**CONNECTION AGREEMENT FOR THE PURPOSE OF WHEELING**

Made and entered into between

**[INSERT NAME OF MUNICIPALITY]**

(hereinafter referred to as the “**Municipality**”)

and

**[INSERT NAME OF CUSTOMER]**

(hereinafter referred to as the “**Customer**”)

*[Drafting note:*

*Text highlighted in yellow must be considered/ amended/ completed by each Municipality to suit their requirements.*

*Text highlighted in green are variations to cater for the Four Wheeling Scenarios.*

*Please refer to the Guide for assistance in completing the Agreements]*

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**PREAMBLE**

**WHEREAS** the Customer has applied to the Municipality for the connection of the Generation Facility/ies for the export and intake of Electrical Energy and to use the Distribution System for purposes of Wheeling, and the Municipality is prepared to approve the connection in accordance with the terms and conditions of this Agreement.

**AND WHEREAS** the Municipality and the Customer are desirous of entering into a written agreement recording and regulating the terms and conditions relating to the physical connection of the Generation Facility to the Distribution System and the Customer’s access and usage of the Distribution System.

**NOW THEREFORE THE PARTIES HERETO HAVE AGREED EACH WITH THE OTHER AS FOLLOWS:**

# GENERAL

# DEFINITIONS

The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:

* 1. “**Agreement**” shall mean this Connection Agreement for the Purpose of Wheelingand the Schedules hereto, including:
     1. Schedule A: Municipal Quotation Letter;
     2. Schedule B: Embedded Generator Systems Operations Manual ***(Drafting note: If there are parameters that the Municipality has developed to be included – include as a Schedule****)*;
     3. Schedule C: Generator Connection Particulars;
     4. Schedule D: Generator Municipal Connection Equipment;
     5. Schedule E: Standard for the Interconnection of Embedded Generation ***(Drafting note: If there are parameters that the Municipality has developed to be included – include as a Schedule****)*;
     6. Schedule F: Quality of Supply Specification ***(Drafting note: If there are parameters that the Municipality has developed to be included – include as a Schedule****)*;
     7. Schedule G: Security For Prescribed Tariff; and
     8. Schedule H: Early Termination Guarantee;

and “this Agreement” shall have a corresponding meaning;

* 1. “**Approval**” means any permission, permit, approval, consent, licence, authorisation, registration, grant, acknowledgement or agreement to be obtained from any Government or Governmental Authority by either Party under any Law or the Code(s) and each Party's Approval or Parties' Approvals shall be construed accordingly;
  2. “**Business Day**”means any day other than a Saturday, Sunday or public holiday designated as such in the Public Holidays Act, No. 36 of 1994 or proclaimed by the President as a public holiday in terms of such Act;
  3. “**Change of Control**” means if:
     1. a third party acquires ownership of more than 50% of the issued share capital of the Customer which confers, in the aggregate, more than 50% of the total voting rights conferred by all the shares in that issued share capital at the time of the acquisition; or
     2. a third party acquires the right to appoint or remove directors holding a majority of the voting rights at meetings of the board of the Customer; or
     3. a third party acquires the sole right to control a majority of the voting rights exercisable at any general meeting of the Customer, whether pursuant to an agreement with other members of the Customer or otherwise; or
     4. the Customer sells, transfers or otherwise disposes of all or a greater part of its assets or business; or
     5. the Customer is placed under any final order of winding-up, business rescue supervision, judicial management or enters into any voluntary winding-up; or
     6. an event contemplated in 1.4.1 to 1.4.5 occurs in relation to the holding company of the Customer;
  4. “**Change(s) in Law**” means after the Effective Date –
     1. the adoption, promulgation, amendment, change in interpretation, modification or repeal of any applicable law;
     2. any action or inaction of the applicable authority resulting in any Approval being withdrawn, not being issued or renewed on due application, or being made subject to conditions upon its renewal that did not apply when it was initially granted; or
     3. any action or inaction of the Municipality resulting in any wheeling policy being withdrawn, not being issued or renewed, or being made subject to conditions upon its renewal that did not apply when it was initially adopted;

