

FINAL 5: 26 JANUARY 2017

National Solar Water Heater Programme

Framework Agreement

entered into and between

The Department of Energy
(**"DoE"**)

Herein represented by:

Mr Thabane Zulu

In his capacity as:

Director General

Being duly authorized thereto

and

The [] **MUNICIPALITY**
(**"Municipality"**)

Herein represented by:

[]

In his capacity as:

[]

Being duly authorized thereto

PREAMBLE

This Framework Agreement is made by and between:–

The Department of Energy;

and

The [] Municipality, a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998) and the Local Government: Municipal Demarcation Board Act, 1998 (Act No. 27 of 1998).

The Parties agree as follows:

RECITALS

In March 2005, the South African National Energy Efficiency Strategy was developed and published to explore the potential for improved energy utilisation by reducing the country's energy intensity. The South African National Energy Efficiency Strategy derived its mandate from the 1998 White Paper on Energy Policy and proposed certain energy saving targets including: (a) a final energy demand reduction of 12% by 2015; and (b) a long term goal to save 4 255 MW over a period of 20 years.

In June 2009, the South African Government, through the Department of Energy, announced its intention to launch a national solar water heater programme against the backdrop of the prevailing electricity constraints and the energy efficiency targets envisaged in the White Paper and the South African National Energy Efficiency Strategy. At the time the Minister of Energy set a national target 1 million installed solar water heaters in residential areas. A national solar water heater programme was subsequently launched in April 2010. To date about 400 000 solar water heater systems have been installed.

In May 2015, the Minister of Energy announced the implementation of a revised National Solar Water Heater Programme which envisages *inter alia* the participation of municipalities given their constitutional and statutory functions and responsibilities regarding municipal services and the reticulation of electricity.

Although the national solar water heater programme has, as its primary objective, the promotion of energy efficiency, *inter alia*, through the use of sustainable alternative energy sources, and demand side management, it is also expected to yield a number of significant social and economic benefits for South Africans. Furthermore, these benefits are amplified by the extension of the national solar water heater programme to include the repair of existing solar water heater systems installed pursuant to earlier municipal or national solar water heater programmes or the replacement of such existing systems with Baseline Systems where this is considered necessary.

Municipalities are empowered by the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) read together with applicable empowering legislation, to provide municipal services for the benefit of persons residing and working within their municipal areas and are thus able to make a meaningful contribution to the implementation of the national solar water heater programme *inter alia* as envisaged more fully herein.

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement, unless the context requires otherwise, the following capitalised terms shall have the meanings assigned to them below and cognate expressions shall have corresponding meanings:

- 1.1.1. “**Agreement**” means this Framework Agreement together with any and all annexures annexed hereto, as at the Signature Date and as each may be amended from time to time in terms of clause 17.3;
- 1.1.2. “**Baseline System**” means a solar water heater system with an envisaged estimated capacity ranging from 80 (eighty) litres to 150 (one hundred and fifty) litres, together with any and all associated components and equipment, and that complies with the technical standards, specifications and requirements which are to be notified by the DoE to the Municipality in accordance with clause 4.1;
- 1.1.3. “**Business Day**” means a day other than a Saturday, Sunday or public holiday;
- 1.1.4. “**Community Member**” means any natural person currently residing within the municipal boundaries of the Municipality;
- 1.1.5. “**Contract Manager**” means the relevant authorised representative of a Party as appointed and nominated in writing by such Party from time to time with responsibility for liaison and contract management in respect of this Agreement;
- 1.1.6. “**Designated Installation Area**” means each Identified Residential Area that is notified by the Municipality and approved by the DoE in accordance with clause 4.8 for purposes of undertaking or procuring the undertaking of the supply, installation and maintenance of Baseline Systems in respect of Participating Installation Dwellings pursuant to this Agreement and as part of the Project;
- 1.1.7. “**Designated R&R Area**” means each Identified R&R Area that is approved by the DoE in accordance with clause 5 for purposes of undertaking or procuring the undertaking of the repair of existing solar water heater systems and/or replacement, where necessary, with Baseline Systems pursuant to this Agreement, as part of the Project, and in respect of which the Lawfully

Authorised Occupier has confirmed his/her express desire and willingness to have the necessary repairs effected to the existing solar water heating system or a new Baseline System installed in or upon such residential dwelling;

- 1.1.8. **“Disclose”** means any direct or indirect, dissemination, publication, communication, replication, verbalisation, transference or transmission in any manner or form whatsoever, and **“Disclosing”**, **“Disclosed”** and **“Disclosure”** shall have corresponding meanings;
- 1.1.9. **“DoE”** means the Department of Energy of the Government of South Africa or any successor department designated by the Government of the Republic of South Africa from time to time;
- 1.1.10. **“Financial Year”** means a period of 12 (twelve) months commencing on 1 April of a given calendar year and end on 31 March of the following calendar year;
- 1.1.11. **“Hard Water”** means water containing levels of calcium and/or magnesium salts above the threshold set by the DoE from time to time in terms of clause 8;
- 1.1.12. **“Identified Residential Area”** means a residential area that is located within the municipal boundaries of the Municipality, that complies with the criteria sent out clause 4.3 and that has been identified, selected and notified by the Municipality to the DoE as a proposed area for the supply, installation and maintenance of Baseline Systems;
- 1.1.13. **“Identified R&R Area”** means a residential area that is located within the municipal boundaries of the Municipality, that is identified by a Municipality as per clause 5.1 and as supplemented in terms of clause 5.4;
- 1.1.14. **“Installation Target”** means the aggregate number of Systems to be supplied and installed on a national basis in terms of the national solar water heater programme, being up to 1.8 (one comma eight) million Systems by 2019 or such other number of Systems as may be notified by the DoE to the Municipality in writing from time to time;
- 1.1.15. **“Lawfully Authorised Occupier”** means an adult person who is the owner or lessee duly authorised by the owner of a residential dwelling that is located within an Identified Residential Area or Identified R&R Area;
- 1.1.16. **“Municipality”** means the [] Municipality;
- 1.1.17. **“Municipal Infrastructure Initiatives”** any existing or prospective municipal initiatives other than the Project, which the Municipality has begun to implement and/or plans to implement in respect of an Identified Residential Area which relates to the undertaking of any major infrastructural development which could interfere in the implementation of the Project including, inter alia, initiatives relating to the supply, implementation and maintenance of solar water heaters other than by virtue of the Project, the supply, implementation and maintenance of conventional

geysers, the laying of electricity transmission/distribution cables and/or telephone cables and/or the laying of water and/or gas transmission/distribution pipelines;

