



AGREEMENT

BETWEEN

**THE DEPARTMENT OF MINERALS AND ENERGY
(DME)**

AND

.....

**FOR THE PROVISION OF A SUBSIDY IN RELATION TO
THE ESTABLISHMENT OF A RENEWABLE ENERGY PROJECT**

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Whereas –

The White Paper on Renewable Energy has set a target of 10,000GWhs of final energy consumption in South Africa based on renewable sources such as biomass, solar, small-scale hydro and wind by 2013;

And Whereas –

One of the key impediments to the development of renewable energy (RE) Projects is access to finance;

And Whereas –

Government is willing to provide subsidies towards the establishment of renewable energy Projects;

And Whereas –

The Department of Minerals and Energy (DME) has established a Renewable Energy Finance and Subsidy Office (REFSO) to administer such subsidies;

And Whereas –

The Project Developer (the Developer) has applied for a subsidy to facilitate the establishment of a renewable energy Project and;

Now Therefore –

The Parties agree as follows:



1 DEFINITIONS

In this Agreement, unless the context clearly otherwise indicates --

- 1.1. "Agreement" means this Agreement, including schedules 1 and 2, between the Developer and the DME;
- 1.2. "Developer" means XYZ Company, Registration number: _____, the developer of the Project;
- 1.3. "DME" means the Department of Minerals and Energy in the National Government of the Republic of South Africa;
- 1.4. "Effective Date" means the date of signature of this agreement by the last Party signing;
- 1.5. "Financial Close" means the date of final commitment to the financing of the Project by the financiers thereof;
- 1.6. "LoR" means a Letter of Registration issued to the Developer by the DME in terms of which the DME indicates a willingness to award a subsidy to the Developer subject to the terms and conditions set out in such letter;
- 1.7. "Parties" means the DME and the Developer;
- 1.8. "PFMA" means the Public Finance Management Act, 1999 (Act No. 1 of 1999), as amended, and includes any regulations promulgated there under as in force from time to time;
- 1.9. "Project" means a Project for the establishment of ABC RE Plant, as set out in more detail in Schedule 1, and which qualifies for a RE subsidy;
- 1.10. "RE" means renewable energy;
- 1.11. "RE Plant" means the renewable energy plant installed in terms of the Project, as set out in Schedule 1;
- 1.12. "Start-up Date" means the date envisaged by the Developer for the commencement of construction activities with regard to the Project as conveyed to the DME, which date shall not be more than 6 (six) months from the Effective Date;
- 1.13. "Subsidy" means the amount payable by the DME to the Developer to facilitate the realisation of the Project as contemplated in clause 8;
- 1.14. "Subsidy Scheme" means the subsidy scheme in terms of which the Subsidy is approved and disbursed in terms of this Agreement;



- 1.15. Reference to the singular includes reference to the plural and vice versa;
- 1.16. Reference to a natural person shall include reference to a legal person and association of persons and vice versa; and
- 1.17. Reference to any one gender shall include reference to the other gender.



2 PARTIES TO THE AGREEMENT

The Parties to this Agreement are the DME and the Developer, represented by the signatories hereto, who confirm that they are duly authorised and empowered to act as such.

3 OBJECTIVE OF AGREEMENT

The objectives to be served by the agreement between the DME and the Developer are --

- 3.1 to increase the share of RE in the South African energy supply mix;
- 3.2 to provide an incentive to the Developer to implement the Project;
- 3.3 to record the conditions subject to which a Subsidy is given to the Developer to facilitate the establishment of the Project; and
- 3.4 to ensure that the Subsidy is utilised towards the Project, with due regard to the requirements of the PFMA.

4 LOR SUPERSEDED

It is hereby recorded that the LoR issued by the DME towards the Project is hereby superseded by this Agreement.

5 COMMENCEMENT

This Agreement shall come into force on the Effective Date.

6 DURATION

This Agreement shall lapse on the successful commissioning of the RE Plant or 18 (eighteen) months from the Effective Date, whichever occurs first. Notwithstanding this, the DME reserves the right to terminate the Agreement as provided for in section 10.



7 CONDITIONS PRECEDENT

This Agreement as a whole shall only be enforceable by the Developer against the DME if –

- 7.1 the Developer is in possession of a valid LoR at the time this Agreement is entered into; and
- 7.2 the date of Financial Close occurs within 60 (sixty) days from the Effective Date.

