) Buyer shall have the right to review the design of all equipment of the Seller as to the adequacy of the protective apparatus provided at the Facility. The Seller shall be notified of the results of such review by Buyer in writing within thirty (30) days of the receipt of all specifications related to the proposed design. Any flaws perceived by Buyer in the proposed design shall be described in the written notice. Any additions or modifications required by Buyer shall be incorporated by the Seller.

ARTICLE 5 DELIVERY AND ACCEPTANCE OF ENERGY OUTPUT; PAYMENT

5.1 Title to Energy Buyer shall accept all Energy Output that substantially satisfies the specification of the Seller's Facility for Quality of Electrical energy at the Termination Point set out in Appendix B herein, and title to such Energy Output shall pass from seller to Buyer at the Metering Point. Where these Specifications are not substantially satisfied, Buyer may reject such Energy Output where it could reasonably damage Buyer's system, by disconnecting the Facility from the Buyer's system.

5.2 Billing

- (a) Buyer shall read its meters provided as in Article 4.6 (a) at the end of each month for determination of the electrical energy delivered to and accepted by Buyer under the terms of this Agreement, and shall supply the results of such meter readings (including time and date of the reading) to the Seller within fifteen (15) days following the reading thereof.
- (b) Buyer pay the Seller on or before the due date the seasonally adjusted price as calculated pursuant to the provisions of Appendix A for all Energy Output that is not disputed in good faith pursuant to Article 8. The price for Energy Output shall be adjusted annually for the prospective year, differentiated seasonally, and subject to a minimum price of not less than ninety (90) percent of the price at the time of execution of this Agreement, all such values indicated in, and determined pursuant to the calculation in, Appendix A. Any undisputed amounts unpaid after the Due Date shall bear interest at the Prime Rate compounded on a monthly basis. Either party may dispute any billing error, amount, or payment by written notification to the other party within one (1) year of receipt of a meter reading or other alternative billing information pursuant to subpart (d) of this section, whether or not payment has been made by Buyer dispute resolution is in favor of the Seller, Buyer pay the disputed amount plus interest at the Prime Rate, compounded monthly, from the original Due Date to the Date the refund is made. All such payments shall be due within fifteen (15) days of the date of such resolution.
- (c) In the event that any data required for the purpose of determining payment hereunder are unavailable when required, such unavailable data may be estimated by Buyer subject to any required adjustment based upon actual data in the next subsequent payment month.
- (d) To determine the amount of electrical energy delivered and accepted, billing and payment will be based on the first available of the following metering or estimation options in order of preference:

- (i) The primary Buyer meter measurement(s) when that Buyer meter satisfies for the period at issue the accuracy standard in Article 4(c); or
 - (ii) The Seller's secondary or other meter or check meter measurement when that secondary meter is positioned to record the Energy Output, and when that meter(s) satisfies the accuracy standard in Article 4(c) for the period if issue.
 - (iii) Where all meters and sub-meters fail to accurately register electrical energy delivered accepted, the average monthly data for the Facility from the same month in the prior Contract Year, if available, as reasonably adjusted for the particular billing period by any relevant available data regarding rainfall, stream flow, actual Facility fuel consumption, average heat rate, hours of operation, time of operation of generators, and native self-use of power output (collectively "Operation Variations") during the period of meter failure, shall be employed to estimate the amount of electrical energy delivered and accepted. Where such data are not reliably available, the average monthly electrical energy delivered and accepted during the previous six (6) billing periods prior to meter failure (or fewer months if the Facility is less than six months from the Commercial Operation Date), as adjusted or normalized for outages or Operating Variations, shall be used to estimate electrical energy delivered and accepted by the Facility for the period if issue.
- (e) Buyer may set off amounts owed by Buyer to the Seller regarding the Facility against amounts owed by the Seller to Buyer regarding the Facility under this Agreement.
- (f) The Seller may interrupt, reduce or refuse to make available Energy Output to Buyer only to the extent that the Seller reasonably determines that such interruption, reduction, or refusal is necessary in order to install equipment in, make repairs, replacements, investigations and inspections of, or perform maintenance on the Facility which directly affects the Energy Output. The Seller shall, prior to initiating and interruption, reduction or refusal of Energy Output, use its best efforts to provide Buyer a minimum of twenty-four (24) hours advance notice, such notice to include an explanation of the cause of the interruption, and an estimate of the start and duration of the interruption.
- (g) All payments made under this Agreement shall be calculated net of Goods and Services Tax that is payable in respect of such payments. Any Goods and Services Tax that is payable will then be added to such payments.

