

UTILITY MANAGEMENT AGREEMENT
INCORPORATING SERVICE LEVEL AGREEMENT

ENTERED INTO BY AND BETWEEN

THE NAMA KHOI LOCAL MUNICIPALITY
(HEREINAFTER REFERRED TO AS "THE MUNICIPALITY")

AND

RURAL MAINTENANCE (PTY) LTD
(HEREINAFTER REFERRED TO AS "RURAL")

(JOINTLY REFERRED TO HEREINAFTER AS "THE PARTIES")

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Annexure A	-	Indicative Project Financial Model (sample)
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Annexure C	-	Project plan and indicative time frames

The Municipality wishes to appoint a services and technology provider in respect of the Project.

RURAL and its Main Contractors, possesses the requisite experience and expertise to successfully plan, operate and execute the Project.

The Parties therefore wish to enter into a utility management contract incorporating a service level agreement on the terms and conditions set out below.

1. Interpretation and Preliminary

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears:

- 1.1. words importing:
 - 1.1.1. any one gender include the other two genders; and
 - 1.1.2. the singular include the plural and *vice versa*;
- 1.2. references to a "person" include a natural person, company, close corporation or any other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 1.3. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:
 - 1.3.1. "**Agreement**" shall mean this utility management agreement (incorporating a service level agreement), including the Annexures;
 - 1.3.2. "**Annexure**" shall mean an annexure to this Agreement;
 - 1.3.3. "**Authority**" shall mean any government or governmental, administrative, fiscal or judicial authority, body, court, department, commission, tribunal, registry or any state-owned, controlled or legislatively constituted authority which principally performs public, governmental or regulatory functions;
 - 1.3.4. "**Base Line**" shall mean the total amount independently verified by an Independent Expert, over the latest 12 month period, i) the Municipality has so received from customers and banked into its bank account for the electricity and water Services it has so provided to Consumers within its municipal boundary AND ii) the Municipality has expended in making available the electricity and water Services to Consumers;
 - 1.3.5. "**Bulk Supplier(s)**" shall mean the bulk supplier(s) of electricity and water;
 - 1.3.6. "**Bulk Supply Account**" shall mean the monthly bulk electricity and water accounts received from the Bulk Suppliers in respect of the Municipal offtake point(s);



- 1.3.7. "**Capital Assets**" shall mean the fixed assets comprising the electricity and water Networks;
- 1.3.8. "**Commencement Date**" shall mean the Signature Date plus 3 months, which 3 month period will be used by RURAL to prepare for the commencement of the Project.
- 1.3.9. "**Community**" shall mean Consumers and potential Consumers within the Municipal boundaries and serviced by the Municipality;
- 1.3.10. "**Consumers**" shall mean (i) users of municipal services so provided by the Municipality within the Municipal boundaries, which shall, for the avoidance of doubt, also include the Municipality when it consumes electricity and water or itself making use of such electricity and water related services, and (ii) Relevant Institutions;
- 1.3.11. "**Council**" shall mean the Municipal Council of the Municipality;
- 1.3.12. "**Days**" shall mean calendar days;
- 1.3.13. "**Distribution**" shall mean, in the case of electricity, the conveyance of electricity at low, medium and high voltages (275kV and below) for sale to end users, and "**Distribute**" and "**Distributing**" shall have a similar meaning and in the case of water, the conveyance of potable water from the bulk water receiving points to Consumers through pipelines and other related water distribution and metering infrastructure;
- 1.3.14. "**Distribution Licence**" shall mean the electricity distribution licence issued by NERSA, in the exercise of the powers conferred on it by section 6 of the Electricity Regulation Act, to the Municipality to Distribute electricity to all Consumers, subject to the conditions as set out in the license and the Electricity Regulation Act;
- 1.3.15. "**Electricity Regulation Act**" shall mean the Electricity Regulation Act 4 of 2006, and includes the regulations made thereunder or amendments thereto;
- 1.3.16. "**Equipment**" shall mean the installed and operational Network equipment invested into by RURAL as per the provisions of clause 7.5 below;
- 1.3.17. "**Force Majeure**" shall mean any of the following events:
- 1.3.17.1. war, civil war, armed conflicts or terrorism; or
 - 1.3.17.2. nuclear contamination, unless RURAL and/or any subcontractor of RURAL is the source or cause of the contamination; or
 - 1.3.17.3. chemical or biological contamination of the Network from any of the events referred to in clause 1.3.18.1 above; or
 - 1.3.17.4. floods, storms, earthquakes, tremors, fires or other Acts of God,
- which directly causes either Party to be unable to comply with all or a material part of its obligations under this Agreement;

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- 1.3.18. **"Independent Expert"** shall mean an independent auditor (who does not compete, whether directly or indirectly, in any way with RURAL or its Main Contractors), registered with the South African Institute of Chartered Accountants as mutually agreed on by the Parties, or if the Parties fail to reach agreement on an independent auditor within 15 (FIFTEEN) Days of either Party requesting that the dispute be referred to an independent auditor registered with the South African Institute of Chartered Accountants, an independent auditor as may be appointed by the Executive President for the time being of the South African Institute of Chartered Accountants or his successor-in-title;
- 1.3.19. **"Initial Assets"** shall mean the Network and related assets owned and paid for by the Municipality prior to the Commencement Date, the ownership of which shall remain vested in the Municipality;
- 1.3.20. **"Intellectual Property Rights"** shall include:
- 1.3.20.1. any copyright, design right, patents, inventions, logos, business names, service marks and trademarks, internet domain marks, moral rights, rights in databases, data, source codes, reports, drawings, specifications, know how, business methods and trade secrets;
 - 1.3.20.2. applications for registration, and the right to apply for registration, for any of these rights; and
 - 1.3.20.3. all other intellectual property rights and equivalent or similar forms of protection;
- 1.3.21. **"Labour Relations Act"** shall mean the Labour Relations Act 66 of 1995, and includes the regulations made thereunder;
- 1.3.22. **"Law"** shall mean the common law and all legislation, statutes, regulations, directives, orders, notices, promulgations and other decrees of any Authority, which have force of law or which it would be an offence not to obey, as amended, replaced re-enacted, restated or re-interpreted from time to time;
- 1.3.23. **"Main Contractors"** shall mean Netelek (Pty) Ltd as technology supplier to RURAL and any other contractor which may be used by RURAL at its discretion and cost for the execution of the Project;
- 1.3.24. **"MFMA"** shall mean the Local Government Municipal Finance Management Act 56 of 2003, and includes the regulations made thereunder;
- 1.3.25. **"the Municipality"** shall mean the Nama Khoi Local Municipality or its successor-in-title and **"Municipal"** shall have a similar meaning;
- 1.3.26. **"the Network(s)"** shall mean the Municipal electricity and potable water distribution networks within the boundaries of the Municipality so owned and operated by the Municipality;
- 1.3.27. **"NERSA"** shall mean the National Energy Regulator of South Africa, as constituted in terms of the National Energy Regulator Act 40 of 2004 or such regulatory body as may succeed it in terms of replacement legislation;



