**SUPPLEMENTAL AGREEMENT TO THE ELECTRICITY SUPPLY 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 and the Municipality have entered into the Main Electricity Supply Agreement in terms of which the Customer is being supplied with Electrical Energy against payment of Prescribed Tariffs and charges; and

**AND WHEREAS** the Customer has applied to and the Municipality has approved for the Customer to be supplied with Wheeled Energy in accordance with the terms and conditions of this Agreement;

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

# **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 Supplemental Agreement to the Electricity Supply Agreement for the Purpose of Wheelingand includes all schedules, including:
     1. **Schedule 1**: Applicable Tariffs;
     2. **Schedule 2**: Details of Third Party Suppliers;
     3. **Schedule 3**: Allocation of Nominated Energy for Purposes of Wheeling; and
     4. **Schedule 4**: Customer’s Point of Supply.

and “this Agreement” shall have a corresponding meaning;

* 1. “**Approval**” means at any time, any consent, licence, authorisation, approval, permit, filing, permission, recording, notarisation or registration, concession, acknowledgement, exemption or other approval of whatsoever nature in relation to the transactions set out in this Agreement which, at such time, is necessary to be obtained by either Party, as the case may be, from any relevant authority under any applicable law to enable that Party to perform its obligations and/or exercise its rights under this Agreement;
  2. “**Billing Period**” means the duration of the period from one meter reading date and time to the next meter reading and time, measuring the Wheeled Energy and Consumed Energy to determine the Total Consumed Energy for accounting purposes, as determined in the Main Electricity Supply Contract;
  3. “**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;
  4. “**Change 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 Use of System Charges approved by NERSA in accordance with the applicable laws;
  1. “**Change of Control**” means:
     1. If 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. If 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. If 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. If the Customer sells, transfers or otherwise disposes of all or a greater part of its assets or business; or
     5. If 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. If an event contemplated in 1.6.1 to 1.6.5 occurs in relation to the holding company of the Customer;
  2. “**Code(s)”** shall 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. “**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; and
     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 performing this Agreement;
  4. [**Scenario 1 and 2]** “**Connection Agreement**” means an agreement entered into between a Generator and the Municipality, to physically connect the Generation Facility(ies) to the Distribution System that stipulates the conditions and obligations of the parties to that agreement of the connection and delivery of Electrical Energy to or from that connection;.
  5. “**Consumed Energy**” refers to the Electrical Energy consumed by the Customer during a relevant Billing Period;
  6. “**Customer**” shall mean **[INSERT INDIVIDUAL OR COMPANY NAME AND ID OR COMPANY/ CLOSE CORPORATION REGISTRATION NUMBER]**;
  7. “**Customer Check Meters**” means any meter(s) and the fittings, equipment, wiring and installations related to the meter(s) installed and operated by the Customer or Third Party Supplier, which equipment may be used as a check meter to measure the Consumed Energy at the Customer POS;
  8. “**Customer’s Point of Supply or POS**” shall mean the actual supply point on the Distribution System as described in Schedule 4;
  9. “**Deficit Wheeled Energy**” means Electrical Energy consumed by the Customer which exceeds Wheeled Energy reconciled on a **[half hour/ monthly]** metering period and measured at the Customer’s POS;
  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. **“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);
  12. “**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;
  13. [**Scenario 3 and 4]** “**Distribution, Connection and Use of System Agreement or DCUOSA**” means the distribution, connection and use of systems agreement entered into between Eskom and the Generator to physically connect the Generation Facility to Transmission System allowing the Generator to export Electrical Energy from the Generation Facility using the Transmission System;
  14. “**Distribution System**” means the Municipality’s network infrastructure;
  15. “**Effective Date**’’ shall mean **[DATE OR CONDITIONS FOR ENTRY INTO FORCE TO BE SPECIFIED]**;
  16. “**Electrical Energy**” means the quantity of electric power that is generated over a specific interval of time, measured in Kilowatt hours or megawatt-hours;
  17. “**Electrical Grid**” means the Transmission System belonging either to Eskom or to the Distribution System belonging to the Municipality, as the case may be;
  18. “**Electrical Installation**” shall mean any machinery, in or on any premises, used for the transmission or distribution of Electrical Energy from a point of control to a point of consumption anywhere on the premises, including any article forming part of such an electrical installation irrespective of whether or not it is part of the electrical circuit;