- 1.1.18. **“National Solar Water Heater Programme”** means the national solar water heater programme initiated and implemented by or on behalf of the DoE, pursuant to the South African National Energy Efficiency Strategy and the 1998 White Paper, for the supply, installation and maintenance of Baseline Systems in residential homes throughout South Africa as well as the repair of existing solar water heater systems installed pursuant to earlier municipal or national solar water heater programmes and/or the replacement of these systems, where necessary, with Baseline Systems;
- 1.1.19. **“Parties”** means the DoE and the Municipality, and any reference to **“Party”** shall refer to any one of them as required by the context;
- 1.1.20. **“Person”** means a natural person, partnership, firm, corporation, joint stock company, trust, unincorporated association, joint venture, government body, limited liability company, close corporation, any sphere of government (including national, provincial, regional and local government, or organ of state) or any other legal entity which is considered a legal entity under the laws of South Africa or the country in which such an entity has been formed;
- 1.1.21. **“Participating Installation Dwelling”** means a residential dwelling that is located in an Identified Residential Area and in respect of which it is determined, pursuant to a Technical Feasibility Assessment, that the installation and operation of a Baseline System is technically feasible having regard to the technical, structural, operational and safety requirements for the proper and safe installation and operation of a Baseline System and in respect of which the Lawfully Authorised Occupier has confirmed his/her express desire and willingness to have a Baseline System installed in or upon such residential dwelling;
- 1.1.22. **“Project”** means the implementation of the national solar water heater programme and the associated supply, installation and maintenance of Baseline Systems in relation to and within Designated Installation Areas, as well as the repair of existing solar water heater systems installed pursuant to earlier municipal or national solar water heater programmes, or the replacement of such systems with a Baseline System, within Designated R&R Areas and in accordance with this Agreement and subject to the procurement, project plans and other requirements of the national solar water heater programme as determined by the DoE;
- 1.1.23. **“Responsible Authority”** means any ministry or department, any minister, any organ of state, any official in the 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;

- 1.1.24. **“SALGA”** means the South African Local Government Association;
- 1.1.25. **“Signature Date”** means the date that this Agreement is signed by the last remaining Party provided that both Parties sign this Agreement;
- 1.1.26. **“Supplier”** means a manufacturing and/or assembling concern whose primary or sole business activity is the manufacture and/or assembly of Baseline Systems and which has been selected or appointed by the DoE pursuant to a competitive procurement process undertaken by the DoE for purpose of manufacturing and/or supplying Baseline Systems in terms and for purposes of the national water heater programme;
- 1.1.27. **“Technical Feasibility Assessment”** means the detailed technical assessment to be undertaken by or on behalf of the DoE in respect of an Identified Residential Area to determine the technical, operational, infrastructural feasibility of undertaking the supply, installation, operation and maintenance of Baseline Systems in such Identified Residential Area having regard to *inter alia* the technical, structural, operational and safety requirements for the proper and safe installation and operation of a Baseline System, the structural integrity of the residential dwellings in such Identified Residential Area and compliance with the criteria envisaged in clause 4.3; and
- 1.1.28. **“Technical R&R Assessment”** means the detailed technical assessment to be undertaken by or on behalf of the DoE in respect of an Identified R&R Area to determine the technical, operational, infrastructural feasibility of undertaking the repair of installed Systems pursuant to earlier municipal or national solar water heater programmes, or the replacement of such systems with a Baseline System, in such Identified R&R Area having regard to *inter alia* the technical, structural, operational and safety requirements for the proper and safe repair of the existing system or installation and operation of a Baseline System, the structural integrity of the residential dwellings in such Identified R&R Area and compliance with other criteria set by the DoE; and
- 1.1.29. **“Technical Feasibility Report”** means technical feasibility report prepared in respect of and setting out the findings of a Technical Feasibility Assessment or Technical R&R Assessment.

1.2. Interpretation

This Agreement shall be interpreted according to the following provisions, unless the context requires otherwise:

- 1.2.1. The index and headings of clauses of this Agreement are for ease of reference only and shall be ignored in the interpretation and application of this Agreement.

- 1.2.2. Words importing the singular shall include the plural and *vice versa* and words importing one gender shall include the other genders.
- 1.2.3. References to legislation include any statute, by-law, regulation, rule, subordinate legislation or delegated legislation or order, and a reference to any legislation is to such legislation as amended, modified or consolidated from time to time, and to any legislation replacing it or made under it.
- 1.2.4. References to "**Party**" shall include each Party's successors-in-title and, if permitted in this Agreement, their respective cessionaries and assignees.
- 1.2.5. References to a "**person**" shall include a government, state or agency of state, an individual, firm, company, corporation, juristic person, and any trust, organisation, association or partnership (whether or not having separate legal personality) of any of the foregoing that is recognised by law as the subject of rights and duties, and references to a "person" (or to a word incorporating a person) shall be construed so as to include that person's successors in title and assigns or transferees.
- 1.2.6. References to "**clauses**", "**sub-clauses**" and "**Annexures**" are references to the clauses, sub-clauses and annexures of this Agreement.
- 1.2.7. References to any other contract or document shall include a reference to that contract or document as amended, varied, novated or substituted from time to time in accordance with the terms of such other contract or document, as the case may be.
- 1.2.8. Words in parentheses and italics appearing after a clause reference or a reference to an annexure or schedule are inserted for ease of reference only. If there is any discrepancy between the clause reference and the words in parentheses and italics, the latter shall prevail.
- 1.2.9. The Parties acknowledge that each of them has had the opportunity to take legal advice concerning this Agreement, and agree that no provision or word used in this Agreement shall (whether in the case of ambiguity or otherwise) be interpreted to the disadvantage of either Party because that Party was responsible for or participated in the preparation or drafting of this Agreement or any part of it.
- 1.2.10. The number of days indicated to perform an act or discharge any obligation or indicated for any other purpose, shall be calculated by excluding the first day and including the last day, unless the last day falls on a Saturday, Sunday or a public holiday, in which event the last day will be deemed to be the next Business Day.
- 1.2.11. In the computation of periods of time from a specified day to a later specified day, "from" means from and including and "until" or "to" means to and including.