- 1.3.28. **"NRS"** shall mean the National Rationalized Specification;
- 1.3.29. **"Parties"** shall mean the Municipality and RURAL and **"Party"** shall refer to either one of them as the context may require;
- 1.3.30. **"Performance Guarantee"** shall mean the performance guarantee so issued by RURAL to the Municipality to the value of R2,000,000 valid for 6 months from the Commencement Date;
- 1.3.31. **"Positive Delta"** shall mean the improvement in Network revenue so banked and/or the decrease in Network operational expenditure so saved by the Municipality, when compared to the Base Line.
- 1.3.32. **"Project"** shall mean the improvement in revenue and or reduction of costs of the Municipality through the implementation of i) Utility Services management technology services and ii) demonstrated successful industry business practices;
- 1.3.33. **"Relevant Institution(s)"** shall mean any entity or person who falls within the supply area of the Municipality and uses electricity whether on private or public property;
- 1.3.34. **"RURAL"** shall mean Rural Maintenance proprietary limited with registration number 1994/000212/07 a company incorporated according to the laws of South Africa having its principal place of business at 5 Zeederberg Square, Paarl, South Africa
- 1.3.35. **"SANS"** means the South African National Standards, as published by the South African Bureau of Standards from time to time;
- 1.3.36. **"Services"** shall refer to all matters pertaining to the oversight, management and execution of the Project;
- 1.3.37. **"Signature Date"** shall mean the date of signature of this Agreement by the last Party thereto;
- 1.3.38. **"Sub-Contractors"** shall mean Main Contractors;
- 1.3.39. **"Surviving Provisions"** shall mean clause 1 and clauses 12 to 26 (both inclusive) and any other provisions of this Agreement which are expressed to continue in force after termination of this Agreement or which by necessary implication must continue after termination of this Agreement;
- 1.3.40. **"Systems Act"** means the Local Government: Municipal Systems Act 32 of 2000, and includes the regulations made thereunder;
- 1.3.41. **"Term"** shall mean 15 (FIFTEEN) years from the Commencement Date;
- 1.3.42. **"Unforeseeable Conduct"** shall occur if, after the Signature Date, the Municipality or any Authority takes any action (including the introduction, application, or change of any Law) or fails to carry out its obligations as prescribed by Law; and
 - 1.3.42.1. the principal effect of which is directly borne by:
 - 1.3.42.1.1. the Project; or



1.3.42.1.2. RURAL and no other persons; and

1.3.42.2. in respect of which RURAL is not entitled to any other relief pursuant to any other provisions of this Agreement,

provided that:

- (i) Unforeseeable Conduct shall be deemed not to have occurred under circumstances where any action or omission of the Municipality or any Authority is in direct response to any act or omission of RURAL which is illegal (other than an act or omission rendered illegal by virtue of such conduct of the Municipality or any Authority) or in violation of RURAL's obligations under this Agreement;
- (ii) an increase in taxes of general application which does not discriminate against RURAL or against RURAL and other parties shall not be deemed to be Unforeseeable Conduct;

1.3.43. "Utility Services" shall mean electricity and potable water and related services so provided by the Municipality to Consumers (i.e. residential, commercial and industrial users amongst other) whom receive the services from the Municipality and for which the users pay for said services either as a dedicated service(s) or in the form of rates and taxes.

1.3.44. "VAT" shall mean value-added tax levied in terms of the Value-added Tax Act 89 of 1991;

- 1.4. any reference to a statutory provision include any subordinate legislation made from time to time under that provision and includes that provision as amended or re-enacted from time to time;
- 1.5. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 1.6. when any number of Days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last Day unless the last Day falls on a Saturday, Sunday or official South African public holiday, in which case the last Day shall be the next succeeding Day which is not a Saturday, Sunday or gazetted national holiday in the Republic of South Africa;
- 1.7. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.8. where 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 that term has not been defined in this interpretation clause; and

- 1.9. whenever a person is required to act as an Independent Expert in terms of this Agreement, then:
 - 1.9.1. the Independent Expert shall act as an "expert and not as an arbitrator";
 - 1.9.2. subject to any express provision to the contrary, the Independent Expert shall determine:
 - 1.9.2.1. the quantum of his charges, which quantum shall be paid on demand, in the amounts and manner determined by the Independent Expert; and
 - 1.9.2.2. which of the Parties (collectively the "**Concerned Parties**" and separately and individually a "**Concerned Party**") is liable to pay his charges and, if more than 1 (ONE) Concerned Party is so liable, in what proportions the obligation to make payment of his charges is to be split between the Concerned Parties;
 - 1.9.3. the Independent Expert shall be entitled to determine such methods and processes as he may, in his sole discretion, deem appropriate in the circumstances;
 - 1.9.4. the Independent Expert shall consult with the Concerned Parties (provided that the extent of the Independent Expert's consultation shall be in his sole discretion) prior to rendering a determination. The Independent Expert shall afford the Concerned Parties the opportunity to make such written, or at its discretion, oral representations as the Concerned Parties wish, subject to such reasonable time and other limits as the Independent Expert may prescribe and the Independent Expert shall have regard to any such representations but not be bound by them;
 - 1.9.5. the Concerned Parties shall fully co-operate with the Independent Expert and do all such things as may be necessary to assist the Independent Expert with his determination;
 - 1.9.6. having regard to the sensitivity of any confidential information, the Independent Expert shall be entitled to take advice from any person considered by him to have expert knowledge with reference to the matter in question;
 - 1.9.7. having considered the Concerned Parties' respective representations as contemplated in clause 1.9.4, the Independent Expert shall make his determination in as short a time as is reasonably possible in the circumstances;
 - 1.9.8. the Independent Expert's determination will (in the absence of manifest error) be final and binding on the Concerned Parties.

2. Objective of the Agreement

- 2.1. The objective of the Agreement is to provide for the appointment of RURAL as exclusive revenue enhancement services provider for the Utility Services for the duration of the Term.