but shall specifically exclude –

* + 1. the adoption, promulgation, amendment, change in interpretation, modification or repeal after the Effective Date of any law relating to taxes, charges, imposts, duties, levies, deductions or withholdings that are assessed or payable in relation to a person's income, such as any income taxes, corporation taxes, taxes on capital gains or any one-off windfall taxes on profits; and
    2. an amendment to the Prescribed Tariffs approved by NERSA in accordance with the applicable laws;
  1. “**Charges**” means the charges that are due and payable by the Customer to the Municipality under this Agreement for the connection to the Distribution System, which shall comprise the Connection Charge(s) and the Prescribed Tariff Charges as set forth in clause 6;
  2. “**Code(s)**” means the Transmission Code, the Distribution Code, the Renewable Energy Code, and any other code pertaining to the electricity sector published by NERSA, as applicable and as amended, modified, extended, replaced or re-enacted from time to time by NERSA;
  3. “**Commercial Operation**” means a commercial arrangement such as the wheeling of Electrical Energy over the Municipality’s Distribution System or the procurement of Surplus Wheeled Energy by the Municipality from an Off-taker connected to the Municipality’s Distribution System. The commercial arrangement will be covered by a separate agreement to this Agreement;
  4. “**Commissioning**” means the process of testing the Generation Facility Connection Equipment and the Municipal Connection Equipment, to demonstrate whether such plant and equipment meet the applicable requirements and specifications of the Code(s) and this Agreement prior to the commencement of Commercial Operation, including the correction of defects identified during such testing and “Commission” shall be construed accordingly;
  5. “**Confidential Information**” shall mean –
     1. any information disclosed, revealed or exchanged and which pertains to, but is not limited to, all Intellectual Property Rights, all trade secrets, all agreements (whether in writing or not) which exist at the time of revealing the content thereof to the Customer, the content of all possible future agreements which may be entered into with any other party, all knowledge obtained by way of research and development, irrespective of whether the aforementioned information that is revealed is applicable to technical, operational or financial aspects of the Municipality, government in any other sphere, or any government institution or organ of state;
     2. any information of whatever nature, which has been or may be obtained by the Customer, whether in writing or in electronic form or pursuant to discussions between the Parties, or which can be obtained by examination, testing, visual inspection or analysis, including, without limitation, scientific, business or financial data or information, know-how, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, sample reports, models, studies, findings, computer software, inventions or ideas;
     3. analyses, concepts, compilations, studies and other material prepared by or in possession or control of the Customer which contain or otherwise reflect or are generated from any such information as is specified in this definition;
     4. all information which a third party has in terms of any agreement made available to the Municipality and which has become known to the Customer in the course of rendering the Services; and
     5. any dispute between the Parties resulting from this Agreement;
  6. “**Connection Charge**” means charges recouped or to be recouped by the Municipality from the Customer for the cost of connecting the Generation Facility to the Distribution System, in addition to any tariff charges, which shall be either:
     1. a Distribution Standard Connection Charge if the connection is a Standard Connection; or
     2. **[OPTIONAL PROVISION]** a Distribution Premium Connection Charge if the connection is a Premium Connection;
  7. “**Connection Site**” means the site made or to be made available by the Customer to the Municipality for the Municipality Connection Works as provided in Clause 7 as demarcated in Schedule C (Generator Connection Particulars);
  8. “**Contractor**” means any suppliers or contractors engaged by the Municipality or the Customer (as the case may be) to undertake the whole or any part of the Municipality’s or the Customer’s respective obligations under this Agreement, including any sub-contractors appointed by any person who falls within this definition;
  9. “**Customer**” shall mean: **[INSERT INDIVIDUAL OR COMPANY NAME AND ID OR COMPANY/ CLOSE CORPORATION REGISTRATION NUMBER]**;
  10. “**Development Charge**” means a charge to cover the cost incurred to increase the capacity of the Distribution System to meet the additional demand imposed by either a new or upgraded development or connection and the additional capacity requested. The capacity requested shall be the Notified Maximum Demand or the Maximum Export Capacity;
  11. “**Dispatch**” means the process of directing the delivery of Electrical Energy by the System Operator or its delegated alternative to and from the Distribution System and a Unit and/or provision of any ancillary services by a Unit in terms of the Scheduling and Dispatch Rules;
  12. “**Dispatchable**” means the System Operator or its delegated alternative has a contractual right to influence the Dispatch of a Unit and the Unit is able to respond to automatic or manual Dispatch instructions under Normal Operating Conditions;
  13. “**Distribution**” means the regulated business unit through which the Municipality constructs, owns, operates and maintains the Distribution System in accordance with its licence and Code(s);
  14. “**Distribution Code**” means the RSA Distribution Code Version 6.1 (August 2019), comprising the RSA Distribution Code Definitions, the RSA Distribution Governance Code, the RSA Distribution Information Exchange Code, the RSA Distribution Metering Code, the RSA Distribution Network Code, the RSA Distribution System Operating Code, and the RSA Distribution Tariff Code, as published by NERSA and as may be amended and augmented by NERSA from time to time;
  15. “**Distribution Premium Connection Charge**” means the rate to connect the Generation Facility using a Premium Connection which rate is higher than the standard rate at which to connect to the Distribution System?;
  16. “**Distribution Standard Connection Charge**” means the rate applicable to connect the Generation Facility to the Distribution System using a Standard Connection;
  17. “**Distribution System**” means the Municipality’s network infrastructure;
  18. “**Due Date**” means the date reflected on the Municipality’s invoice;
  19. “**Effective Date**’’ means the date of signature of this Agreement by the Party to sign last in time;
  20. “**Electrical Energy**”shall mean the quantity of electric power that is generated over a specific interval of time, measured in Kilowatt hours or megawatt-hours;
  21. "**Electricity Metering Standards**” means the South African National Standard SANS 474:2006 NRS 057:2005 specifying the procedures and standards to be adhered to by electricity licensees and their agents in operating and servicing new and existing metering installations that are to be used for billing purposes;
  22. “**Export Capacity**” means the approval by the Municipality for the Customer to use the Distribution System to supply and deliver Electrical Energy generated by the Generation Facility into the Distribution System up to the Maximum Export Capacity at the Point of Supply, except to the extent there are constraints on the Municipality’s Distribution System which could not be avoided by the exercise of the standards of a Reasonable and Prudent Operator by the Municipality and otherwise subject to the terms and conditions of this Agreement and the Code(s);
  23. "**GMR(2)**” means Regulation 2 of the General Machinery Regulations (GNR 1521 of 5 August 1988) issued in terms of the Occupational Health and Safety Act, 85 of 1993.
  24. “**Generation Facility**” means the Customer’s plant together with the Generation Facility Connection Equipment for the safe, efficient and optimal operation of the plant, up to the Point(s) of Connection, which shall be designed, constructed, installed, operated and maintained by or on behalf of the Customer, but excluding the Municipal Connection Equipment whether or not located at the Connection Site;
  25. “**Generation Facility Connection Equipment**” means the Generation Facility equipment including the Point of Generator Connection, as specified in Schedule C (Generator Connection Particulars) to connect the Generation Facility to the Distribution System, which shall be constructed, owned, operated and maintained by the Customer in accordance with this Agreement, which Generation Facility Connection Equipment shall also include the Point of Utility Connection in cases where this equipment is expressly agreed between the Parties to be constructed, owned, operated and maintained by the Customer;
  26. “**Generation Facility Connection Works**” means the works to be carried out on the Generation Facility’s side of the Point of Connection, save as may otherwise be provided herein, and all related activities by which the Generation Facility shall be connected the Distribution System;
  27. "**Generator Check Meter**” means any meter(s) and the fittings, equipment, wiring and installations related to the meter(s) installed and operated by the Customer..
  28. “**Generator’s Point of Connection or POC**” means the electrical node on the Distribution System where the Generation Facility is physically connected to the Distribution System in terms of the this Agreement;
  29. “**Government**”, “**Governmental Authority**” or “**Governmental** **Instrumentality**” means the government of South Africa or any ministry, department or political subdivision thereof, and any person under the direct or indirect control of any such government exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any other governmental entity, instrumentality, agency, authority, corporation, committee or commission, or any independent regulatory authority, in each case within South Africa, and any successor to or any assignee of any of the foregoing but excluding the Municipality acting in its commercial capacity under this Agreement;
  30. “**Force Majeure**”means any act, event or circumstance or any combination thereof which:
      1. is beyond the reasonable control of the Party having invoked such Event of Force Majeure as a cause for such delay (“**the Affected Party**”);
      2. was not reasonably foreseeable or, could not have been avoided or overcome by the Affected Party, having taken reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on the Affected Party's ability to perform its obligations under this Agreement and to mitigate the consequences of such circumstances; and
      3. prevents, hinders or delays the Affected Party in its performance of all or part of its obligations under this Agreement.
      4. Without limiting the generality of the foregoing, an Event of Force Majeure may include any one of the following acts, events or circumstances, but only to the extent that it satisfies the requirements set out in clauses 1.34.1 and 1.34.3 (inclusive) above:
         1. act of terrorism;
         2. riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority;
         3. ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component;
         4. earthquakes, flood, fire, severe tropical cyclone, tsunami or other physical natural disaster;
         5. strikes at national level or industrial disputes at a national level, or strikes or industrial disputes by labour employed by the Affected Party, its subcontractors or its suppliers and which affect an essential part of the Agreement;
      5. Notwithstanding any other provision of this Agreement, the following shall not constitute an event of Force Majeure:
         1. failure of any Party to make any payment of money in accordance with its obligations under this Agreement, provided always that the obligation of the Affected Party to make such a payment of money is not excused in terms of this Agreement by reason of an event of Force Majeure;
         2. late delivery of fuel, equipment, machinery, plant, spare parts or materials caused by negligent conduct or wilful misconduct on the part of the Affected Party or any of its suppliers or contractors;
         3. late performance by any Party, caused by such Party or such Party’s equipment suppliers, suppliers, contractors, or subcontractors, except where such cause is itself an event of Force Majeure;
         4. mechanical or electrical breakdown or failure of equipment, machinery or plant owned or operated by any Party due to the manner in which such equipment, machinery or plant has been operated or maintained;
         5. delays resulting from reasonably foreseeable unfavourable weather or reasonably foreseeable unsuitable ground conditions or other similar reasonably foreseeable adverse conditions;
         6. any failure by the Affected Party to obtain and/or maintain or cause to be obtained and/or maintained any Approval;
         7. strikes, lockouts and other industrial action by the employees of the Affected Party, any of its affiliates or any contractor of the Affected Party or of any affiliate, unless such action is part of any wider industrial action involving a significant section of the construction industry or the electricity supply sector;
         8. wear and tear or random flaws in materials and equipment or breakdown in or degradation of equipment or machinery of the Affected Party;
         9. an event, circumstance or situation that arises as a direct or indirect result of any appeal or review being lodged against any amendment to any of the authorisations issued in terms of any environmental laws;
         10. an event, circumstance or situation that arises as a direct or indirect result of any applicable authority imposing additional conditions on the Affected Party in terms of any Approvals issued in terms of any environmental laws; or
         11. loss of connection to the grid due to load curtailment by Eskom.
  31. “**Insolvency Event**” means in relation to either Party, where:
      1. that Party passes a resolution or files any application for action for relief under any insolvency Law; or
      2. proceedings are started for an order (whether provisional or final, voluntary or involuntary) to be made for its winding-up, liquidation or business rescue or for the appointment of a business rescue practitioner, liquidator or similar officer in relation to it or a material part of its assets; or
      3. it convenes a meeting with its creditors for the purposes of making any arrangement, compromise or composition for the benefit of its creditors or agrees; or
      4. declares a moratorium or reorganisation in respect of its debts;
  32. “**Island**” means the opening of a circuit breaker or circuit breaks resulting in the severance of the synchronous connection between the Distribution System and the Generation Facility, or between the Distribution System and other section of the Distribution System contained a Synchronised Generator;
  33. “**Law**” means (a) any constitution, statue, ordinance, proclamation, primary or subordinate legislation, including [[**insert Municipality name**] Electricity By-law] or other legislative measure, as well as the common law and customary law and any judgment, decision, interdict, order or rule of any court or tribunal with relevant jurisdiction, in each case having the force of law in South Africa and (b) any directive, requirement, instruction, request, order, regulation, condition of or limitation in any necessary Government authorisation, registration, grant, acknowledgement, exemption or agreement to be obtained from, or code, guideline, policy, direction or rule of a Governmental Instrumentality which is legally binding, including the Code(s);
  34. “**Loss**” means all losses, liabilities, costs, expenses, fines, penalties, damage, damages and claims and all related costs and expenses (including legal fees on the scale as between attorney and client, tracing and collection charges, interest and penalties) and “Losses” shall have a corresponding meaning;
  35. “**Load Shedding**” means the systematic reduction of system demand by temporarily decreasing load in response to transmission system or area capacity shortages, system instability, or voltage control considerations;
  36. “**Main Supply Agreement**” means the **[insert name of main agreement, example: Electricity Supply Agreement]** between the Municipality and the Off-taker for the supply of electrical energy to such Off-taker at the Off-taker’s POS;
  37. “**Maximum Export Capacity**” means the maximum capacity at the Point(s) of Supply notified by the Customer in terms of Clause 11 and accepted by the Municipality for the Distribution of Electrical Energy between the Generation Facility and the Distribution System;
  38. “**Metering Installation**” means the meter(s) and the fittings, equipment, wiring and installations related to the meter(s) at the Point of Supply;
  39. “**Month**” means a calendar month comprising a period commencing at 00:00 on the first day of that month and ending at 24:00 on the last day of that month;
  40. “**Municipal Connection Equipment**” means the Municipality’s equipment specified in Schedule C (Generator Connection Particulars) and in Schedule D (Generator Municipal Connection Equipment) to connect the Generation Facility to the Distribution System and which shall be constructed in accordance with the Municipal Quotation Letter (Schedule A) and owned, operated, and maintained by the Municipality in accordance with this Agreement, and which shall include the Point of Utility Connection in cases where this equipment is owned, operated, and maintained by the Municipality;
  41. “**Municipality Connection Works**” means the works required, including (without limitation) the works to be constructed, changed, or enabled, to connect the Generation Facility to the Municipality’s Distribution System as specified in the ‘Municipal Quotation Letter’ (Schedule A);
  42. “‘**Municipal Quotation Letter**” means the letter attached as Schedule A in which the costs relating to the provision of the Municipality Connection Works, and the cost of the Development Charge are detailed as accepted by the Customer;
  43. “**Municipal Meter(s)**” means the meter(s) forming part of the Municipal Metering Equipment, used for purposes of measuring the imported and exported active and reactive Electrical Energy from and into the Distribution System at the Customer’s POC;
  44. “**Municipal Metering Equipment”** means the meter(s) and the fittings, equipment, wiring and installations related to the meter(s) at the at the Customer’s POC;
  45. “**NERSA**” means the National Energy Regulator of South Africa as established by section 3 of the National Energy Regulator Act, 40 of 2004, as amended;
  46. "**NERSA’s Power Quality Directive**” means the NERSA power quality directive, for the management of power quality in the electricity supply industry;
  47. “**Non-dispatchable**” means the System Operator or its delegated alternative has no contractual right to influence the Dispatch of a Unit under Normal Operating Conditions, or where a Unit has limited ability to respond to Dispatch instructions;
  48. “**Notified Maximum Demand**” shall mean the maximum demand notified in writing by the Consumer and accepted by the Municipality as the maximum demand which the Consumer requires the City to be in a position to supply on demand;
  49. “**NRS 048**” means the quality of supply specification issued by the South African Bureau of Standards, as revised from time to time or as replaced by a national standard;
  50. “**NRS 082**” means the code of practice for recommended maintenance policy for electricity networks operated at voltages up to and including 132 kV (including all associated control and protection systems), issued by the South African Bureau of Standards, as revised from time to time or as replaced by another national standard;
  51. “**Off-taker(s)**” means the person(s) or entity(ies) being supplied with Wheeled Energy;
  52. “**Off-taker’s Point of Supply or POS**” shall mean the actual supply point of the Off-taker on the Distribution System;
  53. “**Parties**” means the Parties to this Agreement as construed in Clause 1 of this Agreement and “Party” shall be construed accordingly;
  54. “**Point(s) of Connection or POC**” means the electrical node(s) on the Distribution System where the Customer’s assets are physically connected to the Municipality’s assets, as more fully described in clause 3.2.1;
  55. “**Point of Generator Connection or PGC**” means the circuit-breaker and associated ancillary equipment (instrument transformers, protection, isolators) that connects a generator to any electrical network, which, in the case of this Agreement with respect to the Generation Facility is described in Schedule C (Generator Connection Particulars);
  56. “**Point of Utility Connection or PUC**” means one or more circuit breakers and associated ancillary equipment (instrument transformers, protection, isolators), entirely independent of any PGC, that connects the Generation Facility to the Distribution System, which PUC may be located near the Point of Connection or may be some other point(s) within the Generation Facility between the PGC and Point of Connection, and the location of which Point(s) of Utility Connection is described in Schedule C (Generator Connection Particulars)**;**
  57. **[OPTIONAL PROVISION]** “**Premium Connection**”’ means a connection made or to be made between the Generation Facility and the Municipality’s network based on the Customer’s requirements, that are in excess of the specifications of a Standard Connection to provide for a more reliable and secure connection, as accepted in the Municipal Quotation Letter and includes the acquisition, installation and Commissioning of the Premium Equipment;
  58. “**Premium Connection Charge**” means the charge payable by the Customer for a Premium Connection, which is set forth in **Schedule A (Municipal Quotation Letter);**
  59. “**Premium Connection Condition**” means a condition that exists when the Connection between the Generation Facility and the Distribution System comprises a technical configuration that is considered at the time of refurbishment to not be a Standard Connection;
  60. “**Premium Equipment**” means the equipment to be installed if the Customer elects a Premium Connection and is in addition to and/or in place of the equipment installed in the case of a Standard Connection, which Premium Equipment, where applicable, shall comprise the equipment listed as such in Schedule D (Generator Municipal Connection Equipment)**;**
  61. “**Prescribed Tariff Charges**” shall mean the approved Municipality’s electricity tariffs, fees and charges for the supply to the Customer of Electrical Energy, Maximum Export Capacity and services, as approved by NERSA and amended from time to time;
  62. “**Property**” has the meaning given to it in clause 3.2.1.
  63. “**Reasonable and Prudent Operator**” means a person acting in good faith to perform its contractual obligations and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence, responsibility and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator complying with all applicable Law, engaged in the same or a similar type of undertaking, in the same or similar circumstances and conditions, any references herein to the “standards of a Reasonable and Prudent Operator” shall be construed accordingly;
  64. “**Renewable Energy Code**” means the Grid Connection Code for Renewable Power Plants (RPPs) Connected to the Electricity Transmission System (TS) for the Distribution System (DS) in South Africa Version 3.0 (August 2019), as published by NERSA and as may be amended by NERSA from time to time;
  65. “**SANS 474**” means the code pf practice for electricity metering issued by the South African Bureau of Standards, as revised from time to time or as replaced by another national standard;
  66. “**Servitude Area**” means the areas of the Property over which rights of way are granted in favour of the Municipality in accordance with clause 17;
  67. “**Scheduling and Dispatch Rules**” means any rules published by NERSA or included in the Code(s) in respect of qualifying Dispatchable and Non-dispatchable Units pertaining to the Scheduling and Dispatch of Electrical Energy output from a Unit;
  68. “**Standard Connection”** means a connection made to or to be made between the Generation Facility and the Municipality’s network based on the lowest lifecycle costs design that meets the specifications in terms of NRS 048 and the Distribution Code for a technically acceptable solution;
  69. “**Standard Connection Charge**” means the charge payable by the Customer for the Standard Connection, which is set forth in the Municipal Quotation Letter **(Schedule A);**
  70. “**Standards**”means NRS 048, NRS 082 and the Electricity Metering Standards, and any other Standard a party must comply with pertaining to the electricity sector in terms of the Cods(s) or Laws;
  71. “**Surplus Wheeled Energy**” means Wheeled Energy which exceeds Consumed Energy reconciled on a **[half hour/ monthly]** metering period and measured at the Off-taker’s POS;
  72. “**Synchronise**” means the act of closing a circuit breaker to bring the Distribution System and the Generation Facility into synchronism with respect to voltage magnitude, phase relationship and frequency and “Synchronisation” shall be construed accordingly;
  73. “**System Operator**” means the Municipality of **[insert name]**’s Network Control responsible for short-term reliability of the power system and which is in charge of controlling and operating the Distribution System and dispatching generation (or balancing the supply and demand) in real time;
  74. “**Trader**” means a legal entity buying Electrical Energy for resale, and such a legal entity being a holder of an electricity trading licence issued by NERSA purchasing Wheeled Energy from the Customer in terms of power purchase agreements;
  75. “**Transmission Code**” means the South African Grid Code Version 10.0 (August 2019), comprising the SAGC Preamble, the SAGC Governance Code, the SAGC Information Exchange Code, the SAGC Metering Code, the SAGC Network Code, the SAGC System Operating Code, and the SAGC Tariff Code, as published by NERSA and as may be amended by NERSA from time to time;
  76. “**Transmission System**” means Eskom’s electricity system consisting of all lines and substation equipment where the nominal voltage is above 132kV;
  77. “**Unit**” means a separate electricity-generating unit or section (comprising multiple units) forming part of the Generation Facility and 'Units' means all or any combination of them;
  78. “**Use of Systems Agreement or UOSA**” means the agreement **[[Scenario 1]** **a Generator / [Scenario 2]** **Trader**] entered into with the Municipality for the use of the Distribution System for purposes of Wheeling Energy to Off-taker(s);
  79. “**Wheeled Energy**” means the Electrical Energy injected at the Generator(s)’s POC being sold or traded to the Off-taker(s) and delivered using the Distribution System at the Off-taker’s POS; and
  80. “**Wheeling**” means the exchange of Electrical Energy between a **[[Scenario 1]** **a Generator / [Scenario 2]** **Trader**] and an Off-taker(s) via the Distribution System, and “Wheel” or “Wheeled” shall have a corresponding meaning.