ARTICLE 6 FORCE MAJEURE

- (a) For purposes of this Agreement, the term "Force Majeure" shall mean any of the following events not within the reasonable control and not due to the failure, negligence or persistent disregard of the Party whose performance is adversely affected or becomes impracticable, and who chooses to invoke Fore Majeure:
- (h) Action of a court or public authority having or purporting to have jurisdiction or restraints by a court or regulatory agency;

- (d) A break or fault in Buyer's transmission or distribution systems or failure of Buyer's or the Seller's transformers, switches, or other equipment necessary for delivery and receipt of electrical energy by Buyer from the Seller;
 - (e) After the Commercial Operation Date, the failure by the Seller after reasonable effort to obtain a necessary consent or approval from the Government;
 - (f) Any act of God, fire, explosion, excessive rains, floods, tidal wave, epidemic, or earthquake.
 - (g) Failure of any major supplier to perform;
 - (h) Any other cause, whether or not similar thereto, beyond the reasonable control of , and without the fault or negligence of, the party claiming Force Majeure;
 - (i) Civil disturbance, insurrection, rebellion, hostilities, public disorder or public disobedience, sabotage, riot, embargo, blockade, quarantine, labor dispute, strikes, lockouts, acts of war or the public enemy whether or not is declared;
 - (j) Nationalization, expropriation, or confiscation of the assets or authority of the Buyer by any authority of the Government.
- (b) Any obligation of either Party which arose before the occurrence of the Force Majeure event causing non-performance shall not be excused as a result of the occurrence of a Force Majeure event. The late payment of money owed is not excused by Force Majeure. No event resulting from a failure of a Party to operate and maintain their respective plant and equipment accordance with Prudent Utility Practices shall be deemed to be an event of Force Majeure.
- (c) No default shall occur, provided that the adversely affected non-performing Party invoking Force Majeure shall:
- (i) Provide prompt notice in writing to the other Party of the occurrence of the Force Majeure, giving an estimation of its expected duration and the probable impact on the performance of its obligations hereunder, and submitting good and satisfactory evidence of the existence of the Force Majeure,
 - (ii) Exercise all reasonable efforts to continue to perform its obligations hereunder,
 - (iii) Expeditiously take action to correct or cure the Force Majeure and submit good and satisfactory evidence that it is making all reasonable efforts to correct or cure the Force Majeure,
 - (iv) Exercise all reasonable efforts to mitigate or limit damages to other Party, to the extent such action will not adversely effect its own interests, and
 - (v) Provide prompt notice to other Party of the cessation of the Force Majeure.
- (d) If a Party is rendered wholly or partly unable to perform its duties and obligations under this Agreement because of a Force Majeure event, that Party shall be excused to the extent necessary from whatever performance is affected by the Force Majeure event to the extent so affected.
- (e) Notwithstanding the foregoing, if the Party is prevented from substantially performing its obligations under this Agreement for a period of three(3) years

due to the occurrence of a Force Majeure event, the other Party may terminate the Agreement by ninety (90) days written notice given any time thereafter to the non performing Party, unless substantial performance is resumed prior to the expiration of ninety (90) day period. ECB may not terminate the Agreement under this part due to a Force Majeure event described in Article 6(a) items (7) or (8).

ARTICLE 7 RELATIONSHIP OF PARTIES; LIMITATION OF LIABILITY; INDEMNIFICATION

The Parties do not intend to create any rights, or grant any remedies to, any third party beneficiary of this Agreement.

- (a) Nothing in this Agreement shall be construed as creating any relationship between the Parties other than not of independent contractors for sale and purchase of electrical energy generated at the Facility. No agency relationship of any kind is created by this Agreement.
- (b) Notwithstanding subpart (d) hereof or any other provision of this Agreement to the contrary, neither the Buyer nor the Seller nor their respective officers, directors, agents, employees, parent, subsidiaries or affiliates shall be liable or responsible to the other party or its parent, subsidiaries, affiliates, officers, directors, agents, employees, successors or assigns, or their respective insurers, for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, including, without limitation, claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement).
- (c) Each Party shall defend, indemnify and save the other party, its officers, directors, agents, employees and affiliates, harmless from and against any and all claims, liabilities, actions, demands, judgments, losses, costs, expenses (including reasonable attorney's fee), suits, actions or damages arising by reason of bodily injury, death, or damage to property sustained by any person or entity (whether or not a party to this Agreement):
 - (i) caused by or sustained on facilities owned or controlled by the Party, except to the extent caused by an act of negligence or willful misconduct: by an officer, director, subcontractor, agent or employee of the other Party; or
 - (ii) caused by an act of negligence or willful misconduct of the Party or by an officer, director, subcontractor, agent or employee of the Party.
- (d) If ECB and Seller are both determined to have been negligent in manner addressed by subpart (d) above, the obligations of the Seller and ECB shall be appropriately adjusted based on the percentage of the responsibility of each Party for such negligence.
- (e) The Seller shall accept all liability and release ECB from and indemnify ECB against any Liability for faults or damage to the Transmission Line, ECB electrical system and public, as a result of the operation of the Seller's equipment.