- 2.2. RURAL, as revenue enhancement Services provider shall;
 - 2.2.1. use its best endeavours to enhance the Utility Services revenue and / or reduce the Utility Services related operational expenditure to the financial benefit of the Municipality;
 - 2.2.2. in line with the Project, be responsible for:
 - 2.2.2.1. the implementation of systems, procedures; and
 - 2.2.2.2. the training of Municipal employees;
 - 2.2.3. ensure that whoever uses municipal Utility Services, pays timeously;
- 2.3. RURAL shall be paid from the Positive Delta so registered from the Commencement Date, for the duration of the Agreement;
- 2.4. The Municipality shall use its best endeavours to support RURAL in the execution of the Project and ensure that duplication of services and responsibilities by other third parties, is guarded against.

3. Main Points of Agreement

3.1. Commencement

RURAL shall commence with the Project and the Services on the Commencement Date.

3.2. Term of the Agreement

- 3.2.1. The Term of the Agreement shall be 15 years from the Commencement Date.
- 3.2.2. The Parties shall within 6 (SIX) months after the 14th (fourteenth) anniversary of the Commencement Date, meet to discuss steps for either termination and subsequent orderly hand over or renewal of the Agreement in such a manner as to not by-pass any supply chain management legislation or policies in effect at the time.
- 3.2.3. In the unlikely event that the Parties have not finalised any renewal terms with regard to the Agreement as mentioned in 3.2.2 above, RURAL shall be appointed on the same terms and conditions as set out in the Agreement for a further 12 months. For the avoidance of doubt, should the Municipality wish to terminate the Agreement after the Term of the Agreement has been reached, then it will simply confirm such termination in accordance with the Term of the Agreement in writing, before the 15th anniversary of the Commencement Date.
- 3.2.4. The Municipality agrees that all software technology systems utilised by RURAL for the duration of this Agreement will terminate on the date of Termination and should the Municipality wish to continue to make use of such technology systems, the Municipality shall contract the relevant technology providers and pay the requisite licence fees going forward.



3.3. Exclusivity

RURAL is granted the sole responsibility for the operation of the Network and the delivery of the Project, specifically pertaining to Utility Services for the duration of the Term.

In the event that there may be an existing agreement already in place between the Municipality and another third party which falls within the scope of the Agreement, then such existing agreements shall be honoured and overseen by Rural until legal termination.

3.4. Scope of Services

3.4.1. The Principles

3.4.1.1. Who receives and uses Utility Services are to pay for it, timeously.

3.4.1.2. The Municipality will do the work itself with its vast human resources already employed. RURAL will only provide the following:-

3.4.1.2.1. Complete a thorough audit of municipality's Network to capture all assets and compile single line diagrams;

3.4.1.2.2. Recover historic debts via electricity / water revenue stream;

3.4.1.2.3. Skills transfer through training of municipal staff;

3.4.1.2.4. Systems deployment (technology) and activation in the customer care, asset register, metering and billing fields;

3.4.1.2.5. Oversight and guidance, steadily declining, from material and significant involvement in the first three years to only oversight in the remaining years;

3.4.1.2.6. Improve the quality of utility services rendered by the Municipality;

3.4.1.2.7. Improve the Tariff modelling of the Municipality;

3.4.1.2.8. Improved payment channels;

3.4.1.2.9. Devise and provide self load shedding programme for the Municipality;

3.4.1.2.10. Assist with design and construction oversight of a Municipal PV solar plant, if financially viable, sustainable and the Municipality can obtain funding for same;

3.4.1.2.11. Establish a cemetery register; and

3.4.1.2.12. Identify additional revenue streams

3.4.1.3. Municipality to endeavour obtaining support for this initiative from the relevant Provincial and National Government departments.

3.4.1.4. The Municipality shall open a ring fenced bank account into which all Utility Services revenue shall be deposited by end users and from which account, funds shall be transferred with the written approval of both the Municipality and RURAL, to the Municipalities primary bank account on a regular basis.

3.4.1.5. RURAL will only receive its funds due from the Positive Delta (additional Utility Services revenues in excess of the Base Line so banked into the ring fenced bank account).

3.4.1.6. The Municipality shall first allocate the Positive Delta to i) pay RURAL, ii) improve Utility Services infrastructure and iii) its own related capability and capacity BEFORE any Positive Delta is expended on non Utility Services related matters.

3.4.1.7. The Municipality to implement the guaranteed payment mechanism for RURAL, prior to the Commencement Date, not dependent on any other approval or instruction from anybody other than ensuring that such payments due to RURAL are made from the Positive Delta on a monthly basis, failing which, Utility Services revenue may accumulate in the ring fenced bank account without the Municipality having access thereto.

3.4.2. The Methodology

3.4.2.1. Audit Phase

3.4.2.1.1. Base Line to be determined by the Municipalities auditors and verified independently by an Independent Expert which will be so used to benchmark RURAL's performance. The fee of the Independent Expert will be paid by RURAL.

3.4.2.1.2. Network asset register will be compiled on which the utilities revenue enhancement strategy will be based.

3.4.2.1.3. Processes and procedures will be documented and reviewed as currently followed by the Municipality, with amendments to be made by RURAL as may be required to optimise services delivery and efficiency.

3.4.2.2. Review of tariffs

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- 3.4.2.2.1. Utility Services tariffs to be reviewed and application made to NERSA or any other regulatory Authority for amendments as may be required to:-
 - 3.4.2.2.1.1. Ensure Consumer tariffs are in line structurally, with the bulk supply tariff structure i.e. time of use based and not flat rate based;
 - 3.4.2.2.1.2. Endeavour that new utility tariffs are affordable and competitive for Consumers when compared to other sustainable municipalities, yet cost reflective for the Municipality;
- 3.4.2.3. Utility Services management system (technology) deployed, commissioned and made operational, comprising the following technology services:-
 - 3.4.2.3.1. Meter reading app
 - 3.4.2.3.2. Non-proprietary meter management system for remote and manual meters which is not dependent on a specific metering manufacturer i.e. the meter management system can interface with a variety of supplier products
 - 3.4.2.3.3. Vending system
 - 3.4.2.3.4. Utility Services billing system
 - 3.4.2.3.5. Customer portal for the convenience of users accessing their electricity and water related billing and usage information over the web
 - 3.4.2.3.6. Fault desk for the effective management of queries so logged by external users of municipal services
 - 3.4.2.3.7. SMS functionality to impart information to Consumers.
- 3.4.2.4. RURAL shall base its Services on,
 - 3.4.2.4.1. efficient and quality services provision to all Consumers.
 - 3.4.2.4.2. apolitical service delivery.
- 3.4.3. Challenges
 - 3.4.3.1. Any duplicate or conflicting services in relation to RURAL which may already be under contract by the Municipality with other 3rd party services providers, will be terminated at the request of RURAL

provided that there is no additional or further cost implication to the Municipality, in which case the Municipality will then terminate at the earliest opportunity to do so without attracting penalties or such additional costs.