  19. “**Electricity Metering Standards**” means the South African National Standard SANS 474:2006 NRS 057:2005 specifies 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. Applicable to metering installations in their entirety, including all measuring transformers, wiring, cabling, metering panel construction, active and reactive meters, data loggers and associated test facilities;
  20. “**Eskom**” means Eskom Holdings SOC Limited, a company duly incorporated under the laws of South Africa, with registration number 2002/015527/30, Eskom acting through its transmission or distribution division, or any entity to which such functions of Eskom are transferred pursuant to a restructuring of the South African electricity market (including the creation of an independent system operator);
  21. [**Scenario 3 and 4]** “**Eskom’s Point of Supply or POS**” means the electrical node on the Electrical Grid where Eskom supplies electrical energy to the Distribution System (as indicated in the electricity supply agreement between Eskom and the Municipality);
  22. “***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 11 to 13 (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 Electrical Grid due to load curtailment by Eskom;
  23. “**Generator**” shall mean the person(s) or entity(ies) licensed by NERSA, operating a Generation Facility(ies) and who has entered into a [**[Scenarios 3 and 4]** **DCUOSA /** [**Scenario 1 and 2] or Connection Agreement**] for the connection of the Generation Facility(ies) to the Electrical Grid;
  24. “**Generation Facility(ies)**” means an electricity generation facility owned and operated by a Generator and comprising all plant, machinery and equipment, all associated buildings and structures;
  25. “**Generator’s Point of Connection or POC**” means the electrical node on the Electrical Grid where the Generation Facility is physically connected to the Distribution System in terms of the [[**Scenario 1 and 2] Connection Agreement or**[**[Scenarios 3 and 4] DCOUSA**];
  26. “**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;
  27. “**Green Benefits**” means all the intangible benefits associated with the generation of renewable energy and are distinctly separate from the energy itself;
  28. “**Greening of Electricity Consumption**” means transitioning from fossil fuel based electricity to green electricity with the associated Green Benefits of renewable electricity;
  29. “**Intake Points**” is [[**Scenario 1 and 2] the Generator’s POC to the Distribution System /**[**Scenario 3 and 4] or the Eskom POS**];
  30. “**Intellectual Property Rights**” means all intellectual property rights of whatever nature, including (i) all patents and other patent rights, including divisional and continuation patents, utility models; (ii) rights in and to inventions, whether patentable or not; (iii) rights in trademarks, service marks, logos, slogans, corporate, business and trade names, trade dress, brand names and other indicia of origin; (iv) rights in designs, topography rights, rights in circuit layouts and mask-works; (v) copyright, including all copyright in and to computer programs; (vi) rights in internet domains, reservations for internet domain names, uniform resource locators and corresponding internet sites; (vii) rights in databases and data collections; (viii) know-how, show-how, trade secrets and Confidential Information, in each case whether or not registered and including applications for registration, extension, renewal and re-issuance, continuations, continuations in part or per division of, any of these and the right to apply for any of the foregoing, all claims for past infringements, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world;
  31. “**Kilowatt hour or kWH**” shall mean the consumption or generation of electrical energy equivalent to one kilowatt of power sustained for one hour;
  32. “**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);
  33. “**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;
  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. “**Main** **Electricity Supply Agreement or Main ESA**” means the **[insert name of main agreement, example: Electricity Supply Agreement]** between the Municipality and the Customer for the supply of Electrical Energy to such Customer through the Customer POS and in respect of which this Agreement is supplemental to. The Main ESA and this Agreement shall be read together and regarded as one contract between the Parties. Provisions provided for in the Main ESA shall apply *mutatis mutandis* to this Agreement, unless this Agreement specifically provides otherwise;
  36. "**Maximum Export Capacity or MEC**” means the maximum export capacity at a Generator(s)’ POC notified by the Generator or Trader and accepted by the Municipality in accordance with the Laws, Codes and Electricity Metering Standards for transmission of Electrical Energy between the Generation Facility(ies) and the Distribution System;
  37. “**Municipality**” means **[insert details of relevant Municipality entering into the Agreement with the Customer]**;
  38. "**Municipal Metering Data**" means the data output from the Municipal Meter(s);
  39. "**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 POS;