- 1.2.12. References to the words "**include**", "**including**" and "**in particular**" shall not be construed as being by way of limitation, illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words. The words "**other**" and "**otherwise**" shall not be construed so as to be limited or defined by any preceding words, where a wider construction is reasonably possible.
- 1.2.13. The terms "**hereof**", "**herein**", "**hereunder**" and similar words refer to this Agreement and not to any particular clause, paragraph, part, Annexure or any other portion or subdivision of this Agreement.
- 1.2.14. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that these provisions do not expressly state this.
- 1.2.15. If any provision in clause 1.1 (*Definitions and Interpretation*) contains a substantive provision conferring rights or imposing obligations on either Party, effect shall be given to such provision as if it was a substantive provision in the body of this Agreement.
- 1.2.16. If figures are referred to in numerals and in words and if there is any conflict between the two, the words shall prevail.
- 1.2.17. Expressions defined in the body of this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own conflicting definitions.
- 1.2.18. If any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that such term has not been defined in this clause 1 (*Definitions and Interpretation*).

2. COMMENCEMENT AND DURATION

- 2.1. This Agreement shall commence and become effective on the Signature Date and, unless otherwise agreed by the Parties in writing, it shall endure until the Installation Target is achieved as notified by the DoE to the Municipality in writing, or until it is terminated or cancelled earlier in accordance with its terms, whichever occurs first.
- 2.2. Notwithstanding the provisions of clause 2.1, the Parties agree that the DoE shall be entitled to terminate this Agreement prior to the achievement of the Installation Target by giving the Municipality no less than 40 (forty) Business Days written notice of such termination.

- 2.3. The Parties agree that although neither Party shall have any claim against the other arising from or in the early termination, cancellation or expiry of this Agreement such early termination, cancellation or expiry of this Agreement shall not expunge, limit, reduce or terminate any obligation by either or both Parties to effect payment of any amounts which may be due by a Party to the other in terms of this Agreement, as at the date of such termination, cancellation or expiry, as applicable.

3. STRUCTURE OF THE NATIONAL SOLAR WATER HEATER PROGRAMME AND THE PROJECT

- 3.1. The Parties acknowledge and agree that the National Solar Water Heater Programme and the Project are envisaged to be undertaken as follows:
- 3.1.1. the DoE is envisaged, subject to the approval of its accounting officer, to undertake the selection and procurement of manufacturers/suppliers who shall be responsible for the manufacture and supply of Systems including the Baseline System and who shall conclude relevant agreements with the DoE in this regard (the “**Manufacturers/Suppliers**”);
 - 3.1.2. the DoE is envisaged, subject to the approval of its accounting officer, to undertake the selection and procurement of service providers who are appropriately qualified and trained to undertake the installation and maintenance of Baseline Systems (the “**Install Co.’s**”);
 - 3.1.3. the DoE is envisaged, subject to the approval of its accounting officer, to undertake the selection and procurement of service providers who are appropriately qualified and trained to undertake the repair of existing solar water heater systems and/or replacement of existing systems with a Baseline System (the “**Repair Co.’s**”);
 - 3.1.4. Install Co.’s and Repair Co.’s are envisaged to employ and utilise appropriately trained and qualified installers for purposes of undertaking the proper installation and maintenance of Baseline Systems, with preference being given to the employment of persons based in the municipal boundaries of the Municipality as installers and these persons will be identified and managed by the Municipality;
 - 3.1.5. the Manufacturers/Suppliers will provide a warranty in respect of the Baseline System at their own cost;
 - 3.1.6. the DoE will collaborate with the Department of Labour, the Department of Higher Education and industry appropriate Skills Education and Training Authorities (SETAs), as well as the Expanded Public Works Programme (EPWP) and Community Work Programme (CWP) located in the Department of Public Works to establish a national training programme to train potential installers and repairers identified by the Municipality. The DoE envisages that the development and implementation of such a national training programme, including any necessary associated interfaces with government stakeholders, will be undertaken by the South African Bureau of Standards (SABS) pursuant to a Memorandum of Understanding to be concluded between the DoE and the SABS or any other company appointed by the DoE;

- 3.1.7. Participating Municipalities such as the Municipality are envisaged to propose Identified Installation Areas for the supply and installation of Baseline Systems in accordance with this Agreement and to provide all required information on Identified R&R Areas;
- 3.1.8. the DoE is envisaged, subject to the approval of its accounting officer, to undertake or procure the undertaking of Technical Feasibility Assessments in respect of Identified Residential Areas and Technical R&R Assessments of Identified R&R Areas;
- 3.1.9. the DoE may, subject to the approval of its accounting officer, conclude an agreement with the SABS regarding the accreditation of the solar water heaters, verification of local content compliance and training of installers and repairers; and
- 3.1.10. the DoE envisages establishing a national call centre that can be accessed inter alia by Community Members and end-users of Baseline Systems for the purposes of logging complaints, faults, service calls.

4. IDENTIFIED RESIDENTIAL AREAS AND APPROVAL OF DESIGNATED INSTALLATION AREAS

- 4.1. Within a period of 20 (twenty) Business Days of Signature Date of this Agreement or such longer period as the DoE may notify to the Municipality, the DoE shall inform the Municipality in writing of the technical standards, specifications and requirements which will apply to the Baseline System that is envisaged to be supplied and installed at each Participating Installation Dwelling.
- 4.2. Within 40 (forty) Business Days of the Signature Date, the Municipality shall by written notice to the DoE, notify the DoE of the initial Identified Residential Area/s which it wishes to propose for inclusion in the Project provided that:
 - 4.2.1. the Municipality shall not propose more than 4 (four) Identified Residential Areas at a time;
 - 4.2.2. subject to clauses 4.2.1, 4.2.4 and 4.2.5, where a Municipality proposes more than 1 (one) Identified Residential Area, the Municipality shall state the proposed order of priority in which the Identified Residential Areas put forward by it are to undergo Technical Feasibility Assessments, and if such Identified Residential Areas are approved as Designated Installation Areas by the DoE, the proposed order of priority in which the Project is to be undertaken in relation to such Designated Installation Areas it being agreed and acknowledged that the DoE shall not be required to undertake the Technical Feasibility Assessments and/or the Project in accordance with the order of priority proposed by the Municipality;
 - 4.2.3. the Municipality may not propose any further or additional Identified Residential Areas whilst any proposed Identified Residential Areas are undergoing Technical Feasibility Assessments;