8 SUBSIDISING OF PROJECT

The DME will subsidise the Project by an amount of RXXXX.

9 PAYMENT OF SUBSIDY

- 9.1 The payment of the Subsidy is subject to –
 - 9.1.1 the release of funds by the Developer's lead financier to enable construction to commence before or on the Start-up Date; and
 - 9.1.2 physical inspections by the DME aimed at obtaining satisfactory proof of the commencement of construction activities of the Project.
- 9.2 The Subsidy will be paid within 30 (thirty) days of the conditions in clause 9.1 having been met.
- 9.3 Any erroneous payment of the Subsidy will immediately be recoverable from the Developer by means of a letter of demand by the DME, and the DME shall levy interest on such amount outstanding for more than 30 days from the date of the letter of demand at the rate prescribed in terms of section 80(1)(b) of the PFMA.

10 TERMINATION OF AGREEMENT

- 10.1 This Agreement may forthwith be terminated by the DME –
 - 10.1.1 if the Developer fails to comply with any of its obligations as contemplated in clause 11;
 - 10.1.2 if construction does not commence before or on the Start-up Date;
 - 10.1.3 if the RE Plant is not commissioned within 18 (eighteen) months from the Effective Date;
 - 10.1.4 if the lead financier for any reason stops providing finance towards the Project;



- 10.1.5 if the Developer fails to obtain any approval required in terms of provincial or local ordinances or by-laws relating to environmental planning, zoning or building matters;
- 10.1.6 if at anytime BEE ownership in the Project becomes less than 25% of the equity in the Project;
- 10.1.7 if the Developer is convicted of fraud, corruption or theft, or any other matter that otherwise may have a negative influence on the Project;
- 10.1.8 if accounting records are not available when required, or inspections are prevented from taking place;
- 10.1.9 if the Developer does not comply with the requirements imposed by the DME in terms of the PFMA relating to financial and risk management systems with regard to the Project;
- 10.1.10 if any of the rights and obligations of the Developer with regard to the Project are ceded or assigned without the prior approval of the DME;
- 10.1.11 upon an application for the provisional or final liquidation, or judicial management, of the Developer being made;
- 10.1.12 if any information in the application for Subsidy was incorrect, or if information was wilfully omitted or withheld by the Developer; and
- 10.1.13 if the Subsidy was fraudulently or misleadingly applied for and received.
- 10.2 The DME may, prior to terminating this Agreement in terms of clause 10.1 -
 - 10.2.1 on the written application by the Developer, extend any time period contemplated in this Agreement that may lead to its termination;
 - 10.2.2 direct the Developer to comply with this Agreement by way of a written notice setting out the nature of the alleged non-compliance, and setting out a reasonable period to rectify such non-compliance.
- 10.3 The Developer may, on the material non-compliance of the DME with the provisions of this Agreement, revoke the Agreement upon 30 (thirty) days' written notice to the DME.
- 10.4 The DME may, should this Agreement be terminated as provided for in clause 10.1, without derogating from any other rights it may have, demand re-payment of the Subsidy together with interest prescribed in terms of section 80(1)(b) of the PFMA, calculated from the date the Subsidy was paid.



11 OBLIGATIONS OF DEVELOPER

Without derogating from any other obligation in terms of this Agreement, the Developer has the following obligations:

11.1 Proper use of the Subsidy

The Developer shall only utilise the Subsidy towards the Project and for no other purpose.

11.2 Availability of staff

The Developer warrants that it has the necessary staff and competence to establish the Project, and in particular that it has --

11.2.1 the necessary processes and capability to manage Subsidies transferred to it; and

11.2.2 appropriate project, risk and financial management skills.

11.3 Milestones

The Developer shall commence and implement the Project in accordance with the milestones set out in Schedule 2.

11.4 Accounting

Financial statements of account and relevant records relating to the Project must be retained and kept for at least five years.

11.5 Standards

The Developer shall comply with any code or standard relating to the development of the Project as may be required by law or by a reasonable developer in the same position as the Developer.

11.6 Reporting

The Developer shall, on commissioning of the RE Plant, provide the DME with a report containing particulars about --

11.6.1 the energy produced by the plant;

11.6.2 such other particulars as the DME may reasonably require with regard to the commissioning of the Project.

