

[NAME OF BUYER]

- And-

[NGABWE POWER COMPANY Ltd.]

.....

POWER SUPPLY AGREEMENT

(Relating to the supply of power to large and retail customers from the Solar Power Generation Plant at Ngabwe Municipality – Zambia)

.....

This Agreement is for use by NGABWE POWER COMPANY only and may not be used by any other party without the prior written consent.

THIS AGREEMENT (together with any Schedules attached hereto) is executed on the day of2018 by and between:

- (1) [**DESCRIBE BUYER**], (hereinafter referred to as the “**Buyer**”, which expression shall where the context so admits, include its successors and assignees) of the one part;

AND

- (2) **NGABWE POWER COMPANY Ltd.**, a company incorporated in Zambia whose registered office is at Plot No. [], Lusaka, Zambia (hereinafter referred to as the “**Seller**”, which expression shall where the context so admits, include its successors and assignees) of the other part.

Buyer and Seller are hereinafter referred to individually as "**Party**" and collectively as the "**Parties**".

WHEREAS:

- A. The Seller will develop, construct, operate and maintain a power generation facility [insert type of technology to be used] with an installed capacity of [insert capacity of proposed plant] located at [insert project location], (hereinafter referred to as the “facility”).
- B. The Seller wishes to sell and the Buyer wishes to purchase the power on the terms and conditions contained herein.

NOW THEREFORE, the Parties hereby agree as follows:

1. DEFINITIONS

1.1 In this Agreement:

“**Agreement**” means this Agreement together with the schedules hereto and any extensions or amendments agreed to in writing by the Parties.

“**Applicable Law**” means all laws, treaties, ordinances, decrees, statutes, rules and guidelines and regulations of any national, state, municipality, regional or other governmental agency or authority having jurisdiction over the Parties. Any reference to an Applicable law shall include all statutory provisions amending or replacing such laws.

“**Approval**” means any approval, consent, exemption, license, permit from any relevant Authority required for the performance of either Parties obligations hereunder.

“Available Capacity” means at any given time the alternating current capacity of the plant available for delivery to the Purchaser in accordance with this Agreement.

“Business Day” means a day other than a Saturday, Sunday or public holiday.

“Buyer” means the Purchaser of the electricity generated under the terms of this Agreement.

“Change in Law” means:

- (a) the adoption, enactment, promulgation, repeal, amendment, reinterpretation, change in application, change in interpretation or modification of any Applicable Law, by any Relevant Authority after the execution of this Agreement;
- (b) the imposition of any material condition not required as of the date hereof in connection with the issuance, renewal or modification of any Approvals, by any Relevant Authority; or
- (c) the change or modification of any Approvals by any Relevant Authority or the imposition of other obligations imposing a cost on Seller after the execution date of this Agreement.

“Day” means a period of twenty four hours beginning at 00:00 hours and ending at 24:00 hours.

“Effective Date” means the date on which this Agreement takes effect after satisfying all conditions precedent.

“ERB” means the Energy Regulation Board established under the Energy Regulation Act, Chapter 436 of the Laws of Zambia.

“EIA” means Environmental Impact Assessment.

“Generation License” means the license issued by the ERB authorizing the Seller to generate power.

“kW” means kilo watt.

“kwh” means kilo watt hour.

“Month” means a calendar month.

“Person” means any natural person or body corporate or unincorporated body.

“Country Standards” means any standards that are applicable or may be applicable to the Project from time to time.

2. INTERPRETATION

2.1 In this Agreement, except where expressly provided to the contrary:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include every gender;
- (c) Schedules hereto shall form part of this Agreement and in the event of any conflict between the main body of this Agreement and a Schedule the main body of this Agreement shall prevail over the provisions of the Schedule;
- (d) reference to any publication, statute, rule, regulation, instrument or standard means the same as amended, supplemented or re-enacted from time to time;
- (e) reference to any contract or agreement means the same as amended, supplemented or replaced from time to time;
- (f) reference to Clauses and Schedules means reference to Clauses hereof, and Schedules to this Agreement;
- (g) headings are inserted for ease of reference only and shall not form part of this Agreement, affect its interpretation or construction or have any legal effect;
- (h) when any number of days is prescribed, such number shall mean calendar days, unless Business Days are expressly referred to, and the determination of the number of days comprised in a given period for the purposes of determining the interest accrued within such period shall exclude the first day and include the last day of such period; and
- (i) reference to any notice or notification means a notice or notification made in writing or as otherwise expressly provided in this Agreement.

3. TERMS OF AGREEMENT AND CONDITIONS PRECEDENT

3.1 This Agreement shall come into effect on the date on which the conditions precedent are satisfied and on signature of the Parties. The Agreement shall be effective, unless terminated in accordance with the provisions herein, for a period of [insert validity period for the PSA] years.