# INTERPRETATION

* 1. Clause headings are not to be referred to in interpreting this Agreement.
  2. Unless the context indicates otherwise, a reference to a person includes natural persons, juristic persons, partnerships, and trusts.
  3. An expression which denotes –
     1. Any gender includes the other genders; and
     2. The singular includes the plural and *vice versa*.
  4. Any reference in this Agreement to “days” shall be construed as Calendar Days unless expressly qualified by the word “Business”.
  5. Words and expressions defined in this Agreement shall bear the same meanings when used in any schedules or other Schedules to this Agreement unless separately defined therein.
  6. When a number of days is specified in this Agreement, it shall be calculated by excluding the first and including the last day, unless the last day does not fall on a Business Day, in which case the last day shall be the next succeeding Business Day.
  7. When the last day for performance of an obligation falls on a day that is not a Business Day, the obligation shall be performed on the next succeeding Business Day.
  8. A reference to any legislation includes any statutory amendment or substitution thereof.
  9. If any provision in clause 1 confers rights or imposes obligations on any Party, it shall be implemented as if it were a substantive provision in the body of the Agreement, notwithstanding that it is contained in clause 1 of this Agreement.

# INTRODUCTION

* 1. The Customer has applied for the connection of the Generation Facility situated on the property as described in **Schedule C (Generator Connection Particulars)** to the Distribution System and has received and accepted the **Municipal Quotation Letter (Schedule A).**
  2. This Agreement sets out the terms and conditions upon which the Parties have agreed to:
     1. physically connect the Generation Facility to the Distribution System at the **[Municipality’s / Customer’s]** substation located at **[INSERT PLACE]** (the Point(s) of Connection) on Erf **[INSERT PROPERTY DESCRIPTION]** (hereinafter referred to as the “**Property**”); and
     2. allow the Customer access to and the usage of the Distribution System to export Electrical Energy from the Generation Facility [**for purposes of a Wheeling arrangement**],
     3. against the payment(s) by the Customer to the Municipality of the applicable charges (as set out in clause 6).
  3. This Agreement is not intended to regulate or govern any aspect of the initial physical construction of the Municipality Connection Works, except insofar as Clause 8 applies thereto.

# TERM

* 1. This Agreement shall commence on the Effective Date and shall continue for a minimum period of **[INSERT NUMBER OF YEARS IN WORDS] [INSERT NUMBER OF YEARS IN NUMERAL VALUE];** thereafter the Agreement will continue indefinitely unless terminated by either party in terms of clause 26.

# CONNECTION TO THE DISTRIBUTION SYSTEM

* 1. Subject to the terms and conditions of this Agreement, the Municipality shall allow the Customer to connect the Generation Facility to the Distribution System to supply and deliver Electrical Energy generated by the Generation Facility/ies into the Distribution System up to the Maximum Export Capacity at the Point of Connection for purposes of Wheeling.
  2. Other than for the purposes of carrying out tests and Commissioning, the Customer shall only connect the Generator Facility to the Municipal Distribution System on permission granted by the Municipality in terms of clause 12, an Operational Notification or a written exemption from the Municipality.

# CHARGES

* 1. The Customer shall be liable for payment of:
     1. the Connection Charges as set out in the Municipal Quotation Letter recorded in **Schedule A**;
     2. Development Charge as recorded in Municipal Quotation Letter recorded in **Schedule A;** and
     3. Prescribed Tariff Charges for:
     4. the Generation Facility’s connection to the Distribution System; and
     5. the supply of Electrical Energy.
  2. The Municipality shall monthly render accounts to the Customer.
  3. The Customer shall not be relieved from his/her obligation to pay the Charges due to an error or omission in any account or failure to render an account. If a municipal account is not received before the Due Date, the Customer is responsible to acquire an account at the municipality’s customer care service counter.
  4. The onus shall be on the Customer to satisfy himself/herself that the account rendered is in accordance with the Prescribed Tariff Charges.
  5. All accounts shall be payable by or on the Due Date reflected on the account. Any amount outstanding from the first day after the Due Date will incur interest at the rate prescribed by the Municipality from time to time.
  6. The Municipality reserves the right to disconnect the Generation Facility from the Distribution System should the account remain unpaid after the Due Date. In the event of a disconnection of the Generation Facility for non-payment of an account, the Customer shall be liable for payment of the prescribed reconnection fee for re-connecting the Generation Facility. The Municipality shall not be liable for any losses suffered by the Customer, or any other party, as a result of Electrical Energy not Wheeled due to a disconnection of the Generation Facility for non-payment of an account.
  7. The Customer may dispute an amount stated in any Municipal invoice by serving notice on the Municipality specifying the amount and the basis of the dispute, who shall review such dispute and provide feedback. The Customer shall not be entitled to reduce, or set off, or defer payment of any disputed amount beyond the due date.
  8. Failing resolution of the dispute in terms of clause 6.7, the Parties may utilise the provisions of clause 27.

# SECURITY FOR PRESCRIBED TARIFF CHARGES

* 1. The Municipality may require the Customer to provide an approved guarantee as security for the due payment of the accounts to be rendered in terms of this Agreement.
  2. If the Municipality requires the Customer to provide such security, **Schedule G (Security for Prescribed Tariff)** must be completed and shall apply to this Agreement.