  40. “**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 POS;
  41. “**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;
  42. “**Nominated Energy**”refers to Wheeled Energy the Customer has purchased from Third Party Suppliers in terms of one or more Power Purchase Agreements, which Wheeled Energy will be allocated by the Municipality in terms of Schedule 3 and subject to any Nomination Protocol the Municipality may develop to balance the demand and supply of Wheeled Electrical Energy;
  43. “**Nomination Protocol**” means the Municipality’s protocol in terms of which Wheeled Electricity purchased by the Customer from Third Party Suppliers will be allocated to balance the demand and supply of Wheeled Energy;
  44. “**Notified Maximum Demand**” shall mean the maximum demand notified in writing by the Customer and accepted by the Municipality as the maximum demand which the Customer requires the Municipality to be in a position to supply on demand, as regulated in terms of the Supplemental ESA;
  45. “**Parties**” means the Customer and the Municipality and “Party” means either one of them as the context may indicate;
  46. “**Personal Information**”means personal information relating to an identifiable, living natural person, and where it is applicable, an identifiable, existing juristic person including, but not limited to:
      1. information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;
      2. information relating to the education or the medical, financial, criminal or employment history of the person;
      3. any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
      4. the biometric information of the person;
      5. the personal opinions, views or preferences of the person;
      6. correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
      7. the views or opinions of another Data Subject about the person; and
      8. the name of the person if it appears with other Personal Information relating to the person or if the disclosure of the name itself would reveal information about the person;
  47. “**POPI Act**” means the Protection of Personal Information Act, No. 4 of 2013, including any regulation or code made thereunder;
  48. “**Power Purchase Agreement or PPA”** shall mean the agreement entered into between the Third Party Supplier and the Customer for the sale and purchase of the Electrical Energy Wheeled in terms of this Agreement;
  49. “**Prescribed Tariffs**” shall mean the approved Municipal electricity tariffs, fees and charges for the supply of Electrical Energy, Notified Maximum Demand and services, as approved by NERSA and amended from time to time;
  50. “**Processing**”means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including—
      1. the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
      2. dissemination by means of transmission, distribution or making available in any other form; or
      3. merging, linking, as well as restriction, degradation, erasure or destruction of information;
  51. “**Province**” means the Western Cape province;
  52. **“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;
  53. “**Surplus Wheeled Energy**” means Wheeled Energy which exceeds Consumed Energy reconciled on a **[half hour/ monthly]** metering period and measured at the Customer’s POS;
  54. “**Time of Use Periods**” means the time periods as defined in the Prescribed Tariffs;
  55. “**Third Party Supplier(s)**” is/ are the persons or entities detailed in Schedule 2, authorised by the Municipality and contracted by the Customer in terms of a PPA(s) to supply Wheeled Energy to the Customer being transmitted through the Electrical Grid;
  56. “**Total Consumed Energy**” means the total quantity of Electrical Energy delivered over the Distribution System and consumed by the Customer in respect of a Billing Period, as measured by the Municipality at the Customer Point of Supply measured in Kilowatt hours and based on a Time of Use Period tariff;
  57. “**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;
  58. **“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;
  59. **“Transmission System”** means Eskom’s electricity system consisting of all lines and substation equipment where the nominal voltage is above 132kV;
  60. **[Scenarios 1 and 2]** “**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 Customer(s);
  61. "**Use of System Charges**” refers to those charges in relation to the use of the Distribution System for the purposes of Wheeling, ancillary services and other costs attributable to providing the Trader or Generator with direct or indirect use of the Distribution System;
  62. “**Wheeled Energy**” means the Third Party Supplier’s Electrical Energy injected onto the Distribution System as measured by **[[Scenarios 3 and 4]** **Eskom / [Scenarios 1 and 2]** **the Municipality]** at the relevant Intake Points for delivery and consumption by the Customer;
  63. “**Wheeling”** means the exchange of Electrical Energy between the Third Party Supplier(s) and the Customer using the Electrical Grid, and “Wheel” or “Wheeled” shall have a corresponding meaning; and
  64. **[Scenarios 3 and 4]** "**Wheeling Annexure”** means the annexure to the DCUOSA entered into between the **[[Scenarios 3] Generator /or [Scenarios 4] Trader**] with Eskom for the use of Eskom’s Electrical Grid for purposes of Wheeling Energy to the Customer.