- 4.2.4. the DoE shall be entitled (but not obliged) to limit the number of Identified Residential Areas that may be proposed by the Municipality during any Financial Year, as notified in writing by the DoE to the Municipality from time to time; and
- 4.2.5. the DoE shall be entitled (but not obliged) to limit the number of Identified Residential Areas that it approves as Designated Installation Areas in respect of the National Solar Water Heater Programme, as notified in writing by the DoE to the Municipality, from time to time.
- 4.3. For purposes of this Agreement a residential area shall qualify as an Identified Residential Area if it:
 - 4.3.1. falls within the municipal boundary of the Municipality;
 - 4.3.2. comprises predominantly of residential dwellings which are free standing residential dwellings, semi-detached dwellings and/or sectional title developments (excluding multi-storey apartment blocks);
 - 4.3.3. is a contiguous and proclaimed area which does not exceed 5000 (five thousand) individual residential dwellings;
 - 4.3.4. comprises residential dwellings that receive a secure and ongoing metered supply of potable water by the Municipality by means of water reticulation infrastructure and physical connections leading up to and connecting with the relevant residential dwellings;
 - 4.3.5. is not supplied with Hard Water as supported and confirmed by a recent written water analysis report submitted by the Municipality and issued by a SANAS accredited laboratory; and
 - 4.3.6. comprises predominantly residential dwellings whose roof structures:
 - 4.3.6.1. are capable of supporting the installation, operation and weight of a Baseline System;
 - 4.3.6.2. have the required roof pitch to enable the safe and proper installation, operation and maintenance of a Baseline System; and
 - 4.3.6.3. have the required roof solar orientation to enable the safe and proper installation, operation and maintenance of a Baseline System.
- 4.4. In identifying and proposing Identified Residential Areas the Municipality shall have regard to the following principles:
 - 4.4.1. the Municipality may give preference to newly proclaimed residential areas and residential developments whether or not such areas and developments are designated or envisaged to be low income and/or low-to-medium income residential areas and/or which are economically depressed and/or socially and infrastructurally underdeveloped or resourced;
 - 4.4.2. the Municipality may give preference to residential areas that are wholly or largely characterised

as low income residential areas and/or low-to-medium income residential areas and/or which are economically depressed and/or socially and infrastructurally underdeveloped or under-resourced as regards the provision of municipal infrastructure and/or municipal services, followed by residential areas that are wholly or largely characterised as medium income residential areas and/or medium-to-high income households and/or which are less economically depressed and/or less socially and infrastructurally underdeveloped or under-resourced as regards the provision of municipal infrastructure and/or municipal services, followed by residential areas that are wholly or largely characterised as high income residential areas and/or which are not economically depressed and/or not socially and infrastructurally underdeveloped or under-resourced as regards the provision of municipal infrastructure and services;

- 4.4.3. the Municipality should in general not select areas that have already been identified for a Municipal Infrastructure Initiative, any such selection will be dealt with in terms of clause 6; and
- 4.4.4. an Identified Residential Area shall not be identified or selected based on racial, religious or political considerations, profiling or affiliation whether actual or perceived.
- 4.5. Prior to the approval of an Identified Residential Area as a Designated Installation Area, the DoE shall procure the undertaking of Technical Feasibility Assessment in order to determine whether such Identified Residential Area should qualify to be approved as a Designated Installation Area.
- 4.6. The Municipality shall provide the DoE with the following particulars relating to the residential dwellings located within each Identified Residential Area identified and proposed by the Municipality for purposes of enabling the undertaking of a Technical Feasibility Assessment in respect of each such Identified Residential Area:
 - 4.6.1. the names and contact details of the Lawfully Authorised Occupiers of the residential dwellings; and
 - 4.6.2. the physical street addresses, stand or erf numbers, and accurate longitudinal and latitudinal co-ordinates (GPS Co-ordinates) of the residential dwellings and the precise extent of the area.
- 4.7. The DoE undertakes to consider each Identified Residential Area proposed by the Municipality, in good faith and with regard to the criteria contained in clause 4.3 and the requirements in clause 4.6, to procure the undertaking of a Technical Feasibility Assessment and the preparation of a Technical Feasibility Report in respect of each Identified Residential Area proposed by the Municipality provided that the DoE may request additional information and/or documentation from the Municipality in respect of any Identified Residential Area proposed by the Municipality.
- 4.8. Without detracting from the generality of clause 6, the DoE shall be entitled to reject any Identified Residential Area that is proposed by the Municipality in terms of clause 4.2, where it is determined or assessed, pursuant to a Technical Feasibility Study or otherwise, that:

- 4.8.1. the Identified Residential Areas does not comply with clause 4.3;
- 4.8.2. the Municipality has not complied with the requirements in clause 4.6 in respect of such Identified Residential Area;
- 4.8.3. having regard to *inter alia* the technical, structural, operational and safety requirements for the proper and safe installation and operation of the Baseline System, it is not technically, operationally and/or infrastructurally feasible to undertaking the supply, installation, operation and/or maintenance of Baseline Systems in the whole or a considerable part of such Identified Residential Area;
- 4.8.4. the structural integrity of all or a considerable portion of the residential dwellings in such Identified Residential Area do not comply with the criteria envisaged in clause 4.3; and/or
- 4.8.5. the selection of such proposed Identified Residential Area violates any of the principles in clause 4.4.4.
- 4.9. If an Identified Residential Area is rejected by the DoE, it shall notify the Municipality in writing accordingly provided that where such rejection is based wholly or partially on the outcome of a Technical Feasibility Assessment the DoE shall provide a copy of the relevant Technical Feasibility Report.
- 4.10. Subject to clauses 4.2, 4.3, 4.4, 4.6, 6 and 9:
 - 4.10.1. if Identified Residential Areas are rejected by the DoE the Municipality shall be entitled to propose other or additional Identified Residential Areas to the DoE, in accordance with this Agreement, for its consideration and evaluation; and
 - 4.10.2. if the supply and installation of Baseline Systems to a Designated Installation Area is completed, the Municipality shall be entitled to propose other or additional Identified Residential Areas to the DoE, in accordance with this Agreement, for its consideration and evaluation.
- 4.11. If an Identified Residential Area is approved by the DoE as a Designated Installation Area the DoE shall notify the Municipality in writing accordingly.