ARTICLE 8 DISPUTE RESOLUTION

- (a) The parties agree that if there is any dispute or difference between them arising out of the Agreement or in the interpretation of any of the provisions thereof they shall Endeavour to meet in an effort to resolve such dispute by discussion, within 30 days (Conciliation Period) of such dispute arising, failing such resolution then the parties in dispute shall refer at their costs the dispute to mutually agreed expert with experience in the field of Power generation or related field to resolve the matter within 60 days from the conciliation period, where the difference or dispute involves a claim in money this Article shall apply where the claim is less than Namibia Rupees 1,000,000.00. Where such dispute is not resolved as aforesaid at the end on ninety (90) days after conciliation period notwithstanding the fact that the claim is less than -----then the provisions of 8(b) shall apply.
- (b) Any dispute that is not resolved under 8(a) above may be submitted by either party to arbitration for final settlement under the Arbitration Act No. 11 of 1995
- (c) The decision of the Arbitrator shall be final and binding on the parties.
- (d) The performance of the contract may contract may continue during arbitration proceedings as far as possible.

ARTICLE 9 DELEGATION AND ASSIGNMENT

This Agreement shall inure to the benefit of and bind the respective successors, assigns, and delegates of the Parties. No assignment or delegation by the Seller of any of its rights, duties, or obligations here under shall be made or become effective without the prior written consent of the Buyer in each case being obtained, which consent shall not be unreasonably withheld by the Buyer or its successors in interest, except that without the Buyer's consent the Seller may (1) delegate or assign some or all of its rights and duties to an affiliate whose principal functions are to hold the ownership interest in or to operate the Facility, or (2) assign or delegate to an unrelated entity for purposes of financing, obtaining equipment, or construction of the Facility. The Seller shall promptly notice Buyer in writing of any assignment or delegation that it makes.

ARTICLE 10 MISCELLANEOUS PROVISIONS

- (a) This Agreement may not be modified or amended except in writing signed on behalf of both Parties by their duly authorized officers.
- (b) This Agreement constitutes the entire agreement between the Parties relating to the subject hereof, and all previous agreements, discussions, communications and correspondences with respect to the subject matter hereof are superseded by the execution of this Agreement
- (c) The interpretation and performance of this Agreement shall be in accordance with and controlled by the laws of the Democratic Socialist Republic of Namibia.

- (d) Each Party represents and warrants to the other that the execution and performance of this Agreement does not conflict with any rules, regulations or requirements binding that Party, and that there is no legal or administrative action pending that prohibits or impairs the Party from performing under the Agreement.
- (d) There shall be no implied waivers under this Agreement. The failure of either Party to require compliance with any provision of this Agreement shall not affect that Party's right to later enforce the same. It is agreed that the express waiver by either Party of performance of any of the terms of this Agreement or of any breach thereof shall not be held or deemed to be an implied waiver by that Party of any subsequent failure to perform the same or any other term or condition of this Agreement or of any breach thereof.
- (e) If any clause of this Agreement is ruled invalid by a court of competent jurisdiction, it shall not affect the remainder of the Agreement if it can construed to affect its essential purpose without the invalid clause.
- (f) The Headings in this Agreement are descriptive, and are not intended to affect the interpretation or meaning of the Agreement.
- (g) Any notice, invoice, or other communication which is required or permitted by this Agreement, except as otherwise provided herein, shall be in writing and delivered by personal service, telecopy, or mailed postage prepaid, properly addressed as follows:
 - (1) In the case of the Seller to the person, the Seller, and address as indicated on the signature execution line below.
 - (2) In the case of the Buyer to: General Manager, -----

Another address or addressee may be specified in a notice duly given as provided. Each notice, invoice or other communication which shall be mailed, delivered or transmitted in the manner described above shall be deemed sufficiently given and received for all purposes at such time as it is delivered to the addressee or at such time as delivery is refused by the addressee upon presentation.

ARTICLE 11 FIRST REFUSAL; MILESTONES

(a) First Refusal At the conclusion of the term of this Agreement, Buyer shall have the right of first refusal on terms identical to those offered by a third party to the Seller, to purchase any electrical energy to be sold from the Facility after the term of this Agreement. The Seller shall inform Buyer in writing of any such terms offered by a third party. ECB shall sixty (60) days thereafter to exercise its right of first refusal, if at all.