# CONNECTION SITE

* 1. The Customer shall provide proof of ownership, registered lease or servitude in favour of the Customer in respect of the land on which the Connection Site for the Municipality Connection Works are to be situated.
  2. The Customer shall make available and provide unobstructed access to the Municipality to the Connection Site and in accordance with the requirements of the Code(s) for:
     1. Connecting the Generation Facility to the Distribution System;
     2. The Municipal Connection Works;
     3. The operation and maintenance the Municipal Connection Equipment; and
     4. Attaching notices to indicate the Municipality’s ownership of Municipal Connection Equipment.
  3. In the event of the Municipality being unable to gain access to the Connection Site using reasonable commercial endeavours, the Municipality’s obligations shall be suspended for the period that the Municipality cannot access the Connection Site. The Customer shall not have any claim for Losses against the Municipality as a result thereof.
  4. Should the rights of the Customer to the land on which the Municipality Connection Works are or are to be situated cease or be challenged during the duration of this Agreement, the Customer shall immediately notify the Municipality of such cessation or challenge and such will constitute an event of default for which the Municipality shall have the right to terminate this Agreement in accordance with clause 26.
  5. The responsibility for all cable/conductor terminations at the Point of Connection shall be set out in [**Schedule B (Embedded Generator System Operations Manual)] *(Drafting note: If there are parameters that the Municipality has developed to be included – include as a Schedule****)***.**

# NETWORK PERFORMANCE AND QUALITY OF SUPPLY

* 1. The Municipality will provide the Customer with a Standard Connection, unless the Customer and Municipality agreed to a Premium Connection, in terms of the **Municipal Quotation Letter (Schedule A).**
  2. The Municipality shall provide a standard quality of supply, which complies with NRS 048.
  3. The Customer shall at its cost maintain the quality of supply and comply with quality of supply limits from the Generation Facility in accordance with the Municipality’s [**Quality of Supply Specification (Schedule F) *(Drafting note: If there are parameters that the Municipality has developed to be included – include as a Schedule****)***]** and the applicable Code(s) and Standards.
  4. The Municipality will use reasonable commercial endeavours to provide the Customer with reliable and continuous network availability, based on the connection of the Customer and in compliance with NERSA’s requirements and directives. The Municipality does not guarantee that the continuity and voltage quality of the applicable connection can always be maintained under all contingencies. The Customer shall take adequate measures to protect the Generation Facility against any Losses that could arise from voltage interactions, voltage dips, or any other variations in the voltage quality, and, comply with the protection requirements stipulated by the Municipality in accordance with clause 10 and the Municipality shall not be liable for damage to the Generation Facility due to any fault on the Distribution System.
  5. The Customer may in writing request indicative levels of voltage and interaction performance from the Municipality and Customer concerns shall be addressed on a case-by-case basis.
  6. **[OPTIONAL PROVISION:]** The Customer may elect to:
     1. pay for the necessary infrastructure required to provide a connection with higher levels of reliability; and
     2. pay for additional monitoring equipment to affect monitoring of performance at the Point of Supply.
  7. The Municipality shall not be liable for Losses suffered or sustained by a Customer or any third party as a result of or arising from the cessation, interruption or any other abnormality of the supply of Electrical Energy, unless the cessation, interruption or any other abnormality is due to the negligence of the Municipality, and the Customer hereby indemnifies and holds the Municipality harmless against such Losses.

# PROTECTION, SYNCHRONISING, AND EARTHING REQUIREMENTS

* 1. The Parties shall comply with the requirements of the Code(s) **[and Schedule E (Standard for the Interconnection of Embedded Generation) *(Drafting note: If there are parameters that the Municipality has developed to be included – include as a Schedule****)***]** with respect to the:
     1. Installation and maintenance of a protection system for the protection of the Generation Facility, the Generation Facility Connection Equipment, and the Municipal Connection Equipment; and
     2. Synchronisation and earthing of the connection of the Generation Facility to the Distribution System.
  2. The Municipality’s protection system may include a Synchronise check/s and/or live line close-blocking functionality on the circuit breakers supplying parts of the Distribution System that could reasonably become Islanded with the Generation Facility**.**
  3. The Customer shall at its cost procure, install, maintain and operate a protection system on the Generation Facility side of the Point of Connection which shall:
     1. comply with the requirements of the applicable Code(s) [and specifications in **[Schedule E (Standard for the Interconnection of Embedded Generation)] *(Drafting note: If there are parameters that the Municipality has developed to be included – include as a Schedule and reference Schedule number and name****)*;
     2. be compatible with the Distribution System protection system; and
     3. safeguard the Generation Facility and Generation Facility Connection Equipment from any fault condition on the Distribution System, including but not limited to (i) phase faults, (ii) earth faults, (iii) under or over voltage, (iv) under or over frequency and (vi) open-phase conditions.
  4. The Customer shall at all times ensure that the Generation Facility’s protection settings are coordinated with the Municipality 's protection settings.
  5. Prior to the Commissioning of the Generation Facility, the Customer shall perform the necessary tests to ensure their protection settings are coordinated and comply with the Municipality’s protection settings and shall furnish the Municipality with such test certificate/s and results.
  6. Subject to the Code(s), the Municipality may disconnect the whole or part of the Generation Facility from the Distribution System, or may operate circuit-breakers upstream of the Customer’s Generation Facility, thereby Islanding the Generation Facility with a portion of the Distribution System. In the event of such an Island developing, the Customer shall ensure that the Generation Facility is disconnected from the Distribution System within 2 (two) seconds and its failure to do so shall constitute a breach of this Agreement.

# MAXIUM EXPORT CAPACITY

* 1. The Maximum Export Capacity of the Generation Facility at the date of this Agreement is set out in **Schedule C (Generator Connection Particulars).**
  2. The Customer may request a change in the Maximum Export Capacity by giving written notice to the Municipality, after having obtained the necessary Approvals.
  3. The Municipality may approve or reject the request in clause 11.2 and shall take into account the following considerations in making a decision:
     1. any additional capital expenditure the Municipality will have to incur;
     2. any additional capacity the Distribution System may require;
     3. whether any of the Municipal Connection Equipment may have to be removed and replaced, and any associated costs thereof; and
     4. the Development Charges paid under the original Connection Charge or additional Development Charges required.
  4. The Customer may in writing request the Municipality to approve the Customer temporarily exceeding the Maximum Export Capacity, which the Municipality will not unreasonably withhold or delay. If the Municipality grants approval, the Customer shall only be entitled to exceed the Maximum Export Capacity for the period approved. Municipality’s approval shall be subject to the Customer obtaining the necessary Approvals.
  5. The Municipality may in writing instruct, or request the Customer to increase the Maximum Export Capacity in order to:
     1. avoid or mitigate the effect of an emergency, provided that this shall only be for the period as instructed or requested by the Municipality; or
     2. comply with the requirements of the Code(s); or
     3. maintain safety in accordance with the standards of a Reasonable and Prudent Operator as may be reasonably necessary or expedient;

provided, it is technically possible and subject to the Customer obtaining the necessary Approvals.

* 1. Save for clauses 11.4 and 11.5, exceedances of the Maximum Export Capacity shall constitute a breach of this Agreement **[OR shall attract penalty payable by the Customer on demand by the Municipality in an amount of [R insert].]**

# COMMISSIONING OF THE FACILITY AND FACILITY CONNECTION EQUIPMENT

* 1. The Municipality shall deliver a written notice to the Customer promptly after the Municipality Connection Works have been certified as completed and are ready to be Commissioned.
  2. The Municipality shall consider the test certificates and results required to be submitted by the Customer in terms of clause 10.5 demonstrating compliance with clause 10.3, and if satisfied with such certificates and results to its discretion and subject to the Code(s) and Standards, issue a written notification to the Customer (the “**Operational Notification**”) that the Customer has the right to connect the Facility Connection Equipment to the Distribution System, for purposes of completing the required Commissioning tests which could not be carried out prior to connection to the Distribution System.
  3. The Customer shall submit the test certificates and results of all tests to the Municipality for acceptance in accordance with the requirements of the Code(s), [and **Schedule B (Embedded Generator System Operations Manual) and Schedule E (Standard for the Interconnection of Embedded Generation)]**. ***(Drafting note: If there are parameters that the Municipality has developed to be included – include as a Schedule and reference Schedule number and name****)*;
  4. In the event that the Municipality does not accept the test certificates, the Customer will be required to retest its compliance with clause 10.5.
  5. The Operational Notification issued for completion of Commissioning shall not provide the Customer with the right or authority to commence with Commercial Operation.

# USE OF THE DISTRIBUTION SYSTEM

* 1. Following the successful completion of all outstanding Commissioning tests provided for in clauses 12.2 and 12.3, and the Municipality’s receipt and acceptance of all associated test certificates, the Municipality will provide the Customer with a second Operational Notification granting the Customer permission to commence Commercial Operation.
  2. On receipt of the second Operational Notification, the Customer has the right to connect the Generation Facility to the Distribution System and use the Distribution System for the export and import of Electrical Energy, subject to the provisions of other agreements which govern the Commercial Operation.
  3. The Customer shall:
     1. under no circumstances whilst connected to the Distribution System, Commission, test, use or operate the Generation Facility or Generation Facility Equipment in a manner that could impact the Distribution System without having received the permission in clause 12.2, an Operational Notification or a written exemption from the Municipality;
     2. undertake Commissioning and testing of the Generation Facility or Generation Facility Equipment upon written request from the Municipality, subject to any rights and obligations under the Code(s);
     3. comply with the requirements of the Codes **[and Schedule E (Standard for the Interconnection of Embedded Generation)] *(Drafting note: If there are parameters that the Municipality has developed to be included – include as a Schedule and reference Schedule number and name****)*;with respect to governor and excitation control of its generator/s included in the Generation Facility;
     4. operate its generator/s included in the Generation Facility within the real and reactive power limits / or real power and voltage limits set forth in the Code(s) **[Schedule B (Embedded Generator System Operations Manual) and Schedule E (Standard for the Interconnection of Embedded Generation)]**. ***(Drafting note: If there are parameters that the Municipality has developed to be included – include as a Schedule and reference Schedule number and name****);*
     5. not conduct maintenance or other work on the Generation Facility while connected to the Distribution System; and
     6. appoint a person responsible for the supervision of the Generation Facility beyond the Municipal Meter in terms of GMR(2).

# SCHEDULING AND DISPATCH

* 1. Both Parties shall be required to act in accordance with the requirements of the Scheduling and Dispatch Rules and the Code(s).
  2. The Parties agree that the Generation Facility will be Non-Dispatchable **[and/ or]** Dispatchable under Normal Operating Conditions**.**
  3. The Customer shall provide the Municipality or its delegated alternative with all required information in respect of each Unit to enable the Municipality to balance demand and supply and ensure the reliability of the Distribution System.
  4. The Municipality may stipulate the required information and format that it must be provided in.
  5. The Customer shall use reasonable commercial endeavours to ensure the information provided is completely accurate and if the Customer becomes aware of any act, event, condition or circumstance which may render any such information incorrect, misleading or inaccurate, shall notify the Municipality as soon as it becomes aware of such.