4. Financial Matters

4.1. Monies due to RURAL

RURAL shall be entitled, for the first 3 years of the contract period to receive 12% (twelve percent) of all Utility Services revenues so banked, excluding VAT, into the ring fenced Project Municipal bank account, provided that the Positive Delta shall be sufficient to cover the 12% service fee. In the event that the Positive Delta is not sufficient to cover the entire 12% service fee, such service fee for which there is not enough Positive Delta, shall simply remain unpaid without attracting interest until such time as the Positive Delta is sufficient to allow for the full payment of the 12% service fee. For the avoidance of doubt, any delayed service fee payments due to insufficient Positive Delta, will not attract any interest nor will it become payable **BUT** any delayed service fee payments not paid monthly to RURAL for whatever reason (although sufficient Positive Delta has been demonstrated) **shall attract interest at the prime lending rate plus 4%.**

For the next period being from the start of year 4 until the end of year 6, the service fee due to Rural shall be 8% (eight percent) and for the remainder of the contract period being from the start of year seven until the end of year 15, the service fee will be 6% (six percent) of the Utility Services revenue. The service fee so due to RURAL is for:-

- 4.1.1. RURAL to implement and execute the Project as per this Agreement;
- 4.1.2. RURAL to recover moneys it has so invested with regard to:-
 - 4.1.2.1. the systems technology it so deploys (and associated software licence fees) for the Term;
 - 4.1.2.1.1. Meter reading application
 - 4.1.2.1.2. Meter management system
 - 4.1.2.1.3. Vending system
 - 4.1.2.1.4. Billing system
 - 4.1.2.1.5. Customer web portal
 - 4.1.2.1.6. Fault desk
 - 4.1.2.1.7. SMS functionality
 - 4.1.2.1.8. Load shedding control (if, as and when required)
 - 4.1.2.2. The audits so conducted and documented;
 - 4.1.2.2.1. Base Line determination for performance measurement



- 4.1.2.2.2. Network asset register compiled
 - 4.1.2.2.3. Operational processes and procedures documented
 - 4.1.2.2.4. Development of the electricity master plan (EMP) and the water master plan (WMP)
 - 4.1.2.3. The tariffs so reviewed and subsequently approved by NERSA or any other relevant Authority;
 - 4.1.2.4. Oversight so provided to the Municipalities' Utility Services field operations;
 - 4.1.2.5. Training for Municipal employees with regard to RURAL's systems and operational strategies.
 - 4.1.2.6. Assist with unlocking funding for the upgrading / refurbishment / development and expansion of Municipal electrical infrastructure from Governmental or other entities. For the avoidance of doubt, "other" relates to development banks, commercial banks, donor organizations or the like.
 - 4.1.2.7. Suggestions and strategies to mitigate the existing Eskom and other bulk services provider debt (if applicable).
 - 4.1.2.8. Rural will invest at its sole discretion a minimum of R20,000,000 (twenty million Rand) over the course of the first 2 years to initiate the Project pertaining the items so mentioned in this clause 4 and Rural will also as part of this investment, deploy Network metering and communications infrastructure for around 250 large, commercial and strategic user electricity and water metering points.
- 4.2. For the avoidance of doubt, RURAL will not be entitled to any other fees or payments or claims other than the 12%, 8% and 6% service fee respectively on Utility Services revenues banked by the Municipality as set out above.
- 4.3. In the unlikely event that Utility Services revenues are not banked into the ring fenced Project Municipal bank account, then all such revenue received by the Municipality shall still be accounted for as if it had been banked into the ring fenced Project Municipal bank account.
- 4.4. Payments due by RURAL**
- RURAL shall be liable for:
- 4.4.1. payment of any technology licence and support fees due to the systems it deploys within the Municipality for the duration of the Term;
 - 4.4.2. the payment of its own staff, transport, communication and subsistence;
 - 4.4.3. loan repayments in respect of any capital so made available by RURAL in order to provide the Services.

4.5. Liabilities and Debts Owing Prior to Contract Signature Date

Although RURAL shall use its best endeavours to increase revenues and/or decrease Utility Services operational expenditures, the Municipality shall remain responsible for all Network related creditors and debtors of the Municipality, and equally all outstanding debtors shall remain for the account of the Municipality. Under no circumstance can the Municipality demand a guaranteed increase of banking from RURAL as RURAL is only paid, based on the achievement of Positive Delta.

5. Annual Rates Review

- 5.1. RURAL shall annually for the Term, in consultation with the Municipality, submit an application for a tariff review to NERSA or any other relevant Authority as so required for its consideration and approval. The annual tariff review shall amongst other, provide for the items so specified by NERSA or any other relevant Authority as the case may be and shall, together with any public participation presentation and meeting schedule, form the basis on which RURAL shall, on behalf of the Municipality, annually apply for the tariff review to NERSA or any other relevant Authority as so required.
- 5.2. The Parties acknowledge that NERSA, as regulatory Authority for electricity, is entitled to set tariffs in accordance with the Electricity Regulation Act and to resolve related tariff disputes.

6. Operation, Management and Maintenance

The Municipality shall at all times remain responsible for the provision of all labour, transport, tools, equipment and material required to operate, maintain, upgrade and expand the Networks.

7. Investment in Network

- 7.1. The Municipality shall operate and maintain the Networks in accordance with relevant South African electricity best practices.
- 7.2. The Municipality shall adhere to applicable quality of supply guidelines – SANS 473:2006 and SANS 474:2009 (or such replacement guidelines as may be issued).
- 7.3. The Municipality shall adhere to applicable quality of service guidelines – NRS 047-1:2005 (or such replacement guidelines as may be issued).
- 7.4. The Municipality shall adhere to loadshedding regulations so published in terms of NRS 048-9:2023 Edition 3 (or such replacement guidelines as may be issued).
- 7.5. All Equipment installed by RURAL for the operation and management of the Project specifically pertaining to the Network, shall be for the account of RURAL and shall remain the property of RURAL until natural termination of the Agreement as per clause 11 below. The provisions hereof shall apply notwithstanding the installation of such Equipment on the Municipal premises and or the supply of technology against payment of licence fees and the like for delivery of the Utility Services or the accession thereof to any of the Municipal assets or that the equipment may be incorporated into or form part of other goods or change their essential character. All Equipment and



technology, whether fixed to immovable property or not, shall be deemed to remain movable property and be deemed to be severable without injury to either property. **For the avoidance of doubt**, only physical hardware and communications equipment installed on the Network shall be transferred free of charge to the Municipality at the natural termination of the Agreement.