3.2 The rights and obligations of the Parties herein shall come into force and effect on the date on which the following conditions are satisfied:

- (a) the installment of the power generation facility, grid and storage has been completed;
- (b) obtaining approval of the Agreement from the ERB;
- (c) the Seller obtaining a Generation Licence issued by the ERB; and
- (d) either Party obtaining all necessary consents/approvals required in the performance of the obligations under the Agreement.

3.3 In the event that the conditions precedent are not satisfied or waived, either Party may terminate this Agreement by notice in writing to the other Party.

4. SALE AND PURCHASE OF ENERGY

4.1 Subject to the terms of this Agreement (including Technical Limits), the Seller shall:

(a) make available to Buyer at the Delivery Point the Available Capacity up to the Contract Capacity;

(b) deliver and sell to Buyer at the Delivery Point the Net Energy Output; and

(c) provide to the Buyer Ancillary Services.

4.2 Subject to and in accordance with the terms of this Agreement (including the Technical Limits), the Buyer shall pay for the electricity supplied in accordance with the provisions of this Agreement.

5. CHARGES

5.1 The Buyer shall pay the Seller such charges as may be determined by the Seller and approved by the ERB from time to time;

5.2 The Charges shall take into account all relevant costs associated with the sale of electricity to the Buyer plus a margin approved by the ERB. The costs associated with the sale of electricity include the cost of generating and transmitting the electricity from the generation plant, the amounts payable under agreements between the Seller and third parties that hedge the cost of generation, market and other charges payable under the rules, metering charges and costs associated with complying with the other regulations and any other relevant laws;

5.3 The Charges shall be based on the actual metered consumption of electricity at the premises and will be adjusted by the applicable transmission loss factors and distribution loss factors.

6. METERING

6.1 The consumption of the energy from the PV system shall be measured and metering shall be the responsibility of the Seller. The Seller shall install, own, and operate the metering facility at its own expenses.

6.2 A prepaid metering system shall be installed by the Seller and the Buyer shall ensure that the meter is secured as it shall remain the property of the Seller;

6.3 The Buyer shall not interfere with the meter and shall allow the Seller and /or its agents access to the premises for the purpose of installation, reading, testing, repair or maintenance of all meters;

6.4 If, at any time, the Buyer discovers that any part of the metering has been tampered with, the Purchaser shall inform the Seller; and

- 6.5 If a meter malfunctions or metering data is not available for any reason, then, subject to any relevant Laws, the amount of electricity sold will be transferred by us to the replacement meter.

7. PAYMENT

- 7.1 Payment will be done in advance upon purchase of electricity units from the Seller's Customer centre or using approved mobile system;
- 7.2 The Buyer may negotiate for a postpaid system where bills will be sent by the Seller on a monthly basis;
- 7.3 When postpaid system is agreed the bills to the Buyer maybe sent the by email, fax or mail to the address of the premises, or any other address notified from time to time. At the start of this contract, the Buyer shall advise the Seller of the email address to which the bills can be sent bills;
- 7.4 The postpaid Consumers must pay all bills within 14 days of receipt of the bills, by electronic funds transfer to our nominated account or in cash at our customer centre. In addition to other remedies that may be available to the Seller, interest is payable on delayed payments on the outstanding amount.

8. CREDIT SUPPORT

- 8.1 The Seller may request for a bank guarantee (or a replacement bank guarantee) or a cash deposit for an amount not exceeding 2.5 times of the Buyer's estimated average monthly bill; and
- 8.2 The Buyer shall provide the bank guarantee (or replacement bank guarantee) or cash deposit within 5 days of the request.

9. LOAD CHANGES

If requested by the company, the consumer must provide the Company with monthly or quarterly load forecasts for the premises.

Unless we consent, you must not vary your electricity consumption at the premises by more than 10% above or below the forecasts you provide us. We must not unreasonably refuse our consent, but we may give it subject to reasonable conditions.

10. DISCONNECTION

- 10.1 For the postpaid consumers-If you do not pay us any amount that is validly due and owing on time, we may cause the supply of electricity to the premises to be disconnected until you have paid all outstanding amounts (including interest for late payments).

- 10.2 We must not exercise our right under clause 9.1 unless we have given you a written notice requiring the outstanding amount to be paid within 5 Business Days of the date of the notice and you have failed to comply with the notice.

11. RENEWAL

- 11.1 This Agreement may be renewed for another period on the terms and conditions agreed by the Parties in writing.