5. IDENTIFIED R&R AREAS AND APPROVAL OF DESIGNATED R&R AREAS

- 5.1. Within 40 (forty) Business Days of the Signature Date, the Municipality shall by written notice to the DoE, notify the DoE of all areas within the Municipality in which solar water heater systems were previously supplied and/or installed without charge to residential dwellings pursuant to any municipal or national solar water heater programme (“**Identified R&R Areas**”).
- 5.2. In identifying the Identified R&R Areas the Municipality shall provide the following information for purposes of enabling the undertaking of a Technical R&R Assessment (if any) in respect of such

Identified R&R Area:

- 5.2.1. the names and contact details of the Lawfully Authorised Occupiers of the residential dwellings; and
 - 5.2.2. the physical street addresses, stand or erf numbers, and accurate longitudinal and latitudinal co-ordinates (GPS Co-ordinates) of the residential dwellings and the precise extent of the area;
 - 5.2.3. the present condition of the existing solar water heater systems; and
 - 5.2.4. whether the present condition of existing solar water heater systems is considered to be particularly dangerous for any reason or is otherwise socially or politically contentious and how this is manifested.
- 5.3. The DoE shall consider the Identified R&R Areas against its own existing database of solar water heater systems that were previously supplied and/or installed without charge to residential dwellings pursuant to any municipal or national solar water heater programme and other relevant information, and may after receiving the Identified R&R Areas from the Municipality (or after receiving no Identified R&R Areas from the Municipality) notify the Municipality that it has supplemented the Identified R&R Areas with further areas within the jurisdiction of the Municipality in which solar water heaters were previously supplied and/or installed without charge to residential dwellings pursuant to any municipal or national solar water heater programme and shall provide a Supplementary R&R List to the Municipality recording all additional areas.
- 5.4. The Municipality shall provide comments on the Supplementary R&R List within 20 days of receiving it and shall at the same time provide such information provided for in clause 5.2 as it has regarding the installations identified on the Supplementary R&R List, whereafter the areas identified on the Supplementary R&R List shall be added to the Identified R&R Area.
- 5.5. The DoE may, where it considers this to be appropriate given the information which it has from its own information sources and the information provided by the Municipality, procure the undertaking of a Technical R&R Assessment of the Identified R&R Areas to determine which of these (if any) should be approved as a Designated R&R Area.
- 5.6. The selection of Designated R&R Areas and the determination of whether some or all of the existing systems in a Identified R&R Area should be repaired or replaced with a Baseline System shall be entirely at the discretion of the DoE following a Technical R&R Assessment (if any) and the DoE may request additional information and/or documentation from the Municipality in respect of any Identified R&R Area proposed by the Municipality.
- 5.7. Without detracting from the generality of clause 5.6, the DoE shall be entitled to reject any Identified R&R Area, where it is determined or assessed, pursuant to a Technical R&R Assessment or otherwise, that:

- 5.7.1. the present condition of the majority of the existing solar water heater systems in the Identified R&R Area is acceptable and, as such, the area is not presently a priority;
- 5.7.2. having regard to *inter alia* the technical, structural, operational and safety requirements for the proper and safe repair of the existing solar water heater system and/or replacement with a Baseline System, it is not technically, operationally and/or infrastructurally feasible to undertake the repair of the existing solar water heater system and/or replacement with a Baseline System in the whole or a considerable part of such Identified R&R Area;
- 5.7.3. the structural integrity of all or a considerable portion of the residential dwellings in such Identified R&R Area do not comply with the criteria envisaged in clause 4.3 and as such the area is not suitable for further investment pursuant to the National Solar Water Heater Programme;
- 5.7.4. the selection of such area as a Designated R&R Areas may be seen to violate the principle that a Designated R&R Areas shall not be identified or selected based on racial, religious or political considerations, profiling or affiliation whether actual or perceived.
- 5.8. If an Identified R&R Area is rejected by the DoE, it shall notify the Municipality in writing accordingly provided that where such rejection is based wholly or partially on the outcome of a Technical R&R Assessment, the DoE shall provide a copy of the relevant Technical Feasibility Report.
- 5.9. If an Identified R&R Area is approved by the DoE as a Designated R&R Area the DoE shall notify the Municipality in writing accordingly.

6. CARRYING OUT OF THE NATIONAL SOLAR WATER HEATER PROGRAMME

- 6.1. The Parties agree that in developing and adopting any project plan, roll-out plan, repair and/or replace plan, and/or installation programme in respect of the National Solar Water Heater Programme and/or the Project, and/or in undertaking and implementing both the National Solar Water Heater Programme and the Project, the DoE is required to act in a reasonable and prudent manner so as to ensure fair and reasonable allocation, supply and installation of Baseline Systems, repair of existing solar water heater systems and/or replacement with Baseline Systems, on a broadly distributed national basis and having regard to reasonable financial, technical, logistical and practical constraints, limitations and considerations as well as other reasonable factors and considerations such as the relative population density of provinces and municipalities including the Municipality and the relative geographical spread and location of Identified Residential Areas, Identified R&R Areas and municipalities including the Municipality. As such the Parties agree that:
 - 6.1.1. the DoE shall be entitled, in its sole discretion, to reject, increase or reduce the geographical ambit of any Identified Residential Area and/or any Identified R&R Area;
 - 6.1.2. the DoE shall be entitled, in its sole discretion, to suspend, defer or reduce the supply and

installation of Baseline Systems to any Designated Installation Area and/or the repair and replacement activities in any Identified R&R Area;

- 6.1.3. the DoE shall not be obliged to undertake the supply and installation of Baseline Systems in Designated Installation Areas or to do so solely in Designated Installation Areas; and
- 6.1.4. the DoE shall have the fullest and widest discretion to determine the manner, timing, staging and the rate at which:
 - 6.1.4.1. Technical Feasibility Assessments are undertaken in respect of Identified Residential Areas;
 - 6.1.4.2. Technical R&R Assessments (if any) are undertaken in respect of Identified R&R Areas;
 - 6.1.4.3. any Identified Residential Area is approved as a Designated Installation Area;
 - 6.1.4.4. any Identified R&R Area is approved as a Designated R&R Area;
 - 6.1.4.5. the supply and installation of Baseline Systems is undertaken in any Designated Installation Area; and
 - 6.1.4.6. repair and replacement activities are undertaken in any Designated R&R Area.

7. IDENTIFICATION OF INSTALLERS AND REPAIRERS WITHIN THE MUNICIPAL BOUNDARY

- 7.1. Following the Signature Date the Municipality agrees to establish a local labour desk and / or database to identify persons residing within the municipal boundaries of the Municipality who can be appropriately trained to act as installers or repairers for purposes of undertaking the proper installation and maintenance of Baseline Systems within Designated Installation Areas and/or repair of existing solar water heaters in Designated R&R Areas (“potential installers and repairers”). In doing this the Municipality shall have regard to clause 8 below and shall develop and obtain approval from the DoE for an appropriate communication strategy and communication plan prior to publishing information on the local labour desk and / or database process.
- 7.2. The Municipality agrees to request assistance from the Department of Small Business Development (DSBD) and Department of Military Veterans with identification of potential installers and repairers.
- 7.3. The Municipality will at all times be responsible for managing expectations and communications to the potential installers and repairers identified by them.
- 7.4. In developing any project plan, roll-out plan and/or installation programme within a Municipality the Municipality and the DoE will agree the number of installers and/or repairers required at any particular point in time.
- 7.5. The Municipality will send an agreed number of potential installers and/or repairers on the national training programme to be conducted by the SABS or other service provider identified by the DoE.