# **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 annexures 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**

The Municipality has approved the Customer’s application to be supplied with Wheeled Energy from the Third Party Supplier(s) as detailed in Schedule 2 using the Distribution System, on the terms and conditions contained in this Agreement.

1. **TERM**

* 1. Subject to clause 4.2, this Agreement shall commence on the Effective Date and shall continue for a period of **[INSERT NUMBER OF YEARS IN WORDS] [INSERT NUMBER OF YEARS IN NUMERAL VALUE]**. This Agreement may be extended by written agreement for another [**INSERT NUMBER OF YEARS**], for [**INSERT NUMBER OF TIMES**].
  2. This Agreement shall automatically terminate before the termination date provided for in 4.1, if any one of the following events occur, whichever occurs first in time:
     1. The PPA between the Third Party Supplier and the Customer has been terminated, or, if the Customer has concluded more than one PPA, if all the PPAs that the Customer has concluded have been terminated;
     2. **[Scenarios 1 and 2]** the UOSA between the Municipality and all Third Party Suppliers identified in Schedule 2 have been terminated;
     3. **[Scenarios 3 and 4]** The Wheeling Annexure between Eskom and the [**[Scenarios 3]** **Generator(s) /or [Scenarios 4]** **Trader(s)**], as the case may be, has been terminated; or
     4. If this Agreement is terminated in terms of clauses 20 or 21.

# **METERING EQUIPMENT INSTALLATION**

* 1. The Municipality shall be the owner of the Municipal Metering Equipment.
  2. The Municipal Meter(s) shall be the primary meter utilised for the purposes of measuring the Total Consumed Energy at the Customer’s POS and for the purposes of calculation of any charges payable under this Agreement.
  3. The Municipality shall, at its cost, procure, 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. **[Alternative option: The Customer shall, at the Municipality’s cost, procure, install, operate and maintain the Municipality’s Metering Equipment at the Customer POS, which Municipal Metering Equipment must comply with the requirements stipulated by the Municipality and the Electricity Metering Standards and Laws**.**]**
  4. The Municipality shall ensure that the Municipality’s Metering Equipment is tested and audited in accordance with the requirements which the Municipality may stipulate, 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 cost of procurement, installation, maintenance, testing and auditing of the Municipality’s Metering Equipment shall be borne by the Municipality.
  6. Third Party Suppliers and Customers shall be entitled to have access to the Municipality’s Metering Data. Third Party Suppliers shall submit a written request to the Municipality for the data and the Municipality shall provide the data within **[INSERT NUMBER OF DAYS IN NUMERALS AND WORDS AND SPECIFY WHETHER BUSINESS OR CALENDAR DAYS]** Days.
  7. The Customer or Third Party Suppliers may, at its own cost, install or procure the installation of, Customer Check Meters at the Customer POS, adjacent to the Municipality’s Metering Equipment, and shall be responsible for the operation and maintenance of the Customer Check Meters during this Agreement. The Municipality may prescribe the technical requirements which the Customer Check Meters must comply with.

**Testing of Municipal Meters**

* 1. 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.
  2. If the Municipal Metering Equipment is tested in terms of clause 5.8 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.
  3. If such test demonstrates that the Municipal Metering Equipment is accurate and/or within the tolerance level required by the Electricity Metering Standards, the Customer shall be liable for the costs associated with the test.
  4. 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.

# **MEASUREMENT OF CONSUMED ENERGY AND WHEELED ENERGY**

**Measurement of Consumed Energy**

* 1. The Total Consumed Energy shall be measured monthly by the Municipality at the Customer’s POS for each Billing Period on a **[monthly / half hour]** reconciliation basis.
  2. **[OPTIONAL: Where duplicate meters owned by the Municipality have been installed and the meter readings at any time differ by more than 2,5% (two comma five per centum) from the average of the two readings, then for the purposes of rendering accounts, if the Municipality’s records show that the discrepancy is attributable to one meter only, the reading of the other meter shall be taken, but if the discrepancy is due to the inaccuracy of both meters, the average of the reading of both meters shall be taken. Such meters shall be tested and, the account of the Customer will be adjusted accordingly after the inaccuracy has been ascertained.]**
  3. Where Electrical Energy is supplied or made available at more than one Point of Supply to an Electrical Installation, in terms of a single contract of supply, then the metered import and/or export capacity shall be the vector sum of the simultaneous demand supplied or to be supplied at the several points of supply agreed to under this Agreement.