# METERING OF ELECTRICITY

* 1. The Municipal Meter shall be the primary meter utilised for the purposes of measuring the imported and exported active and reactive Electrical Energy from and into the Distribution System at the Generation POC for the purposes of calculating of any Charges payable under this Agreement.
  2. The Customer shall at the Municipality’s cost, Commission, install, operate and maintain the Municipal Metering Equipment, which Municipal Metering Equipment must comply with the requirements stipulated by the Municipality and the Electricity Metering Standards. **[Alternative option: The Municipality shall at its cost Commission, install, operate and maintain the Municipal Metering Equipment, which Municipal Metering Equipment shall comply with the requirements stipulated by the Municipality and the Electricity Metering Standards.]**
  3. The Municipality shall be the owner of the Municipal Metering Equipment.
  4. The Municipality shall at its cost, audit and test the Municipal Metering Equipment at least every five (5) years, or such shorter period as the Municipality may deem necessary and give the Customer written notification of such auditing and testing requirements.
  5. The Customer may install a Generator Check Meter at its own cost and which must comply with the Electricity Metering Standards and any additional technical specifications specified by the Municipality. The Customer shall be responsible for the operation and maintenance of the Generator Check Meters during this Agreement.
  6. In addition to any testing which the Municipality elects to undertake on the Municipal Metering Equipment, subject to the provisions of the Electricity Metering Standards and applicable laws, the Customer may in writing request a test of the Municipal Metering Equipment by written notice to the Municipality. In such event, the Municipal Metering Equipment shall be tested by a certified meter tester within **[INSERT NUMBER OF DAYS IN NUMERALS AND WORDS AND SPECIFY WHETHER BUSINESS OR CALENDAR DAYS]** of receipt of the written request.
  7. If the Municipal Metering Equipment is tested in terms of clause 15.6 and is found to be operating outside the tolerance level required by the Electricity Metering Standards or otherwise is not properly functioning, then the Municipal Metering Equipment shall be recalibrated and/or repaired, as soon as practicable, by a certified repairer, and the Municipality shall be liable for the costs associated with the tests as well as the applicable repair charges.
  8. If such test demonstrates that the Municipal Metering Equipment is accurate within the tolerance level required by the Electricity Metering Standards, the Customer shall be liable for the costs associated with the test.
  9. A Party shall not, and shall not attempt to, relocate or modify, or procure or permit the relocation or modification of any meter without the prior written consent of the other Party and shall not interfere in any manner whatsoever with the proper functioning of any meter and each Party shall ensure that its contractors do not interfere in any manner whatsoever with the proper functioning of any meter.

# RIGHT TO CURTIAL OR INTERRUPT UNDER EMERGENCY CONDITIONS

* 1. The Municipality shall have the right to request or instruct the Customer to curtail Electrical Energy generation during abnormal system conditions or low load periods and the Customer shall on such request or instruction reduce peak generation.
  2. Either Party shall have the right to disconnect the Generation Facility from the Distribution System under emergency conditions as described in the Code(s), if such action is deemed necessary by it, acting as a Reasonable and Prudent Operator, for the protection of life or equipment or for maintaining the reliability and security of the Distribution System or the Generation Facility. The Parties shall give reasonable advance notice of such action where possible.
  3. The Municipality shall as quickly as commercially reasonably practicable rectify the conditions leading to the emergency interruption and shall as quickly as commercially reasonably practicable, notify the Customer once such emergency conditions have passed upon which the Customer may re-synchronise the Generation Facility to the Distribution System.
  4. Neither Party shall be liable for any damage suffered by the other Party during abnormal system or emergency conditions due to measures taken in compliance with clauses 16.1-16.3.
  5. The Customer shall, if and when required, switch off generation during Load Shedding according to published load shedding schedules. Neither party shall be liable for any Losses arising from Load Shedding.

# GENERATION FACILITY SITE RIGHT(S) OF WAY

* 1. The Customer grants the Municipality an irrevocable right-of-way in perpetuity, free of charge to convey electricity and telecommunications over the Property.
  2. The right(s)-of-way shall be binding on the Customer, its heirs, assignees and legal successors and such include, where applicable, the following rights:
     1. the right to transmit Electrical Energy free of charge over the Property;
     2. the right to erect an overhead power line(s), underground cable(s) together with such structures, equipment, conductors, and overhead cables on the Property, and to erect or lead such conductors or other equipment on, under or over the Property as may at any time be necessary or convenient in exercising the right-of-way for overhead power line(s) / underground cable(s) as well as extension(s) of such line(s) and/or cable(s) to other customers of the Municipality (collectively, the ‘Cable Works’). The said rights shall be along a route mutually agreed to by the Parties;
     3. the right to retain any existing line(s) and/or cable(s) on the Property;
     4. the right to enter and be upon the Property at all reasonable times in order to construct, erect, operate, use, maintain, repair, re-erect, remove, alter or inspect the Municipality Connection Works, or in order to gain access to any adjacent properties over which the Municipality has, and in the exercise of, similar rights;
     5. the right to have access to and egress from the Property using existing roads and gates on the Property and to erect such gates and fencing on the Servitude Area necessary or convenient to gain access to and egress from the Property; and
     6. the right to request the owner or the Customer to arrange at its cost for the removal of any trees, bush, grass, material or structures from the Servitude Area and the right to cut or trim any trees on or around the Servitude Area in order to ensure compliance with the restrictions referred to in clause 17.3 hereof.
  3. The following special restrictions are placed for the Municipality’s benefit on the use of the Property:
     1. The Customer shall not:
     2. erect or install above or below the surface of the ground any building or structure;
     3. place any material which might endanger the safety of the Municipality Connection Works or the Cable Works and all associated equipment within the distance as set out in the table below of the centre line without the prior written permission of the Municipality. The centre line is the position of the power line/underground cable:

|  |  |
| --- | --- |
| Voltage | Building restriction on each side of the centre line |
| 1. All voltages below 22 kV | 9 metres |
| 2. 22 kV | 9 metres |
| 3. 33 kV | 11 metres |
| 4. 44 kV | 11 metres |
| 5. 66 kV | 11 metres |
| 6. 88 kV | 11 metres |
| 7. 132 kV and Delta construction 275 kV | 1. metres (15.5 – 20 metres) |

* + 1. no mining activities or blasting operations shall be permitted within 500 (five hundred) metres of any power line/underground cable without the prior written permission of the Municipality; and
    2. the Customer shall not plant or allow to grow any vegetation in the Servitude Area nor plant or allow to grow in the vicinity of the Servitude Area vegetation that could grow to a height in excess of the horizontal distance of that tree from the nearest conductor of any power line or allow it to grow in such a manner as to endanger that line should it fall or be cut down.
  1. The Customer shall ensure that the rights hereby granted to the Municipality shall be brought to the attention of any potential purchaser or transferee of the Property (or any portion thereof) or to the seller (at that time) of the Property (of any portion thereof) before it is sold and/or transferred to such purchaser or transferee.
  2. The Municipality may on written notice, at the Municipality’s cost, require the Customer to, and the Customer shall facilitate or the cause the notarisation of servitudes against the title deed under which the Property is held in order to secure the Municipality’s right of access to the Connection Site.
  3. If the Customer is not the owner of the Property, the Customer shall be required to ensure that the owner of the Property grants to the Municipality of all such rights as described in this clause 17, free of charge. Should the Customer fail to obtain the rights-of-way for free of charge, such failure shall suspend all of the Municipality’s obligations in terms of this Agreement.
  4. If any alteration or removal is required by the Customer or the owner of the Property if the Customer is not the owner, to or of the whole or any part of the Municipality Connection Works or the Cable Works and all associated equipment located above, on or under the Property for any reason whatsoever, all costs and expenses to be incurred by the Municipality in effecting such alteration or removal shall be borne, and at the Municipality’s election paid in advance, by the Customer.

# THE MUNICIPALITY’S OBLIGATIONS

The Municipality shall, acting as a Reasonable and Prudent Operator:

* 1. **[Optional clause: maintain its Distribution System in accordance with NRS 082]**. (*Drafting note – to be excluded if a Municipality isn’t implementing NRS 082 fully)*
  2. maintain the Approvals for the Municipality’s live equipment in the Municipal Connection Equipment in accordance with the electrical regulations of the Occupational Health and Safety Act 85 of 1993;
  3. provide the Municipal Connection Equipment;
  4. ensure that the Municipal Connection Equipment complies with the requirements of this Agreement for the purposes of connecting the Generation Facility to the Distribution System;
  5. engineer, design, commission, maintain and operate the Municipal Connection Equipment in accordance with the parameters set forth in the Code(s) **[and Schedule B (Embedded Generator System Operations Manual) and Schedule E (Standard for the Interconnection of Generation)] *(Drafting note: If there are parameters that the Municipality has developed to be included – include as a Schedule and reference Schedule number and name****)*;
  6. accept into its Distribution System Electrical Energy generated by the Customer at the Point of Supply in terms of, but not limited to, the Maximum Export Capacity Conditions set out in Clause 11;
  7. certify to the Customer, in writing, when the Municipal Connection Equipment has been successfully Commissioned;
  8. measure the Electrical Energy exported and imported at the Point of Connection for the purposes set out in Clause 15.2;
  9. provide information to the Customer as required for the performance by the Customer of its obligations in terms of this Agreement;
  10. operate and maintain Municipal Metering Equipment;
  11. audit and test Municipal Metering Equipment at least every five (5) years; and
  12. notify the Customer of any access protocols, health and safety rules, procedures and the like and any other reasonable requirements.

# THE CUSTOMER’S OBLIGATIONS

The Customer shall, acting as a Reasonable and Prudent Operator:

* 1. ensure that the Generation Facility complies with the Requirements of this Agreement for the purposes of connecting the Generation Facility to the Distribution System;
  2. engineer, design, Commission, maintain and operate the Generation Facility in accordance with the parameters set forth in the Code(s) **[and Schedule B (Embedded Generator System Operations Manual) and Schedule E (Standard for the Interconnection of Generation)] *(Drafting note: If there are parameters that the Municipality has developed to be included – include as a Schedule and reference Schedule number and name****)*;
  3. obtain all Approvals as may be required under applicable Law, for the construction, Commissioning, operation and maintenance of the Generation Facility and the export and import of Electrical Energy from the Generation Facility into the Distribution System;
  4. obtain any written permission from the Municipality before first attempting Synchronisation of the Generation Facility with the Distribution System. The permission by the Municipality shall not be unreasonably withheld or delayed, provided that such permission shall only be granted upon successful completion of pre-Commissioning tests and subject to Clause 10.5;
  5. comply with and ensure that the Generation Facility is in compliance with the relevant provisions of the Code(s) and applicable Law in relation to the Generation Facility and without limiting its rights and obligations under the Code(s), the Customer shall continuously monitor its compliance with the Code(s) and furnish the Municipality with test certificates indicating the results of the tests performed;
  6. grant the Municipality access to the Connection Site in accordance with this Agreement;
  7. provide adequate space and maintain in good order at its expense a suitable site, including, where required the substation building, to be mutually agreed upon for accommodating the Municipality’s equipment needed to discharge its obligations in terms of this Agreement;
  8. adhere to any health and safety rules that the Municipality may have in place from time to time at the Municipality’s substation containing the Municipal Connection Equipment;
  9. advise the Municipality of any addition, replacement or alteration made to any equipment owned, operated or controlled by the Customer that could have a deleterious effect on the Distribution System; and
  10. appoint a person responsible for the supervision of the Generation Facility beyond the Municipal Meter in terms of GMR(2).provide data from check meters, required by the Municipality;
  11. export into the Distribution System Electrical Energy generated by the Customer at the Point of Supply in terms of the Maximum Export Capacity conditions as set out in Clause 11.