- 7.6. Successful trainees will to be placed with Install Co.'s or Repair Co.'s pursuant to a placement agreement;
- 7.7. In terms of the placement agreement the Municipality will retain responsibility for overall management of installers and/or repairers which are identified by them.

8. PREVENTION OF HARD WATER SUPPLY

The Parties acknowledge and agree that Hard Water has a materially detrimental effect on the operating life and the operation and maintenance of Baseline Systems and accordingly the Municipality undertakes to use its best endeavours to maintain the quality of potable water supplied to all Designation Installation Areas and to ensure that the potable water that is supplied to the Designated Installation Area shall not constitute Hard Water as per the parameters set by the DoE from time to time and provided by written notification to the Municipality.

9. PRIORITISATION OF MUNICIPAL INFRASTRUCTURE INITIATIVES

The Parties agree that the Project does not in any way replace, displace, alter or rank ahead of any Municipal Infrastructure Initiative which the Municipality is planning, has approved or has already begun to implement in the whole or any portion of any Identified Residential Area. To the extent that an Identified Residential Area has been earmarked for a Municipal Infrastructure Initiative, the DoE may reject such Identified Residential Area in after considering all relevant facts provided by the Municipality for its selection of the Identified Residential Area.

10. COMMUNICATION OBLIGATIONS

- 10.1. If the Municipality proposes one or more an Identified Residential Areas and Identified R&R Areas to the DoE for its consideration in terms of this Agreement the Parties shall engage actively and fully with each other with a view to developing an appropriate communication strategy and communication plan in respect of such Identified Residential Area/s and Identified R&R Areas, in order to enable the communication and Disclosure by the DoE, with the assistance of the Municipality, of key messages and information relating to the Project and/or the National Solar Water Heater Programme to Community Members residing in such Identified Residential Area/s and Identified R&R Areas. Similarly, if any Identified Residential Areas or Identified R&R Areas become Designated Installation Areas or Designated R&R Areas respectively the Parties shall engage actively and fully with each other with a view to developing an appropriate communication strategy and communication plan in respect of such Designated Installation Areas or Designated R&R Areas in order to enable the communication and Disclosure by the DoE, with the assistance of the Municipality, of key messages and information relating to the Project and/or the National Solar Water Heater Programme to Community Members residing in such areas.
- 10.2. The Municipality undertakes to provide all necessary information, cooperation and assistance to the DoE in relation to any all engagements with Community Members and in relation to all

communication strategies, plans, processes, initiatives and activities which developed by the Parties pursuant to and which the DoE wishes to undertake for purposes of communicating with and Disclosing information and documentation relating to National Solar Water Heater Programme and/or the Project, to Community Members residing within Identified Residential Areas, Identified R&R Areas, Designated Installation Areas and Designated R&R Areas.

- 10.3. The Municipality undertakes to provide every assistance to the DoE or any service provider appointed by it which is necessary to obtain the express consent from all Lawfully Authorised Occupiers in any Designated Installation Areas and Designated R&R Areas to participation in the Project and to have the necessary repairs effected to the existing solar water heating system or a new Baseline System installed in or upon the relevant residential dwelling and will, if requested to do so by the DoE, manage the process of obtaining such consent from all Lawfully Authorised Occupiers within its jurisdiction.
- 10.4. The Municipality shall not embark on any communication process or activity or otherwise Disclose, impart or disseminate any information and/or documentation relating to the Project and/or the National Solar Water Heater Programme unless agreed by the Parties in terms of clauses 10.1 and 10.2.
- 10.5. In addition and without detracting from clause 10.4, the Municipality shall not directly or indirectly utilize, Disclose or otherwise make public to any Community Member, Lawfully Authorised Occupier or any other Persons:
 - 10.5.1. any information and/or documentation relating to the Project, Identified Residential Areas, Identified R&R Areas, Designated Installation Areas and Designated R&R Areas and/or the National Solar Water Heater Programme without the prior written consent of the DoE;
 - 10.5.2. any information and/or documentation relating to the Project, Identified Residential Areas, Identified R&R Areas, Designated Installation Areas and Designated R&R Areas and/or the National Solar Water Heater Programme which has not been approved and authorised by the DoE; and/or
 - 10.5.3. any information and/or documentation relating to the Project, Identified Residential Areas, Identified R&R Areas, Designated Installation Areas and Designated R&R Areas and/or the National Solar Water Heater Programme which is in conflict with or at variance with this Agreement and/or any strategies, plans, processes, communication methods, communications, announcements and/or messaging which has been agreed and/or developed by the Parties in terms of clauses 10.1 and 10.2.
- 10.6. In the event that the Municipality breaches any provision of this clause 10 the DoE reserves the right to, in its sole discretion:
 - 10.6.1. suspend, defer or reduce the supply and installation of Baseline Systems to any Designated

Installation Area until such time as the dispute has been resolved;

- 10.6.2. suspend, defer or reduce repair and replacement activities undertaken in any Designated R&R Area until such time as the dispute has been resolved.
 - 10.6.3. terminate the supply and installation of Baseline Systems to any Designated Installation Area regardless of whether or not the Installation Target has been reached;
 - 10.6.4. terminate the repair and replacement activities undertaken in any Designated R&R Area regardless of whether or not the Installation Target has been reached; and/or
 - 10.6.5. terminate this Agreement.
- 10.7. In the event that the execution of the Project and/or the National Solar Water Heater Programme results in civil unrest, protest action and/or any other displays of dissatisfaction by Community Members and/or by any other Persons who reside, work or are otherwise present within the municipal boundaries of the Municipality, the Municipality undertakes:
- 10.7.1. to immediately notify the DoE of such civil unrest, protest action and/or any other displays of dissatisfaction; and
 - 10.7.2. in consultation with the DoE, to immediately take all necessary steps to:
 - 10.7.2.1. Disclose and/or otherwise communicate and disseminate information relating to the Project and the National Solar Water Heater Programme (as approved by the DoE) to the Community Members and/or other Persons with a view to amicably resolving and quelling any such dissatisfaction, unrest, protest or dispute;
 - 10.7.2.2. engage actively with such Community Members and/or the relevant Persons with a view to the safe and amicable resolution of the dissatisfaction, unrest, protest or dispute, including, if and as required, the mobilisation of safety and security personnel of the Municipality and liaising and cooperating with the South African Police Services.