8. Undertakings by RURAL

RURAL undertakes:

- 8.1. to use its best endeavours to optimize service delivery and the adoption of good work ethics by Municipal staff, to the benefit of the Community;
- 8.2. to minimise losses in the running of the Network through the guidance to Municipal staff;
- 8.3. to render the Services efficiently for the benefit of Consumers and the Municipality;

9. Undertakings by the Municipality

The Municipality:

- 9.1. warrants to RURAL that it has and shall continue to comply with all relevant Laws, including but not limited to the MFMA, the Systems Act and the Electricity Regulation Act;
- 9.2. shall assist RURAL in every way possible to obtain access to any part of the Network and administration (inclusive of the relevant Electricity Services bank account(s) to determine banking) to deliver the Services;
- 9.3. shall, in every way possible, instil a culture of payment for services rendered with the Consumers;
- 9.4. shall timeously make payment to the Bulk Supplier as may be required;
- 9.5. shall assist and support RURAL in each and every respect to make the Project a success; and
- 9.6. shall not frustrate or prevent the provision of the Services or the operation and execution of the Project by RURAL in any manner whatsoever and any such prevention or frustration shall be considered a material breach of a material term of this Agreement and be subject to the provisions of clause 13.

10. Audit and Review

- 10.1. The Municipality may, at its discretion, audit RURAL's compliance with the Agreement (including audits of RURAL's premises and systems) provided that any such audit is limited to the Project and the Services, is carried out with reasonable prior written notice and in a reasonable way so as to cause as little disruption as is reasonably possible to the performance of the Services and RURAL's other business.
- 10.2. For purposes of clause 10.1 above, the Parties record that an audit every 18 (EIGHTEEN) months is considered reasonable.



- 10.3. RURAL shall provide all assistance reasonably requested by the Municipality in relation to any audit, including access to RARAL's personnel, records and premises.
- 10.4. The Municipality may engage Independent Expert(s) to undertake any audit, provided that any such Independent Expert shall (i) not be RURAL or REMIG Group competitors; and (ii) have entered into appropriate confidentiality agreements with RURAL.
- 10.5. The Municipality may allow any regulator relevant for purposes of the Project and the Services (such as NERSA) and any persons appointed by such regulator to participate in any audit and to receive the results of that audit.
- 10.6. In addition to the rights set out above, RURAL shall comply with any written request of the Municipality for information relating to the Services that may be required by the Municipality to enable it to comply with the MFMA and the Systems Act.

11. Termination of the Agreement

- 11.1. Subject to the provisions of clauses 3.2.2 above, the Agreement shall terminate upon the expiry of the Term. Upon such natural termination of the Agreement in terms of this clause 11.1, all fixed Equipment so installed on the Network and utilised for purposes of providing the services contemplated in this Agreement as per clause 4.1.2.8 shall become the sole and exclusive paid-up property of the Municipality.
- 11.2. Should the Municipality cancel or purport to cancel the Agreement prior to expiry of the Term in the absence of a material breach of contract on RURAL's part, the Municipality shall be liable for compensation in respect of all demonstrable losses and damages incurred and/or suffered by RURAL including, but not limited to, loss of future income, as well as market-related compensation in respect of the Equipment as determined by the Independent Expert in his sole discretion and payable within 60 (SIXTY) Days of such cancellation or purported cancellation.
- 11.3. **At any time during the Term of the Agreement RURAL may at its sole discretion elect to cancel the Agreement by giving 3 (three) months prior written notice to the Municipality,** in which case all Equipment so stipulated in clause 4.1.2.8 shall upon termination of the Agreement become the sole and exclusive paid-up property of the Municipality and no further monies shall be payable to RURAL by the Municipality pursuant to the provisions of this Agreement, other than any unpaid sums as at the date of termination.

12. Consequences of Termination

Subject to any provision to the contrary in this Agreement, termination of this Agreement will not affect any accrued rights or liabilities of either Party, nor will it affect the coming into force or continuation into force of other clauses and provisions of this Agreement which are expressly or by implication intended to come into force or continue after termination, including without limitation clauses 14 (limitation of liability), 15 (due process warranty and indemnity), 16 (confidentiality), 17 (intellectual property), 18 (good faith), 20 (settlement of disputes), 21 (severability, interpretation and law of application), 25 (general) and 26 (*domicilia citandi et executandi*).



13. Breach

Subject to any provision to the contrary in the Agreement, if the Municipality breaches any material provision of this Agreement, including any warranty given by the Municipality in terms of this Agreement, and remains in breach of such provision for 14 (FOURTEEN) Days after written notice to the Municipality requiring it to remedy that breach, RURAL shall be entitled (without derogating from any of its other rights or remedies under this Agreement or at law), at its option:

- 13.1. to claim specific performance and/or damages against the Municipality; or
- 13.2. to cancel this Agreement and/or claim damages against the Municipality, in which case written notice of the cancellation shall be given to the Municipality, and the cancellation shall take effect on the giving of the notice, provided that RURAL shall not be entitled to cancel this Agreement unless the breach is a material breach of a material term, and the remedy of specific performance or damages would not adequately prevent RURAL from being prejudiced.

14. Limitation of Liability

RURAL shall not be liable for any loss, liability, damage or expense suffered by the Municipality, Consumers or Relevant Institutions and the Municipality hereby indemnifies and holds RURAL harmless against any loss, liability, damage or expense which RURAL may incur or suffer arising from any loss, liability, damage or expense suffered by the Municipality, Consumers or Relevant Institutions, provided that such loss or damage is not as a result of gross negligence or wilful misconduct of RURAL. In particular, RURAL shall not be liable for payment of any pure economic or consequential loss suffered by the Municipality, Consumers or Relevant Institutions.

15. Due Process Warranty and Indemnity

15.1. The Municipality warrants and represents to RURAL that it has complied with all applicable Laws and policies for purposes of appointing RURAL to operate and execute the Project and to provide the Services ("**Due Process Warranty**") and in particular, has complied with the provisions of:

- 15.1.1. Local Government Municipal Systems Act;
- 15.1.2. MFMA;
- 15.1.3. Municipal Supply Chain Management Regulations 2005, published in terms of the MFMA under Government Notice 868 in Government Gazette 27636 on 30 May 2005; and
- 15.1.4. the Municipality's internal supply chain management policy.

15.2. The Municipality hereby indemnifies and holds RURAL harmless against any loss, liability, damage or expense of whatsoever nature which RURAL may incur or suffer as a result of a breach by the Municipality of the Due Process Warranty contemplated in clause 15.1.

- 15.3. The Parties record that a breach by the Municipality of the Due Process Warranty set out in this clause 15 shall not be considered a ground for cancellation of this Agreement by the Municipality.