# CODES

* 1. This Agreement is subject to the provisions of the Code(s), Standards, Laws, the Parties’ licences issued by NERSA, the Prescribed Tariff Charges, and any other applicable Law.
  2. The Parties shall obtain and maintain all Approvals required under the applicable Law and perform its obligations in a manner that complies with all applicable Law, its Approvals and the Code(s).
  3. In the event of a conflict between applicable Law, Approvals and the Code(s) and this Agreement, the provisions of the Code, Approval or Laws shall prevail.
  4. The performance of this Agreement shall not result in any Party being in breach of an obligation/s contained in the applicable Law, its Approvals and the Code(s).

# CONFLICTS WITH OTHER AGREEMENTS

* 1. In the event of any conflict between this Agreement and the Main Supply Agreement, this Agreement shall prevail to the extent of such inconsistency.
  2. In the event of any conflict between this Agreement and any power purchase agreement between the Parties, the provisions of the power purchase agreement shall prevail.

# FORCE MAJEURE

* 1. If either Party desires to invoke an event of Force Majeure as a cause for prevention, hindrance or delay in the performance of any obligation (other than the payment of money in respect of obligations which have accrued prior to the happening of the Event of Force Majeure) hereunder, it must advise the other Party as soon as possible, and in any case not later than [**seven (7) Calendar Days**] following the occurrence of such event, in writing of the:
     1. date of commencement of such Event of Force Majeure;
     2. nature and expected duration of such event; and
     3. actions to be taken in order to comply with requirements of this clause 22, provided that such notice must be sent by such Party not later than 24 (twenty four) hours after the time at which such Party first had knowledge of the effect of such event of Force Majeure.
  2. The Parties must use reasonable endeavours to:
     1. prevent and reduce to a minimum and mitigate the effect of any prevention, hindrance or delay occasioned by any event of Force Majeure; and
     2. ensure resumption of normal performance of this Agreement after the termination of any event of Force Majeure.
  3. The Affected Party is excused from performance and is not construed to be in default in respect of any obligation hereunder for so long as failure to perform such obligation is due to an event of Force Majeure.
  4. Either Party may terminate this Agreement if an event of Force Majeure prevents the other Party from performing any of its obligations under this Agreement for a continuous period of 180 (one hundred and eighty) Calendar Days, subject to the provisions of this Agreement.
  5. The Municipality shall not be liable for damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under this Agreement is the result of an event of Force Majeure.
  6. Unless otherwise directed by the Municipality in writing, Customer shall continue to perform its obligations under the Agreement as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the event of Force Majeure.
  7. Where directed by the Municipality in writing, the obligations of the Customer shall be suspended for so long as the event of Force Majeure continues, and to the extent that the Customer is so prevented, hindered or delayed, provided that all other obligations not affected by the Force Majeure event shall continue to be performed.
  8. The Parties shall co-operate in good faith (each at their own costs) to develop and implement a plan to remedy the event of Force Majeure and/or reasonable alternative measures to remove or work around the event of Force Majeure.
  9. If the Parties are unable to agree as to the existence or as to the effect of an event of Force Majeure by the date falling **[20 (twenty)]** Calendar Days after the receipt by the non-Affected Party of the notice of the event of Force Majeure, then the matter shall be resolved in terms of clause 27 of this Agreement.
  10. The Affected Party shall have the burden of proving both the existence of any event of Force Majeure and the effect (both as to the nature and extent) which any event of Force Majeure has on its performance in terms of this Agreement.

# LIABILITY

* 1. Save to the extent expressly provided in this Agreement, neither Party shall be liable to the other Party under this Agreement or in delict for any Losses incurred directly or indirectly as a result of any action or omission of such Party unless the said action or omission is due to the negligence of the defaulting Party.
  2. If either Party is liable for Losses caused to the other Party such liability shall be limited to direct damages and will exclude consequential damages, provided that consequential damages shall include, but shall not be limited to, loss of production, revenue, income or profit
     1. the liability of the defaulting Party in respect of all Losses suffered or incurred by the non-defaulting Party shall not exceed **[insert amount]** per incident or series of related incidents arising out of or in connection with one event, and the maximum aggregate liability of the defaulting Party in respect of all Losses suffered or incurred by the non-defaulting Party (“**Aggregate Liability**”) in respect of any events occurring in any calendar year shall not exceed **[insert amount]**.
  3. Despite anything to the contrary in this Agreement, save for clause 23.4, the Municipality shall not be liable to the Customer for any Losses which are incurred by the Customer (whether directly or indirectly) as a result of any action or omission related to the design, construction, operation or maintenance of the Distribution System.
  4. Despite clause 23.2.1, nothing in this Agreement shall exclude or limit the liability of either Party for Losses suffered or incurred by the other Party which arise from the unlawful act or fraud of the first Party.
  5. Nothing in this Agreement shall exclude or limit the liability of either Party for death or personal injury or loss or damage to property, to an external party resulting directly from the negligence of the first-mentioned Party or any of its officers, directors, employees, contractors and agents and that Party shall indemnify and keep indemnified the other Party from and against any Losses which the other Party may suffer or incur by reason of any claim on account of death or personal injury to the extent resulting from the negligence of the first-mentioned Party or the negligence of any of its officers, directors, employees, contractors or agents (such claim hereafter being referred to as an ‘Injury Claim’).
  6. Each Party (the “**Indemnifying Party**”) indemnifies the other Party (the “**Indemnified Party**”) against any third party claims, proceedings, compensation and costs incurred by the Indemnified Party in respect of
     1. death of or injury to a person; or
     2. loss of or damage to property;
     3. infringement of an intellectual property right, in each case which arises from the negligence, unlawful intent, fraud, gross negligence, breach of contract or breach of statutory duty of by or by the Indemnifying Party.

# EARLY TERMINATION GUARANTEE

* 1. The Municipality may require the Customer to provide an Early Termination Guarantee to cover recoverable expenditure costs incurred by the Municipality in respect of the Municipal Connection Works or the completed connection decommissioned in the event this Agreement is terminated early, for whatever reason.
  2. If the Municipality requires the Customer to provide **an Early Termination Guarantee, Schedule H** must be completed and shall apply to this Agreement.

# BREACH

**Breach by the Customer**

* 1. If the Customer is in breach of any provision of this Agreement (other than a breach of any of its payment obligations under this Agreement) and such breach causes:
     1. the Municipality to be in immediate breach of any of its Approvals and such breach requires disconnection of the Generation Facility in terms of those Approvals;
     2. personal injury to the Municipality or Customer staff or members of the public; or
     3. immediate material damage as a result of the malfunctioning of the Generation Facility on the Customer’s premises or on the Distribution System

then the Municipality shall be entitled to disconnect the Generation Facility from the Distribution System immediately and without giving notice.

* 1. In addition, if the Customer is in breach of any provision of this Agreement, then the Municipality shall give written notice to the Customer specifying the nature of the breach and requiring the Customer within **[15 (fifteen**)**]** days of receipt the notice to remedy the breach.
  2. Subject to clause 27, if the breach is not remedied within the period provided for in the notice issued in terms of clause 25.2, the Municipality may disconnect the Generation Facility.
  3. If, following the disconnection of the Generation Facility, the Customer has remedied the breach; the Municipality shall reconnect the Generation Facility without unreasonable delay.
  4. If, following the disconnection of the Generation Facility, the Customer applies to the Municipality for the Generation Facility to be re-connected and is refused or is offered re-connection on conditions which the Customer does not accept, then this shall be recognised as an ‘Incident’ (as defined in the Code(s)) and the Municipality shall only be obliged to re-connect the Generation Facility if NERSA or the arbitrator makes a determination to this effect in terms of clause 27.
  5. If any breach of this Agreement by the Customer results in a disconnection of the Generation Facility and remains un-remedied for a period six (6) months reckoned from the date of the breach the Municipality may terminate this Agreement immediately upon written notice to the Customer.

**Breach by the Municipality**

* 1. If the Municipality is in breach of any provision of this Agreement and such breach causes personal injury or material damage (Material Adverse Impact) to the public or the Generation Facility, then the Customer shall be entitled to disconnect the Generation Facility from the Distribution System immediately without giving notice.
  2. For any other breach of Agreement not provided for in 25.7, the Customer may give written notice to the Municipality specifying the nature of the breach and requiring the Municipality within **[15 (fifteen)]** days of receipt the notice to remedy the breach.
  3. If the Municipality does not remedy the breach within the notice period set out in clause 25.8, the Customer may terminate the Agreement immediately upon written notice.

# TERMINATION

* 1. Subject to clause 25, the Customer shall be entitled to elect to terminate this Agreement, and without penalty or the imposition of any premium, at any time on 12 (twelve) Months prior written notice to the Municipality.
  2. The Municipality shall be entitled to elect to terminate this Agreement if the Use of Systems Agreement between the Municipality and Trader(s) purchasing Electrical Energy for purposes of Wheeling from the Customer, is terminated, for whatever reason.
  3. Any exercise by a Party of its right to terminate this Agreement shall be without prejudice to the rights of such Party to exercise any other rights or remedies available to such Party under this Agreement or in Law.
  4. The termination of this Agreement shall not affect any rights and obligations of the Parties, which may have accrued up to the date of such termination.
  5. The expiry or termination of this Agreement shall not affect the continued operation of those of its provisions that expressly provide for their continued operation after such expiry or termination or which of necessity must continue to operate after such expiry or termination.
  6. Upon termination of this Agreement in terms of this clause 26, the Customer shall pay all amounts owing to the Municipality under this Agreement within **[5 (five)]** working days of receipt of the Municipality’s invoice.
  7. The Municipality may disconnect the Generation Facility following the termination of this Agreement.

# DISPUTE RESOLUTION

Upon the occurrence of any dispute relating to or in connection with this Agreement or the Code(s) which a Party wishes to refer for resolution, such Party shall notify the other Party in writing of the details of the dispute (a “**Dispute**”).

**Referral To NERSA**

* 1. Either Party may, with the written agreement of the other Party, refer any Dispute to the NERSA for mediation in accordance with the Act and the Code(s).
  2. In the absence of a written agreement between the Parties, the Dispute shall be referred for expedited dispute resolution in accordance with clauses 27.3 to 27.10 below or arbitration in accordance with clauses 27.11 to 27.17.