11. CONFIDENTIALITY

- 11.1. The Parties acknowledge that they may, in the course of the carrying out of this Agreement, have gained access to and become acquainted with the business, techniques, methods and processes, trade secrets, data, information technology, software, business associates, and other private, sensitive and confidential information, or any information which is or should reasonable be regarded as from a confidential nature, or which is indicated in writing by one of the Parties to another Party to be of a confidential nature (“**Confidential Information**”).
- 11.2. The Parties accordingly undertake, for the duration of this Agreement as and for a period of 5 (five) years after it terminates for any reason, not to directly or indirectly, utilize, Disclose or make public to

any third party any Confidential Information of the other Parties and to keep any Confidential Information secret and confidential at all times, unless such disclosure takes place in the ordinary course of the carrying out by a Party of its obligations in terms of this Agreement.

11.3. The Confidential Information shall not include-

11.3.1. any information which is already lawfully in the possession of the receiving Party prior its disclosure by the disclosing Party;

11.3.2. any information which a Party can reasonably demonstrate is already generally available in the public domain otherwise than as a result of breach of this clause 11 (*Confidentiality*);

11.3.3. any information which is lawfully acquired from third parties who have a right to Disclose such information;

11.3.4. any information which by mutual written agreement between the Parties is released from confidential status; and

11.3.5. any information which is required to be Disclosed in accordance with any Applicable Law (including any order of a Court of competent jurisdiction), or the rules of a governmental or regulatory authority having the force of Applicable Law.

11.4. Either Party may by notice in writing be entitled to demand the prompt return of the whole or any part of any confidential information supplied by it to the other Party, and each Party hereby undertakes to comply promptly with any such demand.

12. WARRANTIES

12.1. The Parties represent and warrant that as on the Signature Date and on each day thereafter for the duration of this Agreement:

12.1.1. they are duly established under the laws of South Africa and have the right, power and authority to enter into this Agreement and to perform their respective obligations hereunder;

12.1.2. the execution and performance of this Agreement has been duly authorised by all necessary action and the obligations of the Parties hereunder constitute legal, valid, binding and enforceable obligations; and

12.1.3. the execution of this Agreement does not violate the provisions of any other agreement between either of the Parties and any third party.

13. CONTRACT MANAGEMENT

13.1. Within 10 (ten) Business Days after the Signature Date, the Parties shall each appoint a Contract Manager for the purpose of, *inter alia*, discussing the Project progress and any other issues related

thereto, including but are not limited to, reports from the Community Members, challenges and/or issues relating to community liaison and any other issues nominated by either of the Parties.

- 13.2. The Contract Managers and such other parties as they may invite shall meet at least monthly or as reasonably requested by either Contract Manager, to consider and discuss matters relating to the Project and specifically in terms of this Agreement.
- 13.3. Any appointment, removal or replacement of a Contract Manager by either Party, shall be effected by written notice to the other Party and shall be effective as from the date of receipt (or deemed receipt) of such notice by such other Party.

14. DISPUTE RESOLUTION

- 14.1. The dispute resolution procedure contained in this clause 14 (*Dispute Resolution*) shall apply to any dispute or claim between the Parties arising out of or relating to this Agreement.
- 14.2. A dispute will not be deemed as such until one of the Parties has provided written notice to the other Party conveying the nature and scope of the dispute.
- 14.3. All disputes shall first be referred to a committee for mediation, which committee shall consist of the Contract Managers and a representative from SALGA ("**Mediation Committee**"). An agreement reached by the Mediation Committee in attempt to resolve the dispute shall be reduced to writing and shall be binding on the Parties. If the Parties are unable to resolve any dispute within 10 (ten) Business Days of the initial referral to the Mediation Committee, either Party may refer the matter to arbitration.
- 14.4. The arbitration shall be conducted in accordance with the provisions of the Arbitration Act, 1965 (Act No 42 of 1965, as amended from time to time), provided that –
- 14.5. The arbitrator shall be an impartial admitted attorney or advocate of the High Court of South Africa whether practising or non-practising of not less than 10 (ten) years standing appointed by the Parties or, failing agreement by the Parties within 10 (ten) days after the arbitration has been demanded, at the request of either of the Parties shall be appointed by the President for the time being of the Law Society of the Northern Provinces or its successor-in-title. If that person fails or refuses to make the nomination, either Party may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.
- 14.6. The arbitration proceedings shall take place at a venue and time to be determined by the arbitrator.
- 14.7. The arbitration proceedings shall be held informally and in a summary manner, and all procedural requirements and formalities shall be determined by the arbitrator. In determining such formalities and procedure, the arbitrator does not need to observe the normal strict rules of evidence or usual formalities of procedure.
- 14.8. The decision of the arbitrator shall be final and binding on the Parties and the arbitrator shall be

obliged to give his/her award in writing fully supported by reasons.

- 14.9. The cost of the arbitration proceedings shall be borne by the Parties as ruled by the arbitrator.
- 14.10. Notwithstanding the provisions of this clause 14 (*Dispute Resolution*), any Party shall be entitled to approach a competent court of law having jurisdiction to obtain any urgent relief which may be required by such Party.
- 14.11. The provisions of this clause 14 (*Dispute Resolution*) shall survive the termination of this Agreement, for whatever reason, indefinitely.

15. TERMINATION

- 15.1. Neither Party shall have any right, nor shall it exercise, or purport to exercise, any right to terminate this Agreement except as expressly set out in this Agreement.
- 15.2. Should either Party ("**Defaulting Party**") breach any material provision of this Agreement and fail to remedy such breach within 14 (fourteen) Business Days after receiving written notice requiring it to do so from the other Party ("**Aggrieved Party**"), then the Aggrieved Party shall be entitled, without prejudice to its other rights in law, including any right to claim damages, to claim immediate specific performance of the Defaulting Party's obligations, or in the case of a breach of a material provision, to cancel this Agreement immediately by giving written notice to that effect to the Defaulting Party.
- 15.3. Without derogating from any of its rights under and in terms of clause 15.2 or elsewhere in this Agreement, the Aggrieved Party may at any time give written notice to the Defaulting Party to terminate this Agreement forthwith (without prejudice to any or right or remedy) if the Defaulting Party commits a material breach of any term or condition of this Agreement which cannot be remedied or is a repeat of a previously remedied material breach.