**Measurement of Wheeled Energy**

* 1. The Wheeled Energy shall be measured monthly by **[[Scenarios 1 and 2]** **the Municipality/ [Scenarios 3 and 4]** **Eskom]** at the relevant Intake Points in accordance with the [**[Scenarios 1]** Connection and UOSA, **[Scenarios 1 and 2]** the UOSA or the **[Scenarios 3 and 4]]** DCUOSA] for the Billing Period on a **[monthly/ half hourly]** basis.
  2. If, during any period the meter readings at the Generator POC failed to register, or are unreliable due to the meters or any associated equipment being defective, the Municipality or Eskom, as the case may be, can make a reasonable estimate of Wheeled Energy injected into the Electrical Grid for the period that the meter readings were defective or provided unreliable meter readings. Further:
     1. The estimated Wheeled Energy will be based on evidence from meters belonging to the Generator or Third Party Supplier, provided to the Municipality or Eskom, as the case may be;
     2. The Customer’s account for the impacted Billing Period(s) shall, for the period the meters at the Generator’s POC were defective or unreliable, be based on the estimates provided to determine the total Wheeled Energy for that Billing Period; and
     3. The Customer’s account will be adjusted in the Billing Period following the Billing Period during which verified meter readings were received by the Municipality.

**[Scenario 3 and 4]**

* 1. The Customer acknowledges that the Municipality is dependent on Eskom to provide the Municipality with the meter readings at the Generator POC for purposes of determining the amount of Electrical Energy the Municipality should Wheel from the Eskom’s POS to the Customer’s POS.
  2. If Eskom fails to provide the Municipality with meter readings for any period within the prescribed time or in the prescribed format, the relevant Wheeled Energy will be deemed to be zero for the corresponding Billing Period. The Customer’s account will be adjusted in the Billing Period following the Billing Period during which the relevant meter readings and the prescribed adjustment fee have been received by the Municipality.
  3. The Customer accepts that the Municipality shall be entitled to regard the meter readings provided by Eskom as accurate and correct and the Municipality shall not accept any liability for Losses sustained by the Customer as a result of the Municipality’s reliance on the meter readings provided by Eskom, and the Customer indemnifies the Municipality for any Losses the Municipality may suffer as a result of relying on Eskom’s meter readings.

# **ALLOCATION OF ENERGY OUTPUT**

* 1. The Municipality will allocate the Nominated Energy to the Customer as detailed in Schedule 3 in accordance with its Nomination Protocol.
  2. The Customer indemnifies the Municipality for any damages or losses that may arise from the Municipality applying the Nominated Energy allocation, whether this results from a change in allocation or a modification to any PPAs, unless such change was requested and submitted to the Municipality and approved through an update to Schedule 3.
  3. The Customer may elect to purchase Wheeled Energy from more than one Third Party Supplier. If a Customer so elects, it must provide a ranking of Third Party Suppliers and may include a percentage of Nominated Energy to be allocated from each Third Party Supplier. If a percentage or ranking nomination is made, the same percentage or ranking will be applied for each Time of Use Period.
     1. The Customer shall be entitled to nominate the allocation of Wheeled Energy to be supplied by the Third Party Supplier in accordance with the provisions of Schedule 3 of this Agreement, which nomination and allocation the Customer must ensure aligns with the PPA and will be subject to [**insert applicable Municipal By-Law or Municipal Wheeling Policies].**
     2. The Customer shall be responsible for providing the Municipality with the details of each the Third Party Supplier and the amount of Electrical Energy to be Wheeled from such Third Party Supplier.
     3. The Municipality will allocate the Nominated Wheeled Energy to the Customer in accordance with nomination and allocations made in terms of Schedule 3 and any applicable Nomination Protocol.
     4. The Customer may in writing request an amendment of the nomination and/or allocation of Wheeled Energy to the Municipality, and the Municipality has the discretion to approve the request, which approval shall not be unreasonably withheld, subject to clause 7.3.5. The amendment of the nomination and/or allocation shall be effective on acceptance by the Parties of an updated Schedule 3.
     5. In the event of the request in clause 7.3.4 resulting in or requiring an increase of Electrical Energy being injected at one or more Intake Points to meet the demand of a Customer(s), clause 8 shall apply.
     6. The Customer indemnifies the Municipality for any Losses that may arise from the Municipality applying the nominated allocation in accordance with Schedule 3, whether this results from a change in allocation or a modification to any PPAs, or otherwise, unless such change was requested and approved by the Municipality.