**Expedited Dispute Resolution**

* 1. If the Parties are in Dispute, the Parties may in writing agree to follow an Expedited Dispute Resolution process for resolution by a Third Party Expert, as defined in clause 27.4.
  2. The third party expertshall be a qualified engineer of not less than 15 (fifteen) years’ experience in the design, construction, installation, operation and maintenance of power transmission interconnection Generation Facilities (“**Third Party Expert**”).
  3. The Parties shall attempt to agree to the Third Party Expert within **[5 (five**)**]** Business Days after the agreement to follow an Expedited Dispute Resolution process. If no agreement is reached, Third Party Expert shall be appointed by the President of the Engineering Council of South Africa (the “**ECSA**”).
  4. Within **[15 (fifteen)]** Business Days of the effective appointment of the Third Party Expert, each Party shall submit a notice (a “**Position Notice**”) setting out the details and supporting documentation of such Party’s position in respect of the issues in Dispute to the Third Party Expert.
  5. The Third Party Expert shall consider the Position Papers and issue her/his decision with reasons within **[15 (fifteen)]** Business Days of the date on which both Position Notices were submitted. The Third Party Expert may extend the time period on written notice to the Parties, giving sufficient reasons for why additional time is required to make a decision and specifying the additional time required, which period shall not exceed **[10 (ten)]** Days.
  6. If the Third Party Expert should fail to notify the Parties of his decision with respect to any Dispute within **[60 (sixty)]** days of such referral, any Party may give notice for the Dispute to be referred for arbitration.
  7. The decision of the Third Party Expert shall be final and binding on the Parties unless either Party issues a written notice of dissatisfaction to the other Party and Third Party Expert, within **[30 (thirty)]** Days of receipt of the decision. In such event, the Dispute shall be referred for arbitration pursuant to clauses 27.11 to 27.17.
  8. The Third Party Expert determine which Party should bear the costs, unless the Dispute is referred to Arbitration.

**Arbitration**

* 1. Any Dispute not resolved in accordance with clauses 27.3 to 27.10 shall be resolved in terms of the Arbitration Act, No. 42 of 1965 and the Rules of the Arbitration Foundation of Southern Africa from time to time in force (the “**AFSA Rules**”).
  2. All arbitration proceedings shall be conducted in **[INSERT PLACE]** and be concluded within [**ten (10) days**] of referral.
  3. The Parties shall agree to the arbitrator to be appointed and if the Parties cannot agree within **[INSERT NUMBER IN NUMERALS] [INSERT NUMBER IN WORDS]** days after arbitration has been agreed upon, the President for the time being of the Cape Bar Council will be requested to appoint the arbitrator.
  4. The fees payable to the arbitrator shall be determined and agreed to between the arbitrator.
  5. The arbitrator shall be requested to hand down his/her award within **[INSERT NUMBER IN NUMERALS] [INSERT NUMBER IN WORDS]** days after the completion of the arbitration.
  6. The decision of the arbitrator shall be final and binding and may be an order of the High Court of South Africa, Western Cape Division, held at Cape Town.
  7. Nothing in this Agreement shall prevent either Party from access to the High Court of South Africa for interim relief in the form of an interdict, mandamus or order for specific performance pending the outcome of any process for the resolution of a Dispute in terms hereof.

# REPRESENTATIONS AND WARRANTIES

* 1. The Customer represents and warrants to the Municipality that as at and from the Effective Date, for the duration of the Agreement:
     1. It is duly incorporated under the Laws of the Republic of South Africa and has the power to enter into and perform its obligations under this Agreement or, in the case of any Approvals which are not required to be obtained as at and from the Effective Date, it is not aware of any reason why it should not obtain such Approvals in response to its application for them;
     2. It has obtained or will obtain all necessary Approvals (other than those for which the Municipality is responsible) required in connection with the entry into and performance of its obligations under this Agreement;
     3. Its entry into this Agreement and performance of its obligations under this Agreement will not violate or conflict with or exceed any limit imposed by (i) any applicable Law to which it is subject, (ii) its memorandum and articles of association or other applicable constitutional documents or (iii) any other agreement, instrument or undertaking binding upon it; and
     4. all the information supplied to the Municipality by the Customer is true and correct in all material respects.
  2. The Municipality represents and warrants to the Customer that as at and from the Effective Date, for the duration of this Agreement:
     1. it has the power to enter into and perform its obligations under this Agreement;
     2. it has obtained or will obtain all necessary Approvals (other than those for which the Customer is responsible) required in connection with the entry into and performance of its obligations under this Agreement; and
     3. its entry into this Agreement and performance of its obligations under this Agreement will not violate or conflict with or exceed any limit imposed by (i) any applicable Law to which it is subject, (ii) other applicable constitutional documents or (iii) any other agreement, instrument or undertaking binding upon it.

# CONFIDENTIALITY

* 1. The Parties agree that the terms of this Agreement, all information of the Parties that has been exchanged pursuant hereto, including but not limited to details concerning technical expertise will be received in strict confidence and not be divulged to any Person, save their respective employees directly involved with the execution of this Agreement and to the extent used only for the purpose of this Agreement or any of their respective auditors, consultants and advisors, or to any of the shareholders (direct or indirect) and their agents, consultants, contractors, advisers, financiers, potential financiers, investors, potential purchasers of the interests of a shareholder (direct or indirect) insurers or lenders of or to such Party or its affiliates, provided that:
     1. such Party notifies the recipient in advance of such disclosure that the information is subject to the non-disclosure restrictions contained in this clause 29; and
     2. prior to making any disclosure of confidential information, such Party shall procure that the proposed recipient signs a written confidential undertaking on terms no less onerous than in this Agreement.
  2. Each Party will use the same means as it uses to protect its own confidential information, but in no event less than reasonable means, to prevent the disclosure and to protect the confidentiality of such information. No information referred to in this Agreement will be disclosed by the recipient Party, its agents, representatives or employees without the prior written consent of the other Party.
  3. These provisions do not apply to information which is:
     1. publicly known or becomes publicly known through no unauthorised act of the recipient Party;
     2. rightfully received by the recipient Party from a third party;
     3. independently developed by the recipient Party without use of the other Party's information;
     4. disclosed by the other Party to a third party without similar restrictions;
     5. required to be disclosed pursuant to a requirement of a governmental agency or any applicable Law, so long as the Party required to disclose the information gives the other Party prior notice of such disclosure;
     6. publicly disclosed with the other Party's written consent;
     7. disclosed by either Party as required by the regulations of any recognised stock exchange upon which the share capital of the Party (or any shareholders (direct or indirect) of the Party) is or is proposed to be from time to time listed or dealt in, and the Party making the disclosure shall, if reasonably practicable prior to making the disclosure, supply the other Party with a copy of such disclosure or statement and details of the persons to whom the Confidential Information is to be, or has been, disclosed; or
     8. required to be disclosed by the Municipality as may be necessary to enable the Municipality to operate the Distribution System and carry out its obligations in relation thereto in accordance with the standards of a Reasonable and Prudent Operator.
  4. All information supplied by or on behalf of a Party shall remain the sole and exclusive property of such Party and this Agreement shall not operate to transfer ownership or any interest whatsoever therein, and the other Party shall, if requested by the Party disclosing the information following termination of this Agreement, promptly return to such Party all documents and any copies, extracts, notes or similar materials containing or based in whole on such information.
  5. The provisions of this Clause shall survive the expiry or termination of this Agreement for a period of **[five (5) years].**
  6. Each Party shall, insofar as is reasonably practicable, ensure that any copies of confidential information, whether in hard copy or computerised form, will be clearly marked as confidential.
  7. No public announcement or statement regarding the signature, performance or termination of, or otherwise in relation to, this Agreement shall be issued or made by a Party unless the other Party shall have first been furnished with a written copy of the proposed announcement or statement and shall have approved it (such approval not to be unreasonably withheld or delayed).

# RELATIONSHIP BETWEEN THE PARTIES

No provision of this Agreement shall be construed as constituting an agency, partnership, or joint venture between the Parties, and neither Party shall have any express or implied authority to bind the other Party in any way or to represent the other Party unless specifically provided to the contrary in this Agreement.

# PROTECTION OF PERSONAL INFORMATION

* 1. The Customer accepts that the Municipality will process Personal Information and agrees to the collection and use of such Personal Information in connection with the Agreement in accordance with applicable laws.
  2. The Customer agrees to the Municipality sharing such Personal Information with its agents, representatives and other municipalities within the Province for the purposes of producing reports, working papers, infograms, and internal and external presentations. The Municipality undertakes to protect and safeguard all Personal Information which is provided by the Customer and treat same as confidential. The information shall be used and processed in accordance with the applicable legislation, specifically, the Protection of Personal Information Act 4 of 2013.

# DATA AND RECORDS

* 1. The Parties shall maintain complete and accurate data and records, required to facilitate the proper administration of this Agreement.
  2. Each Party shall provide the other Party, within **[INSERT NUMBER]** Business Days of written request from the other Party, electronic copies of any data and records maintained by such other Party in relation to the matters governed by this Agreement at the requesting Party’s cost.

# CHANGE OF CONTROL

* 1. This clause is only applicable to the Customer where the Customer is a juristic person.
  2. In the event of a Change of Control of the Customer, the Municipality’s written consent needs to be obtained by the Customer prior to the Change of Control occurring, which consent shall not be unreasonably withheld by the Municipality.
  3. Without derogating from the foregoing, the Customer shall upon written demand by the Municipality, ensure that any party acquiring control, agrees in writing to be bound by all the provisions of this Agreement, on the same basis as the Customer is bound to this Agreement, prior to the implementation of the aforesaid Change of Control.

# JURISDICTION

* 1. The Parties hereby consent in terms of Section 45 of the Magistrate’s Court Act No 32 of 1944 as amended to the jurisdiction of the Magistrate’s Court having jurisdiction in terms of Section 28 of the said Act, to adjudicate any dispute arising from this Agreement, provided that such consent shall not derogate from the right of either Party to institute proceedings in the High Court.
  2. The Parties consent to the non-exclusive jurisdiction of the High Court of South Africa, Western Cape Division, Cape Town for any legal proceedings arising out of or in connection with this Agreement.

# ASSIGNMENT, CESSION AND DELEGATION

The Customer and the Municipality may not assign, cede, delegate or transfer any rights, obligations, share or interest acquired in terms of this Agreement, in whole or in part, to any other party or person without the prior written consent of the other Party, which consent shall not unreasonably be withheld or delayed.