16. Confidentiality

- 16.1. No Party shall divulge any information relating to the intellectual property and/or trade secrets of the other Party to any third party without the prior written approval of such Party or as required by any law or regulation, court order or any prior agreement, provided that:
- 16.1.1. any Party shall be entitled (after consultation with the other Party so as to avoid embarrassment or prejudice to the extent possible) to make such information available to its stakeholders as may be necessary to enable such stakeholders to consider the value and prospects of their stakeholdings;
- 16.1.2. No Party shall be precluded from divulging any information to any person who is negotiating with such party for the acquisition of an interest in such Party, provided that the person to whom any disclosure is made in the aforesaid circumstances shall first have undertaken in writing not to divulge such information to any other person and to use it only for the purpose of evaluating the business; and
- 16.1.3. No Party shall be precluded from using or divulging such information in order to pursue any legal remedy available to it or as is required by law.
- 16.2. All Parties acknowledge that save for material or information which is readily available to the public all material, drawings and information which have or may come into their possession pursuant to this Agreement — including but not limited to information about each other's business, financial position, trade secrets and techniques, customers and their business operation — consist of confidential and proprietary information which, if disclosed to third parties, might be damaging to each other, and all Parties undertake:
- 16.2.1. To hold all proprietary information in the strictest confidence, not to make use thereof other than in the performance of its obligations in terms of this Agreement, to release it only to employees requiring such information and not to release or disclose it to any other Party; and
- 16.2.2. Not to use the name or any of the trademarks of each other or any affiliates in public releases or advertising or for other promotional purposes, without the other Party's prior written consent.

17. Intellectual Property

- 17.1. All Intellectual Property Rights belonging to a Party shall remain vested in that Party.
- 17.2. The Municipality acknowledges that any and all of the Intellectual Property Rights including trademarks, trade names, copyright and other rights used or embodied in or in connection with the Equipment, or related software or any development or upgrades of



the related software are and shall remain the sole property of RURAL or its Main Contractor and technology providers, as the case may be.

18. Good Faith

In their dealings with each other in the implementation and execution of this Agreement, the Parties undertake to observe the utmost good faith and to give full effect to the intent and purpose of this Agreement, and neither to do anything nor to refrain from doing anything which doing or refraining might in any way prejudice or detract from the rights, property, or interests of the other of them.

19. Force Majeure

19.1. Subject to clause 19.2, the Party claiming relief shall be relieved from liability under this Agreement to the extent that by reason of the *Force Majeure* event it is not able to perform all or a material part of its obligations under this Agreement.

19.2. Where a Party is (or claims to be) affected by an event of *Force Majeure*:

19.2.1. it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the event of *Force Majeure* as soon as practicable and use all reasonable endeavours to remedy its failure to perform; and

19.2.2. it shall not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to its failure to comply with its obligations under clause 19.2.1.

19.3. The Party claiming relief shall serve written notice on the other Party within 10 (TEN) Days of it becoming aware of the relevant event of *Force Majeure*. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of *Force Majeure*.

19.4. A subsequent written notice shall be served by the Party claiming relief on the other Party within a further 5 (FIVE) Days which shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the event of *Force Majeure* on the ability of the Party to perform, the action being taken in accordance with clause 19.2.1, the date of occurrence of the event of *Force Majeure* and an estimate of the period of time required to overcome it (and/or its effects).

19.5. The Party claiming relief shall notify the other as soon as the consequences of the event of *Force Majeure* have ceased and when performance of its affected obligations can be resumed.

19.6. If, following the issue of any notice referred to in clause 19.4, the Party claiming relief receives or becomes aware of any further information relating to the event of *Force*



Majeure (and/or any failure to perform), it shall submit such further information to the other Party as soon as reasonably possible.

- 19.7. If the *Force Majeure* Event occurs before the Take-Over Date, the Parties shall not be entitled to any payments in terms of this Agreement.
- 19.8. The Parties shall endeavour to agree to any modifications to the Agreement which may be equitable having regard to the nature of an event or events of *Force Majeure*.

20. Settlement of Disputes

- 20.1. Subject to any provision to the contrary in this Agreement, should any dispute arise from or in connection with this Agreement (whether such dispute arises out of or in connection with the conclusion or existence of this Agreement, the carrying into effect of this Agreement, the interpretation or application of the provisions of this Agreement, the Parties' respective rights and/or obligations in terms of and/or arising out of this Agreement and/or the validity, enforceability, rectification, termination or cancellation whether in whole or part of this Agreement or from any other dispute which may arise in respect of this Agreement) such dispute shall be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa ("**the Rules**").
- 20.2. There shall be 1 (ONE) arbitrator who shall be a judge, former judge or retired judge of the High Court of South Africa or a senior counsel of at least five years' standing as such.
- 20.3. The appointment of the arbitrator shall be agreed between the Parties but failing agreement between them within a period of 14 (FOURTEEN) Days after the arbitration has been demanded any of the Parties shall be entitled to request the chairman at the relevant time of the Cape Town Bar Council or his representative to make such appointment and, in making such appointment, to have regard to the nature of the dispute.
- 20.4. The arbitration shall be held at a venue agreed upon, in writing, between the Parties or, failing agreement, at a venue in Cape Town selected by the arbitrator.
- 20.5. The decision of the arbitrator shall be subject to a right of appeal by any Party in terms of article 22 of the Rules and should such appeal be made, then the appeal shall be heard by an arbitration tribunal consisting of 3 (THREE) arbitrators who shall:
- 20.5.1. be persons of the same status as the person referred to in clause 20.2 above; and
- 20.5.2. be appointed in the manner referred to in clause 20.3 above.
- 20.6. The decision of the arbitrator or the arbitration tribunal, as the case may be, shall be final and binding on the Parties in the absence of a manifest error in calculation, shall be carried into effect and may be made an order of any Court of competent jurisdiction. Each of the Parties hereby submits itself to the jurisdiction of the Cape Town High Court of South Africa (or its applicable successor in title) should any Party wish to make the arbitrator's decision an order of that Court.



20.7. The provisions of this clause 20:

- 20.7.1. constitute an irrevocable consent by the parties to any proceedings in terms of this clause 20 and none of the Parties shall be entitled to withdraw therefrom or claim, at any stage of the proceedings, that it is not bound by such proceedings;
- 20.7.2. are severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity or alleged invalidity, for any reason, of this Agreement or any part thereof;
- 20.7.3. shall not preclude any Party from instituting any injunctive or other proceedings in any appropriate Court.