12. DEFAULT AND TERMINATION

- 12.1 Either party may terminate this Agreement forthwith if:
- (a) the other Party has failed to comply with any of its obligations under this contract and the breach has not been remedied within 10 days of receiving a notice in writing to remedy the breach; and
 - (b) the other Party commits an act of bankruptcy or goes into liquidation.
- 12.2 Notwithstanding the above, and for the avoidance of doubt, either Party may terminate this Agreement by giving [insert period of notice] months' notice in writing to the other Party.
- 12.3 Upon termination of the Agreement, the Seller may do any one or more of the following:
- (a) cause the supply of electricity to the premises to be disconnected;
 - (b) transfer financial responsibility for the premises to another electricity retailer;
 - (c) recover from any outstanding amounts owed by the Buyer; or
 - (d) sue you for any loss, damage, cost, charge or expense suffered as a result of the breach.

13. TRANSFER

- 13.1 Neither Party may assign or otherwise transfer any of its rights or obligations (in whole or in part) under this Agreement to any person without the prior written consent of the other Party.

14. NOTICES

- 14.1 All notices and other communications required or permitted to be given by a Party under or in connection with this Agreement shall be in writing and shall be delivered by to the following addresses:

To Buyer

Address:

To Seller

Address:

15. FORCE MAJEURE

15.1 Shall mean any event or circumstance or combination of events or circumstances beyond the reasonable control of a Party occurring on or after the date of this Agreement that materially and adversely impedes or delays or otherwise prevents the performance by that Party of its obligations under this Agreement; provided, however, that such material and adverse effect could not have been prevented, overcome or remedied in whole by the affected Party through the exercise of diligence and reasonable care.

15.2 Force Majeure Events shall include the following events and circumstances:

- (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo or revolution;
- (b) radioactive contamination or ionising radiation originating from a source in Zambia or resulting from another Local Political Force Majeure Event;
- (c) any riot, insurrection, civil commotion, act or campaign of terrorism that is of a political nature, such as, by way of example and not limitation, actions associated with or directed against Seller and/or its Contractors as part of a broader pattern of actions against companies or facilities with foreign ownership or management;
- (d) ERB failing to issue the Generation Licence to Seller;
- (e) any strike, work-to-rule or go-slow which is not primarily motivated by a desire to influence the actions of Seller so as to preserve or improve conditions of employment, and
 - (i) is part of an industry wide strike, work-to-rule or go-slow, in response to the coming into force, modification, repeal or change in the interpretation or application of any Applicable Law after the date of this Agreement; or
 - (ii) is by the employees of any Government Authority in response to the coming into force, modification, repeal or change in the interpretation of any Applicable Law after the date of this Agreement; or
 - (iii) is caused by a Political Force Majeure Event;

- (f) any Change in Law which prohibits (by rendering unlawful) the operation of the Plant or which imposes material limitations on the operation of the Plant, unless Buyer remedies in whole the financial effects on Seller and does so in a way that does not have an adverse effect, whether permanent or temporary, on Seller or the Finance Parties;

16. DISPUTE RESOLUTION

- 16.1 If any Dispute arises, the Parties shall attempt in good faith to settle such Dispute in the first instance by mutual discussions within thirty (30) Days of first written notice given by one Party to the other Party of such Dispute.
- 16.2 Upon completion of such thirty (30) Day period, or such additional period as may be agreed between the Parties, either Party may refer the Dispute to arbitration.
- 16.3 The Parties shall mutually agree on the Arbitrator failing which [insert another appointing authority] shall be the final appointing authority. The arbitration shall be conducted in accordance with the Arbitration Act No. 19 of 2000 as amended from time to time. The arbitration shall take place in Lusaka and the language of the arbitration shall be English.

17. APPLICABLE LAW

- 17.1 This Agreement, and any Dispute arising out of or in connection with this Agreement or its subject matter or formation, including non-contractual disputes or claims, shall be governed by, and construed in accordance with, the laws of Zambia.

18. GENERAL PROVISIONS

Entire Agreement

This Agreement constitutes the whole agreement between the Parties and supersedes all previous agreements between the Parties relating to its subject matter.

Each Party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) of the other Party other than as expressly set out in this Agreement.

Amendments

No amendments or modifications of this Agreement shall be valid except by written agreement signed by duly authorized representatives of the Parties; minutes of meetings or other informal documents shall not constitute a written agreement for this purpose.

Waivers

The failure or delay by a Party to exercise any rights or remedies under this Agreement shall not constitute a waiver of that right or remedy.

Severability

All the provisions of this Agreement are distinct and severable. If any provision of this Agreement is found by any court or other authority of competent jurisdiction to be invalid, unenforceable or illegal, this shall not impair the operation of this Agreement or affect the other provisions which are valid.

Relationship of the Parties

This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party.

Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, to act on behalf of, to act as or be an agent or representative of, or to otherwise bind, the other Party.

For and on of behalf Buyer

Signature: _____

Name: _____

Designation: _____

Address: _____

For and on of behalf Seller:

Signature: _____

Name: _____

Designation: _____

Address: _____