# **NOTIFIED MAXIMUM DEMAND**

* 1. In the event of the Customer requesting an amendment of the nomination and/or allocation of Wheeled Energy resulting in or requiring an increase of Electrical Energy being injected at the Customer’s POS, the Municipality reserves the right to accept or refuse such request, if the request requires a change to the Notified Maximum Demand. In this event, the decision of the Municipality will be dependent on a successful application by the Customer of a change in the approved Notified Maximum Demand, and which approval shall be dependent on:
     1. the additional capital expenditure incurred or to be incurred by the Municipality in affecting the change in Notified Maximum Demand;
     2. the additional capacity (if any) of the Municipal Electrical System required to meet the change in Notified Maximum Demand requirements; and
     3. any Development Charges that a change in Notified Maximum Demand may require.

# **CHARGES FOR ELECTRICITY AND BILLING**

* 1. The tariff(s) applied under this Agreement are described in Schedule 1 to this Agreement. The Municipality’s Time of Use Periods will be used in the calculation of all Time of Use charges.
  2. The Customer shall be liable for all charges as per the Municipality’s Prescribed Tariffs. All applicable charges will be billed on the monthly electricity account in terms of the Main ESA.
  3. The Customer will not be paid for Surplus Wheeled Energy, unless otherwise agreed to by the Municipality in terms of clause 10.4, and the Customer’s account shall not show a credit at the end of the month. Credit balances **[will/will not]** be carried forward to the following month.
  4. The Prescribed Tariffs are amended annually on **1 July** of each calendar year. The Municipality reserves the right to make amendments to the Prescribed Tariffs and the Municipality does not warrant the financial viability of the Customer’s Wheeling arrangements.
  5. The Prescribed Tariffs shall be furnished by the Municipality to the Customer upon written request to the Municipality.

# **ENERGY BALANCING**

* 1. The Municipality shall balance the Total Consumed Energy with Wheeled Energy on a Kilowatt Hour basis and not a Rand basis.
  2. Energy will be metered over **[half hourly/ monthly]** metering reconciliation periods at the Customer’s POS to determine Total Consumed Energy and at the applicable Intake Points to determine Wheeled Energy, for each Billing Period. Energy balancing will be done over the same period and on the same **[half hourly/ monthly]** metering reconciliation basis.
  3. Deficit Wheeled Energy will be charged and Surplus Wheeled Energy will be credited at applicable NERSA approved Prescribed Tariffs as published, subject to clause 10.4.
  4. Unless the Municipality has agreed in writing to compensate the Customer for Surplus Wheeled Energy for purposes of Greening of Electricity, Surplus Wheeled Energy will be taken at zero price.
  5. In the event of a Third Party Supplier(s) not being able to inject Electrical Energy into the Electrical Grid for whatsoever reason, Consumed Energy which is not balanced with Wheeled Energy will be accounted for as Deficit Wheeled Energy.
  6. In the event of the Customer not being able to receive Electrical Energy for whatsoever reason, Wheeled Energy which is not balanced with Total Consumed Energy will be considered to be Surplus Wheeled Energy.

# **GREENING MECHANISM / PURCHASE OF SURPLUS WHEELED ENERGY**

**[Clause only to be included if a Municipality has decided to purchase Surplus Wheeled Energy]**

* 1. The Customer may request in writing for the Municipality to purchase Surplus Wheeled Energy to allow the Customer to retain the Green Benefit of Deficit Energy.
  2. If the Municipality agrees to purchase the Surplus Wheeled Energy, a separate agreement will be concluded between the Municipality and the Customer in respect of this transaction.
  3. The Customer will be responsible to manage the supply of Surplus Wheeled Energy.