21. Severability, Interpretation and Law of Application

- 21.1. This Agreement shall be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.
- 21.2. The provisions of this Agreement are intended to be performed in accordance with, and only to the extent permitted by all applicable requirements of law.
- 21.3. A reference to any person includes such person's successors and permitted assigns.
- 21.4. The rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply.
- 21.5. If any provision of this Agreement or the application of the Agreement to any person or circumstances shall, for any reason and to any extent, be held invalid or unenforceable, neither the remainder of the Agreement nor the application of the Agreement or such provision to any other person or circumstance or other instruments referred to in the Agreement or affected provision shall be affected thereby but, rather, the same shall be enforced to the fullest extent permitted by law.

22. Unforeseeable Conduct

- 22.1. Should any Unforeseeable Conduct occur which materially and adversely affects the general economic position of RURAL, RURAL shall be entitled to such compensation and/or relief from the Municipality as shall place RURAL in the same overall economic position as RURAL would have been in but for such Unforeseeable Conduct.
- 22.2. Should RURAL wish to institute a claim for Unforeseeable Conduct it shall give written notice thereof to the Municipality which written notice shall contain reasonable particulars of such conduct and its likely economic consequences for RURAL.
- 22.3. The Municipality shall have 60 (SIXTY) Days from the date of receipt of such notice to remedy the Unforeseeable Conduct and to take such action as would restore the general economic position of RURAL to that which it would have been if such Unforeseeable Conduct had not occurred. If the Municipality does not affect such a



remedy within such period, the Parties shall consult within 10 (TEN) Days after the expiration of such period with a view to reaching a mutually satisfactory resolution of the situation. In the event that a mutually satisfactory resolution has not been reached within such 10 (TEN) Days consultation period, the matter shall be dealt with in accordance with clause 20.

23. Whole Agreement and Amendment

- 23.1. This Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreements, representations or warranties between the Parties other than those set out herein are binding on the Parties.
- 23.2. No amendment to this Agreement shall be of any force and effect unless reduced to writing and signed by or on behalf of both Parties.

24. Cession and Assignment

- 24.1. Subject to clauses 24.2 and 24.3 below, neither Party may at any time cede, delegate or assign any of its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- 24.2. RURAL may perform all and any of the Services pursuant to the execution of its obligations in terms of this Agreement either itself or it may determine that any of its duly nominated Sub-Contractors, provides such services subject to the terms and conditions contained herein.
- 24.3. RURAL may cede this Agreement to a consortium comprising RURAL and any of its duly nominated Sub-Contractors, provided that RURAL continues to warrant the performance.

25. General

- 25.1. This Agreement may be executed in any number of counterparts, all of which taken together will constitute one and the same Agreement, and any Party may enter into this Agreement by executing a counterpart.
- 25.2. The grant of any indulgence, extension of time or relaxation of any provision by a Party shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.
- 25.3. A Party may not rely on any representation, which allegedly induced that Party to enter into this Agreement, unless such representation is recorded herein.
- 25.4. Each Party undertakes, at the request and cost and expense of the other Party, to sign all documents and to do all other acts, which may be necessary to give full effect to this Agreement.
- 25.5. Each Party will pay the costs and expenses incurred by it in connection with the entering into of this Agreement.



- 25.6. The Parties consent to the non-exclusive jurisdiction of the North Gauteng High Court, Pretoria, in respect of all legal proceedings connected with this Agreement.

26. **Domicilia Citandi Et Executandi**

- 26.1. The Municipality selects as its *domicilium citandi et executandi* the following address:

Nama khoi Local Municipality
4 Namaqua Street,
Springbok,
8240

Email address: jan.swartz@namakhoi.gov.za

Designated Recipient: Mr JI Swartz

- 26.2. RURAL selects as its *domicilium citandi et executandi* the following address:

RURAL
5 Zeederberg square
Paarl
7646

Email: chris@remig.co.za

Designated Recipient: CF Bosch

- 26.3. All notices and other communications required or permitted to be given under this Agreement shall be in writing, addressed to the persons at their respective addresses as provided above, and may be delivered in by hand or by email provided that all email correspondence shall be acknowledged by return email.
- 26.4. Each notice delivered in any other manner shall be deemed delivered as of the time of actual receipt thereof.
- 26.5. In the event that the Parties utilise signed documents transmitted by email, the Parties hereby agree to accept and to rely upon such documents as if they bore original signatures.
- 26.6. Each Party may from time to time change its address or its designed recipient for receipt of notices by sending a notice in the manner provided to the others specifying the new address or new designated recipient, provided that the change shall become effective on the 7th (SEVENTH) Day following the date on which the notice is deemed to have been received in accordance with this clause 26.



SIGNED AT Paarl ON THIS THE 7th DAY OF NOVEMBER 2024.

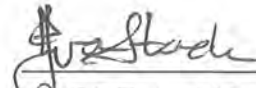


MUNICIPAL MANAGER

Name: Jan Izak Swane

**NAMA KHOI LOCAL MUNICIPALITY
DULY AUTHORISED**

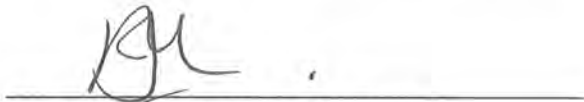
As Witnesses: 1.


Name: PIETER VAN
STADEN

2.


Name: NICOLAAS FRANCOIS
LUBBE-BOSCH

SIGNED AT Paarl ON THIS THE 7th DAY OF November 2024.



**For: RURAL MAINTENANCE (PTY) LTD
DULY AUTHORISED**

Name: Ilze Bosch

Designation: Director

As Witnesses: 1.