11.7 Auditors

In addition to the requirements regarding financial statements and auditing as imposed on the Developer in terms of the Companies Act, 61 of 1973, the DME must be satisfied with the good standing of the accountants and auditors used by the Developer.



11.8 Governance

The Developer shall, in so far as it may be applicable to it, comply with the provisions of the PFMA.

12 GENERAL RIGHTS OF DEPARTMENT

Without derogating from any other right in terms of this Agreement, the DME has the following rights:

12.1 Monitoring and inspection

The DME shall be entitled to monitor the activities of the Developer in terms of this Agreement and the Developer will grant access to any of its premises, at any reasonable time, to any official representing it in order to verify that the terms of this Agreement are being adhered to.

12.2 Information

The DME shall be entitled within a reasonable period, which may not exceed 30 (thirty) days, to be supplied with all the data and information requested by the DME for the monitoring of the activities of the Developer relating to the Project.

13 OWNERSHIP OF ASSETS

13.1 Ownership of any asset created with the help of the Subsidy shall vest in the Developer: Provided that –

13.1.1 the Developer shall not for the duration of this Agreement be entitled to sell, dispose of, mortgage or in any way encumber any such asset without the prior written approval of the DME.

14 CESSION OF RIGHTS AND OBLIGATIONS

14.1 The rights and obligations of the DME in terms of this Agreement may be ceded or transferred to any other party to the extent that such transfer is necessitated by operation of law, or the Parties otherwise agree thereto.

14.2 The rights and obligations of the Developer may not be ceded or transferred to any other party unless the prior written approval of the DME has been obtained.

15 DISPUTE RESOLUTION

15.1 Should any dispute or difference of any nature whatsoever arise between the Parties in connection with or arising from this Agreement, the Party declaring the dispute or difference must notify the other Party in writing,



18 VARIATIONS IN WRITING

All additions, amendments and variations to this Agreement shall be binding only if in writing and signed by the duly authorised representatives of the Parties.

19 ENTIRE AGREEMENT

The Agreement constitutes the entire understanding between the Parties and supersedes any previous oral and written representations, agreements or arrangements between the Parties.

20 WAIVER

No waiver or indulgence by either Party of any default by the other in the performance of any of the provisions of this Agreement --

- 20.1 shall operate or be construed as a waiver of any other or further default whether of a like or different character;
- 20.2 shall be effective unless in writing duly executed by an authorised representative of the Party.

21 CONFIDENTIALITY

Each of the Parties shall ensure that their contractors, sub contractors, consultants and agents and each of their respective permitted successors and assigns, hold in confidence all documents and other information which is of a confidential nature supplied to it by or on behalf of the other Party and shall not (save as required by the laws of South Africa) publish or otherwise disclose or use the same for its own purpose, otherwise than as may be required to perform its obligations under this Agreement: Provided that the provisions of this paragraph shall survive the termination of this Agreement.



22 FORCE MAJEURE

- 22.1 Either Party shall be excused from the non-performance of any of its obligations under this Agreement if caused by any factor outside the control of that Party, such factor including (without limitation) acts of God, direct or indirect terrorist actions, riots, unavailability of materials, strikes, sanctions, embargoes and actions of the legislative (including changes to legislation and subordinate legislation), or the executive, or the military authorities.
- 22.2 The affected Party shall bear the onus of proving that an event of *force majeure* has occurred, and will keep the other Party informed in writing of the circumstances which the affected Party claims amounts to *force majeure*.
- 22.3 If *force majeure* persists for a continuous period of more than 3 (three) consecutive months, either Party may terminate this Agreement on 14 (fourteen) days written notice to the other Party.

23 SEVERABILITY

Any provision of this Agreement which is or may become illegal, invalid or unenforceable shall be ineffective to the extent of such illegality, invalidity or unenforceability and shall be treated as *pro non scripto* and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement.



Signed at _____ on this the _____ day of
_____ 20....

Full Names:

Designation:

I.D. No.:

1. _____

DME

As witnesses:

2.

3.

Signed at _____ on this _____ day of
_____ 20.....

Full Names:

Designation:

I.D. No.:



4. _____

Developer

As witnesses:

5.

6.



Schedule 1: Details of Project (As per Subsidy Application – to be completed by Developer)

1.

2.

3.

4.

5.

6.



Schedule 2: Project Milestones

To be agreed during contract negotiation.