16. NOTICES

16.1. Methods of Delivery

Unless otherwise provided in this Agreement, all notices to be given in terms of this Agreement shall be given in writing and shall:

- 16.1.1. be delivered by hand to the physical address chosen by a Party, provided that such notice shall be delivered during business hours and shall, unless the contrary is proven by the Party to whom the notice is addressed, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a Business Day shall, unless the contrary is proven by the Party to whom the notice is addressed, be presumed to have been received on the following Business Day; or
- 16.1.2. be delivered by registered post to the postal address chosen by a Party. Any notice delivered by

registered post shall, unless the contrary is proven by the Party to whom the notice is addressed, be presumed to have been received on the 10th (tenth) Business Day following the date on which it is posted; or

- 16.1.3. be transmitted by email during business hours and shall unless the contrary is proven by the Party to whom the notice is addressed, be presumed to have been received on the date of transmission of the email. Any notice transmitted after business hours or on a day which is not a Business Day shall, unless the contrary is proven by the Party to whom the notice is addressed, be presumed to have been received on the following Business Day; or
- 16.1.4. be sent by telefax during business hours and shall unless the contrary is proven by the Party to whom the notice is addressed, be presumed to have been received on the date of successful transmission of the telefax. Any telefax sent after business hours or on a day which is not a Business Day shall, unless the contrary is proven by the Party to whom the notice is addressed, be presumed to have been received on the following Business Day and provided that a hard copy is promptly dispatched to the recipient in the manner provided in clauses 16.1.1 or 16.1.2 above.
- 16.2. Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, shall be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause 16 (*Notices*).

16.3. **Addresses**

The Parties choose the postal and physical addresses and contact details set out below:

16.3.1. The **DoE**:

Physical Address:	192 Visagie Street (corner Visagie Street and Paul Kruger Street), Pretoria, 0001
Postal address	Private Bag X96, Pretoria, 0001
Facsimile number:	+27 12 323 5819
Email:	Khanyiso.zihlangu@energy.gov.za
Marked for the attention of:	Mr Khanyiso Zihlangu

16.3.2. The **Municipality**:

Physical Address:

Postal address

Facsimile number:

Email:

Marked for the attention of:

16.4. **Domicilium citandi et executandi**

The Parties choose their respective physical addresses in clause 17.3 as their respective *domicilia citandi et executandi* for all purposes of and in connection with this Agreement. Notwithstanding anything to the contrary herein, a written legal notice or process actually received by a Party shall be an adequate written notice or process, notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

16.5. **Change in address**

Either Party may change its nominated physical or postal address to another physical or postal address, as the case may be, in South Africa (and not in any other country) or its contact details by giving at least fifteen (15) days' prior written notice to the other Party.

17. **MISCELLANEOUS**

17.1. **No cession or assignment**

The provisions of this Agreement shall automatically endure to any legal successors of the Parties, but save as otherwise expressly permitted hereunder, a Party shall not, without the prior written approval of the other Parties, which shall not be unreasonably withheld, assign, cede, delegate, transfer or otherwise dispose of any right or obligation under this Agreement to any other person.

17.2. **Governing Law and Jurisdiction**

17.2.1. This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.

17.2.2. Each Party agrees that the High Court of South Africa shall have exclusive jurisdiction to hear and decide any application, action, suit, proceeding or dispute in connection with this Agreement, and irrevocably submits to the jurisdiction of the High Court of South Africa.

17.3. **No amendments**

No provision of this Agreement (including, without limitation, the provisions of this clause) may be amended, substituted or otherwise varied, and no provision may be added to or incorporated in this Agreement, except (in any such case) by an agreement in writing signed by the duly authorised representatives of the Parties.

17.4. **Waiver**

17.4.1. The failure of any Party to exercise any contractual right or remedy shall not constitute a waiver thereof.

17.4.2. No waiver shall be effective unless it is communicated in writing to the other Party.

17.4.3. Any relaxation, indulgence or delay (together "**Indulgence**") by either Party in exercising, or any failure by either Party to exercise, any right under this Agreement shall not be construed as a waiver of that right and shall not affect the ability of that Party subsequently to exercise that right or to pursue any remedy, nor shall any Indulgence constitute a waiver of any other right (whether against that Party or any other person).

17.5. **Entire Agreement**

17.5.1. Except where expressly provided to the contrary in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

17.5.2. Each Party acknowledges and agrees that it is not entering into this Agreement in reliance on, and shall have no right of action against the other Party in respect of, any assurance, promise, undertaking, representation or warranty made by the other Party at any time prior to the Signature Date, unless it is expressly set out in this Agreement.

17.6. **Costs**

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement and the performance of their obligations under the Agreement.

17.7. **Severability**

If any provision of this Agreement is held by a court or other Responsible Authority to be unlawful, void or unenforceable, it shall be deemed to be deleted from this Agreement and shall be of no force and effect and this Agreement shall remain in full force and effect as if such provision had not originally been contained in this Agreement. In the event of any such deletion the Parties shall

negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so deleted

17.8. Stipulatio Alteri

No part of this Agreement shall constitute a *stipulatio alteri* in favour of any Person who is not a Party to the Agreement unless the provision in question expressly provides that it does constitute a *stipulatio alteri*.

17.9. Good Faith and Co-operation

The Parties agree to co-operate with each other in good faith with a view to the successful, implementation of this Agreement and undertake at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of this Agreement.

17.10. Nature of Contractual Relationship

This Agreement shall not create, give rise to, constitute or imply any partnership, joint venture, agency, fiduciary relationship or employment relationship between the Parties who conclude this Agreement as independent contracting parties. Neither Party shall have, nor represent that it has, any authority to make any binding or other commitments on the other Party's behalf.

17.11. Publicity

The Parties agree that the Municipality shall not issue any press release, advertisement, publication, notification or public statement or utterance or in any way engage in any other form of public disclosure relating to Project and/or the National Solar Water Heater Programme without the prior written approval of DoE.

17.12. Language

This Agreement is made only in the English language. Each document referred to in this Agreement or to be delivered under it shall be in the English language.

17.13. Counterparts

This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

Thus done and signed at.....on this.....day of.....20....

As witnesses:

1. _____

For and on behalf of DoE

2. _____

who warrants his/her authority hereto
Mr Thabane Zulu
Director General: Energy

Thus done and signed at.....on this.....day of.....20...

As witnesses:

1. _____

For and on behalf of the Municipality

2. _____

who warrants his/her authority hereto
[]
[]
[] Municipality