# **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.

# **LIABILITY**

* 1. The Customer shall indemnify and keep indemnified the Municipality against all Losses and against all claims for injury or damage to any person or property whatsoever which may arise out of or in consequence of the Customer or Customer’s employees, directors, service providers or agents participating in this Agreement and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever, in respect thereof or in relation thereto.
  2. Neither Party shall be liable to the other Party whether in contract, delict, or otherwise, for loss of use, loss of profit, loss of any contract or for any indirect or consequential loss or any damage which may be suffered by the other Party in connection with the Agreement.

# **CONFIDENTIALITY**

* 1. The Customer shall not, during the currency of this Agreement, or at any time thereafter, utilise or cause to be utilised, and/or directly or indirectly publish or cause to be published or otherwise disclose or cause to be disclosed to any third party, any of the Confidential Information of the Municipality, government in any other sphere, or any government institution or organ of state.
  2. The Customer shall –
     1. treat and safeguard the Confidential Information as private and confidential during the currency of this Agreement and at any time thereafter;
     2. not without the prior written consent of the Municipality, communicate or disclose any part of such Confidential Information to any person except –
        1. to those employees, consultants and agents on a need to know basis and who are directly involved with this Agreement; and
        2. their auditors, professional advisors and any persons or bodies having the legal right or duty to or knowledge of the Confidential Information;
     3. ensure that all persons are made aware, prior to disclosure, of the confidential nature of the Confidential Information and that they owe a duty of confidence to the Customer and the Municipality; and
     4. ensure proper and secure storage of all Confidential Information.
  3. Any documents or records (including written instructions, notes or memoranda) relating to the Agreement which are to be provided to the Municipality or which come into the Customer's possession during the currency of this Agreement, are deemed to be the property of the Municipality and shall be surrendered to the Municipality on demand, and in the event of the expiry or termination of this Agreement, howsoever caused, the Customer will not retain any copies thereof or extracts therefrom without obtaining the prior written permission of the Municipality.
  4. The Customer –
     1. acknowledges that he/she has carefully considered the provisions of this clause;
     2. agrees that this clause is, after taking all relevant circumstances into account, reasonable and necessary for the proper protection of the interests of the Municipality and the Government of the Republic of South Africa and that if he/she should at any time dispute the reasonableness of this clause, then the onus of proving such unreasonableness shall be on the Customer; and
     3. acknowledges that he has entered into this Agreement freely and voluntarily and that no circumstances exist and/or existed for him alleging, either now or at any future time, that he was at a disadvantage in agreeing to the restraints set out in this clause, or was not in an equal bargaining position with the Municipality in agreeing thereto.
  5. The provisions of this clause shall not apply to all or any information which is:
     1. Publicly available without breach of this Agreement; or
     2. Required to be disclosed in response to a valid order of court or other governmental agency or if disclosure thereof is otherwise required by law.
  6. The Customer shall maintain the confidentiality recorded in clause 14.1 for **[two (2) years]** after expiry or termination of this Agreement, howsoever caused, subject to law.

# **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 Municipality and treat same as confidential. The information shall be used and processed in accordance with the applicable legislation, specifically, the POPI Act.

# **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.

# **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 18, 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 19 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.

# **DISPUTE RESOLUTION**

Any dispute that may arise due to this Agreement will be resolved as follows:

* 1. Resolution must first be attempted by the way of consultation between the Parties. If the consultation process does not lead to a resolution of the dispute, within **[INSERT NUMBER IN NUMERALS] [INSERT NUMBER IN WORDS]** Business Days, then the Parties agree to refer the dispute to NERSA or for arbitration as provided for below.
  2. 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). In the absence of such written agreement, either Party may refer such dispute forthwith to arbitration. If the Parties agree to mediation on any dispute but such mediation fails within [**30 (thirty)**] days of such referral or such longer period as agreed between them, then either Party may, following the expiry of such period, refer such dispute to arbitration.
  3. All arbitration proceedings shall be conducted in **[INSERT PLACE]**. The arbitration shall be conducted informally, but in accordance with the provisions of the Arbitration Act, 42 of 1965, it being intended that if possible it shall be concluded within **[ten (10)]** days of referral.
  4. If the Parties cannot agree on the appointment of an arbitrator within **[INSERT NUMBER IN NUMERALS AND WORDS AND SPECIFY WHETHER BUSINESS OR CALENDAR DAYS]** Days after arbitration has been agreed upon, then the President for the time being of the Cape Bar Council will be requested to appoint the arbitrator.
  5. The fees payable to the arbitrator shall be determined and agreed to between the arbitrator and the Parties and the Parties shall be jointly and severally liable for the payment of the arbitrator’s fees. Any Party may request the other Party to deliver an acceptable guarantee or reasonable deposit for his portion of the cost.
  6. The arbitrator shall be requested to hand down his/her award within **[INSERT NUMBER IN NUMERALS AND WORDS AND SPECIFY WHETHER BUSINESS OR CALENDAR DAYS]** Days after the completion of the arbitration.
  7. 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.