Name: PIETER VAN
STADEN

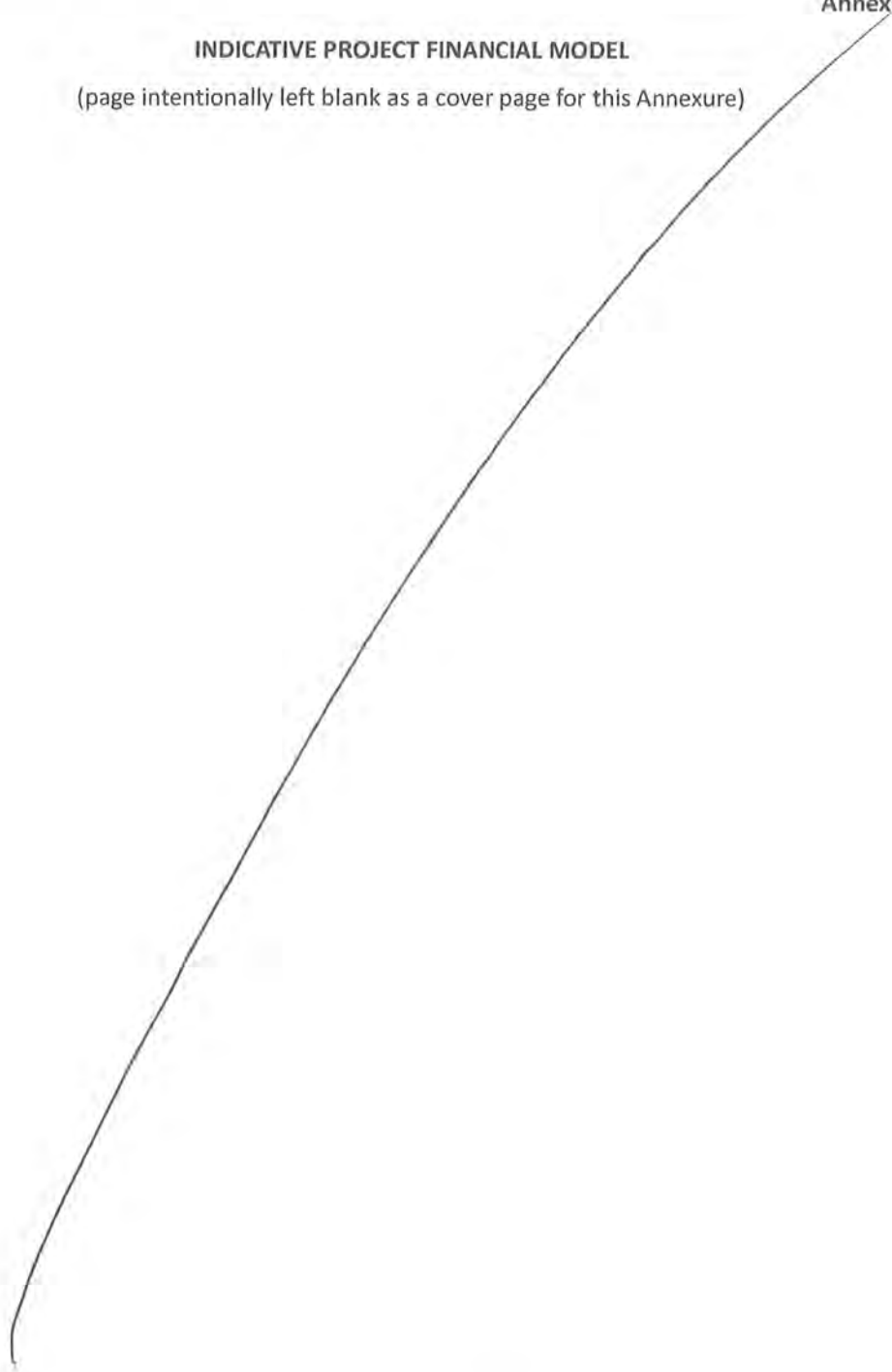
2.


Name: NICOLAAS FRANCOIS
LUBBE-BOSCH



INDICATIVE PROJECT FINANCIAL MODEL

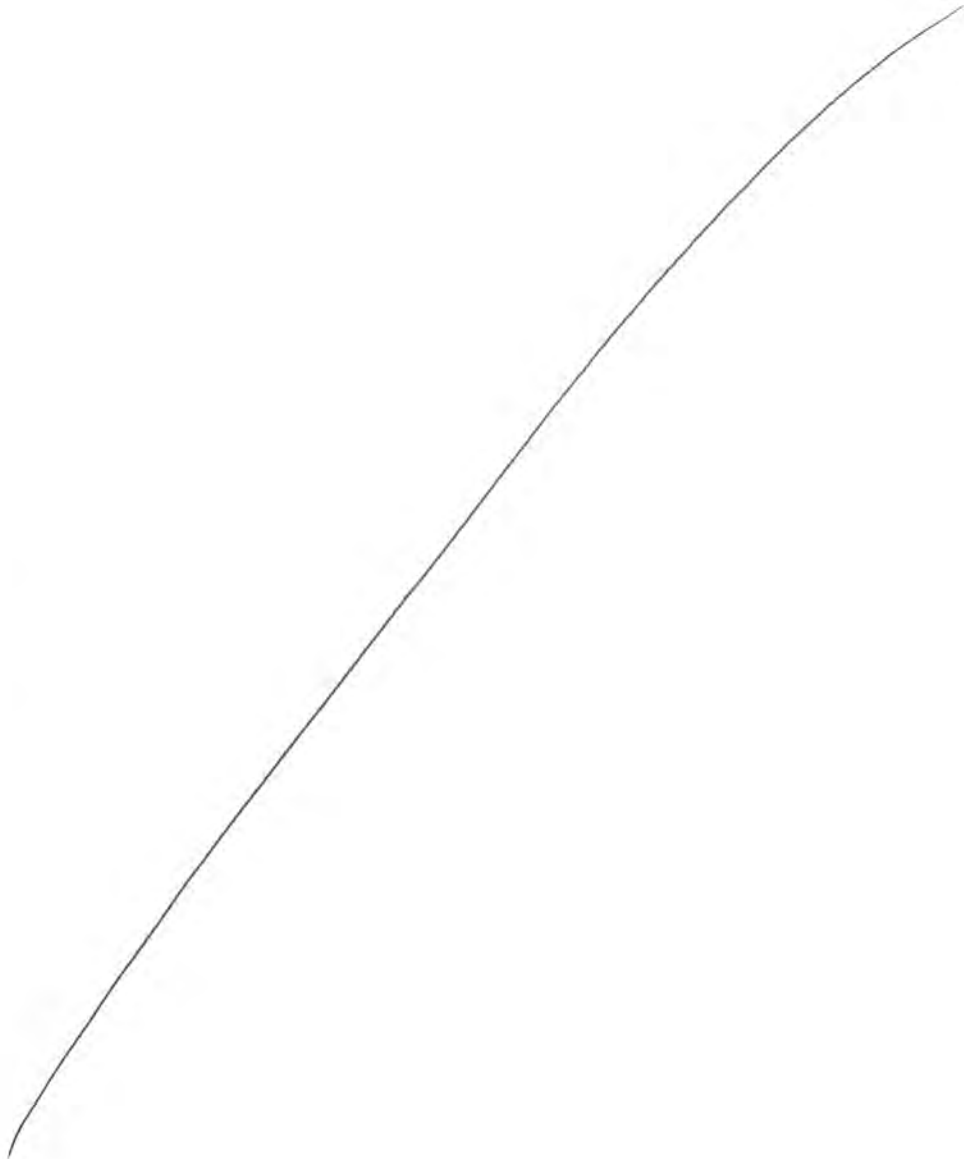
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PROJECT PLAN AND INDICATIVE TIME FRAMES