# WAIVER

* 1. No extension of time or other indulgence granted by either Party to the other in respect of either of the Parties’ obligations will constitute a waiver of either of the Parties’ right to enforce compliance with the terms of this Agreement, neither shall it constitute a novation of this Agreement.
  2. No failure or delay on the part of either Party in exercising any right, power or privilege precludes any other or further exercising thereof or the exercising of any other right, power or privilege in terms of this Agreement in the future.
  3. No waiver of any of the terms and conditions of this Agreement shall be binding unless expressed in writing and signed by the Party giving the same, and any such waiver shall be affected only in the specific instance and for the purpose given.

# GOVERNING LAW

This Agreement is to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.

# SEVERABILITY

All provisions of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any clause of the Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pronon scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties hereto declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

# NO THIRD PARTY BENEFICIARY

The terms and provisions of this Agreement are intended solely for the benefit of each Party and their respective successors or permitted assigns, and it is not the intention of the Parties hereto to confer third party beneficiary rights upon any other person.

# COSTS

Each Party shall bear his/her/its own costs incurred in the negotiation, preparation and settling of the terms of this Agreement.

# NOTICES AND DOMICILIUM

* 1. Each of the Parties chooses as their respective *domicilium citandi et executandi* for the purposes of the giving of any notice, the serving of any legal process and for any purposes arising from this Agreement at their respective addresses set forth hereunder:

**The Municipality**

Address: **[INSERT]**

For the attention of: **[INSERT]**

Email: **[INSERT]**

**Customer**

Address: **[INSERT]**

For the attention of: **[INSERT]**

Email: **[INSERT]**

* 1. Any notice to any Party shall be addressed to it at its *domicilium* aforesaid and be sent either by electronic mail message, pre-paid registered post or be delivered by hand. In the case of any notice:
     1. If transmitted by electronic mail message, it shall be deemed to have been received on the date of transmission;
     2. Sent by pre-paid registered post, it shall be deemed to have been received, unless the contrary is proved, on the seventh Calendar Day after posting; and
     3. Delivered by hand, it shall be deemed to have been received, unless the contrary is proved, on the date of delivery, provided such date is a Business Day or otherwise on the next following Business Day.
  2. Any Party shall be entitled by notice in writing to the other, to change its *domicilium* to any other address within the Republic of South Africa, provided that the change shall become effective only fourteen (14) days after the service of the notice in question.

# THE PARTIES’ OBSERVANCE OF APPLICABLE LEGISLATION

The Parties shall, in addition to complying with the terms and conditions of this Agreement, also comply with the provision of any law which may have application to this Agreement.

# ENTIRE AGREEMENT

* 1. This Agreement constitutes the entire agreement between the Parties and no amendment, alteration, addition or variation of any right, term or condition of this Agreement will be of any force or effect unless reduced to writing and signed by the Parties to this Agreement or their duly authorised representatives.
  2. **[Notwithstanding the provisions of clause 43.1 above, the schedules to this Agreement may be amended by an exchange of letters between the Parties.]**
  3. The Parties agree that there are no conditions, variations or representations, whether oral or written and whether expressed or implied or otherwise, other than those contained in this Agreement.

# LANGUAGE

* 1. This Agreement is being executed in the English language only and is the definitive version of this Agreement.
  2. All communication, notices, or other documents to be made, given, or approved relating to this Agreement shall be made in the English language.

# INDEPENDENT ADVICE

* 1. Each of the Parties hereby respectively agrees and acknowledges that:
     1. it has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and
     2. each provision of this Agreement (and each provision of the Schedules and schedules hereto) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

# WARRANTY OF AUTHORITY

Each Party warrants to the other Party that it has the power, authority and legal right to enter into, sign and perform in terms of this Agreement, and that this Agreement has been duly authorised by all necessary actions of its directors or person/s on whose behalf the signatory acts herein.

# SIGNATURE

This Agreement may be signed in one or more counterparts and the signature of a counterpart by any Party shall have the same effect as if that Party had signed the same document as the other Party/ies.

SIGNED AT \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ THIS \_\_\_\_\_\_\_\_\_\_ DAY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20\_\_

|  |  |
| --- | --- |
| The Customer | : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| As Witnesses: | 1: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  | 2: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

SIGNED AT \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ THIS \_\_\_\_\_\_\_\_\_\_ DAY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20

|  |  |
| --- | --- |
| The Municipality | : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| As Witnesses: | 1: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  | 2: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

# SCHEDULE A: MUNICIPAL QUOTATION LETTER

***[The Municipal Budget Quote Letter should be included here.]***

*It should detail the costs relating to the provision of:*

*1. Connection equipment and other costs for construction of the point of connection (Connection Works).*

*2. Network strengthening costs (if applicable – the component not recovered through Shared Network Charges levied according to municipal approach to sharing such costs amongst customers).*

*3. Protection & control equipment costs.*

*4. Design and project management time required from the Distributor to develop and supervise the connection works.*

*5. New meter costs (if applicable).*

*6. Administrative charges as applicable.*

*7. Development charges.*

*8. Any other costs to be incurred in association with the connection and presence of the generator on the distribution network which are passed onto the customer.*

# SCHEDULE B: EMBEDDED GENERATOR SYSTEMS OPERATIONS MANUAL

**[Municipalities should include relevant information in this Schedule.]**

# SCHEDULE C: GENERATOR CONNECTION PARTICULARS

**[To be completed by Generator and Municipality]**

*Should include:*

1. *Maximum Export Capacity as at date of Agreement*

*2. Connection Details*

|  |  |
| --- | --- |
| Point(s) of Connection | *Erf number*  *GPS Coordinates*  *Aerial view* |
| Point of Supply | *Add description* |
| Property description | *Add description* |
| Point of Utility Connection | *Add description* |
| Point of Generator Connection | *Add description* |
| Point of Common Coupling | *Add description* |

*Include design diagrams*

# SCHEDULE D: GENERATOR MUNICIPAL CONNECTION EQUIPMENT

|  |  |
| --- | --- |
| Name of Generator |  |
| Physical Address | Suburb/Township/Farm  Postal Code  Erf Number  Latitude (DD MM SSS)  Longitude (DD MM SSS) |
| Maximum Export Capacity (MW) |  |
| Grid Supply Point Equipment | *Example*  ***At HV (Insert name) Substation: (Insert detail)***  *E.g.*  *132 kV transformer bay*  *1 x 80 MVA 132/11 kV transformer*  *132 kV bus bar with bus-coupler*  *1 x 132 kV feeder bay to [the Distribution Substation or related customer]*  *SCADA equipment where relevant*  *Metering equipment*  *Protection, CT’s and VT’s*  ***At HV Overhead line (Insert name and structure) from (Insert name) Substation (Insert detail)***  *E.g.*  *5 km of single circuit 132 kV line with Hare conductor and optical fibre ground wire (OPGW 24 pair) terminated from new structure X to the existing line between Structures Y and Z.*  ***At Distribution MV (Insert name) Substation:***  *E.g.*  *1 x 11 or 33 kV incoming isolator bay*  *1 x 11 or 33 kV customer feeder bay*  *11 kV double bus bar with bus-coupler bay and associated voltage transformers*  *Bypass isolators*  *SCADA equipment where relevant*  *Bidirectional metering equipment*  *Protection, CT’s and VT’s*  ***Downstream of existing (Insert site name) point of supply (1 MW and above)***  *E.g.*  *3-stage Protection scheme with CT’s and VT’s*  *SCADA equipment*  *Bidirectional metering equipment* |

# SCHEDULE E: STANDARD FOR THE INTERCONNECTION OF EMBEDDED GENERATION

**[Insert applicable standards, including:**

* **Eskom 240-61268576 Standard for the Interconnection of Embedded Generation; and**
* **Municipality’s standards/ requirements.]**

# SCHEDULE F: GENERATION QUALITY OF SUPPLY SPECIFICATION

**[Municipalities should include relevant information in this Schedule.]**

# SCHEDULE G: SECURITY FOR PRESCRIBED TARIFF

The Customer shall, prior to the connecting of the Generation Facility, deposit with the Municipality the sum of **[**R..................................**.]** or furnish the Municipality with an approved guarantee for the aforementioned amount. The amount of the said deposit or guarantee may be varied at any time by the Municipality. The Prescribed Tariff Charge Security, if in the form of a Bank Guarantee, shall be returned to the Customer upon termination of this Agreement after final set off any amount owing to the Municipality.

In the event of any account not being settled in due time, the Municipality shall be entitled to call upon the Prescribed Tariff Charge Security without any written notice to the Customer.

The Municipality shall have the right to call upon the Customer at any time to vary the Bank Guarantee so that the amount of the Prescribed Tariff Charge Security shall be sufficient to cover the estimated amount payable by the Customer for the Prescribed Tariff charges during any period of three (3) consecutive Months, and the Customer shall be obliged to furnish the Municipality with a legal, valid, and binding replacement Bank Guarantee within **[30 (thirty)]** days of being called upon to do so. The Municipality shall promptly return the earlier Bank Guarantee to the Customer upon receipt of such replacement Guarantee

If and whenever the Bank Guarantee provided by the Customer in accordance with this clause ceases (for any reason whatsoever) to be of full force and effect or otherwise to comply with this clause, the Customer shall **[30 (thirty)]** days of before the cease of the Bank Guarantee provide to the Municipality a new Bank Guarantee or cash deposit which meets the requirements of this clause.

# SCHEDULE H: EARLY TERMINATION GUARANTEE

The Municipality will, in connecting the Generation Facility to the Distribution System, incur certain expenditure costs, payable by the Customer, which will be recoverable if this Agreement is terminated early for whatever reason, and the Municipality Connection Works or the completed connection decommissioned.

The Customer shall furnish the Municipality with an early termination guarantee in the amount of **R[insert]** (**[INSERT AMOUNT IN WORDS]**)**]** in the form of a Bank Guarantee (“**Early Termination Guarantee**”). The Customer shall ensure that for the duration of this Agreement, the Municipality is provided with a legal, valid, and binding Early Termination Guarantee.

The amount of the Early Termination Guarantee set out in Clause 0 will decrease by **[1/10th (one tenth)]** per year, starting **[four (4)]** years after the Completion Date and will be completely extinguished after **[13 (thirteen)]** years.

The Municipality shall return the Early Termination Guarantee to the Customer within **[20 (twenty)]** Business Days of the Customer furnishing the Municipality of the Customer furnishing the Municipality with any acceptable replacement Early Termination Guarantee or, in the case of the final Early Termination Guarantee within **[20 (twenty)]** Business Days of the expiry or termination of this Agreement; provided that the Customer has paid all amounts owning by it in respect of this Agreement.

If this Agreement is terminated before the **[13 (thirteen)]** year period has lapsed, the Municipality shall be entitled to call up the guarantee without any notice to the Customer. The amount received by the Municipality under the guarantee shall be refunded, without interest, to the Customer should the supply be taken over by another customer within **[INSERT NUMBER IN NUMERALS AND WORDS]** Months.