(b) Milestones (i) The Seller shall have a period of the [] day of the months for receipt of all permits and approvals necessary for land acquisition and use; construction, and operation of the Facility, from the date hereof.

(ii) The Seller shall have a period [] month after achieving the Milestone (i) above, to achieve the Commercial Operation Date.

**Namibia IPP and Investment Market Framework Technical Assistance
A Grant by the U.S. Trade and Development Agency to the Electricity Control Board of
Namibia – Grant Number: GH051130313**

In witness whereof the Parties have executed this Agreement as of the [] day of the month of [], [200], each signatory duly authorized entity to enter freely this Agreement and to be bound by the terms and conditions contained herein.

-----BUYER

THE SELLER

By:

By:

Name:

Name:

Title:

Title:

By:

By:

Name:

Name:

Title:

Title:

APPENDIX A RATES FOR DELIVERY OF ENERGY OUTPUT

1. Power Purchase Tariff

- 1.1 Payments to be made to the Seller under the Power Purchase Agreement shall be calculated in accordance with the provisions of this Appendix. The Tariff calculation is based on avoided cost principles. The methodology of calculating the avoided cost is given under Section 2 of this Appendix.
- 1.2 Tariff for a given year is applicable from 1st January to 31st December of the year. The Tariff shall be adjusted annually for the perspective year. Differentiated seasonally and subject to provisions of the Section 1.3 below.

The Tariff applicable for a given year will be published before the first day of December of the previous year.

1.3 Minimum tariff

The Tariff in any given year shall not be less than 90% of the First Year Tariff as set out in Section 3 below. If during the term of this Agreement, the Tariff forecast for any year becomes less than 90% of the Tariff on the date of the execution of this Agreement ("First Year Tariff"), the Tariff applicable for that year will be equal to the Tariff applicable for the previous year.

2. Calculation of the Tariff

2.1 Introduction

Avoided cost of energy represents the maximum value of generation avoided by the Buyer as result of any purchase of energy from sources outside the Buyer's system. Ideally, this value should be the value of one unit of energy (kWh) displaced at the margin by unit of energy purchased from such sources. According to this rather broad definition, the avoided cost of a unit of electricity comprises fuel and variable O&M costs of generation displaced at the margin by a unit purchased at a given instant. This is generally the cost of most expensive unit being generated at that instant, since it is implied that different generators are dispatched in their merit order of costs, subject to availability.

For purchases of energy from the Seller, the maximum price the Buyer is willing to pay for energy is its avoided cost, subject to the provisions of Sections 1.3 above. The avoided generation cost is calculated separately for dry and wet seasons of year.

2.2 Tariff Calculation Methodology

The following method is used in the calculation of yearly Tariff:

Step 1. To calculate the cost of a unit generated by each plant in operation using applicable fuel costs and other plant data such as heat rates. The applicable fuel cost will be determined on basis of the fuel price calculation by the Ceylon Petroleum Corporation in its fuel sales to the Buyer. This formula, along with the plant data and the parameters used in the calculations are published in the "Calculation of Small Power Purchase Tariff", which is published separately for the respective year.

Step 2 Compute the expected plant factors for each month in the year under consideration using projections prepared by the Buyer's System Control Center

Step 3 Calculate the fraction of time that each plant operates in the margin during a given month using the expected monthly plant factors. These fractions are then used in estimating the overall monthly avoided cost.

Step 4 Estimate the avoided costs for wet and dry seasons separately (for hydropower IPPs) by taking the arithmetic average of the months in each season. That is, the Dry Season tariff is the average of avoided costs calculated for months -----and the Wet Season tariff is the average of those in the balance of the months. Allowances made on account of Station Losses, Transmission Losses and overheads incurred by ECB are as follows:

Allowance for	Percent
Station Losses	3.0
Transmission Losses	3.2
ECB Overheads	1.5

Step 5 Estimating the Tariff offered to small power producers

The Tariff offered to the Seller each year shall be the arithmetic average of the following:

- (a) Avoided cost of generation for the year, calculated according to methodology described in Step 4, and;
- (b) Avoided costs of generation used for estimating the price offered to the Seller in the previous two years.

APPENDIX C TECHNICAL STANDARDS FOR TESTING OF THE FACILITY

- (i) The Engineering Recommendation G.59/1 of The Electricity Association, 30, Millbank, London SW 1P 4RD, United Kingdom and connected documents thereto.
- (ii) Any Subsequent written agreement come into force between the seller and ECB on testing the Facility.