# **BREACH**

* 1. Should either Party hereto breach or fail to comply with any term or condition of this Agreement then the Party aggrieved thereby (“**Aggrieved Party**”) shall give the defaulting party (“**Defaulting Party**”) written notice to rectify such a breach.
  2. In the event of the Defaulting Party failing to rectify such a breach in terms of clause 20.1 within fourteen (14) Business Days of the receipt of such notice, the Aggrieved Party shall be entitled to give written notice of termination of this Agreement to the other Party.
  3. Should either Party repeatedly breach any of the terms and conditions of this Agreement in such a manner as to justify the Aggrieved Party in holding that the Defaulting Party’s conduct is inconsistent with the Defaulting Party’s intention to carry out the terms and conditions of this Agreement, then and in such event the Aggrieved Party shall without prejudice to its legal rights and remedies, be entitled to terminate this Agreement upon the giving of written notice of termination of this Agreement to the other Party.
  4. Termination of this Agreement shall be without prejudice to any other rights or remedies of the Aggrieved Party under this Agreement or at law and will not affect any accrued rights or liabilities of the Parties at the date of termination.

# **TERMINATION**

This Agreement shall terminate **[with immediate effect upon/ [insert] number of Calendar Days following]** the happening of any of the following events:

* 1. If the Customer gives **[INSERT NUMBER IN NUMERALS AND WORDS]** Business Days’ notice in writing to the Municipality requesting termination of this Agreement; or
  2. If the Main ESA is terminated for whatever reason; or
  3. If the Parties mutually agree in writing to terminate this Agreement.

# **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 of South Africa.
  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.

# **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 (7th) 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) Calendar Days after the service of the notice in question.

# **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 29.1 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 annexures 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 1: APPLICABLE TARIFFS**

**Municipality to include information required**

Charges for Wheeling of Electricity shall include:

1. Wheeling Use of System charges;
2. Deficit Wheeled Energy charges;
3. Surplus Wheeled Energy Credit;
4. Development costs (if any); and
5. Other?

# **SCHEDULE 2: DETAILS OF THIRD PARTY SUPPLIERS**

Details of Third Party Supplier(s)

**[IF THERE ARE MULTIPLE THIRD PARTY SUPPLIERS. BELOW FORM MUST BE COMPLETED IN RESPECT OF EACH]**

|  |  |
| --- | --- |
| Name |  |
| Address |  |
| Contact details |  |

NERSA Trading licence details

|  |  |
| --- | --- |
| Licence Number |  |
| Approval date |  |

Where the Third Party Supplier is a Generator or a Trader who will Wheel energy from a Generator(s) directly connected to the Distribution System to the Customer, the following information must be provided for each Generator:

|  |  |  |
| --- | --- | --- |
| Name of Generation License holder |  |  |
| Maximum Export Capacity (MW) |  |  |
| Generator POC voltage level |  |  |
| Primary energy source |  |  |
| Name of Supply Authority to which the Generation Facility is connected |  |  |
| Location of Generator POC |  |  |
|  | Address |  |
|  | GPS Location |  |
| Name of Generator POC Substation |  |  |
| Generator NERSA Generation License |  |  |
|  | Licence number |  |
|  | Approval Date |  |
| Municipality to include other information required |  |  |

# **SCHEDULE 3: ALLOCATION OF NOMINATED ENERGY FOR PURPOSES OF WHEELING**

In terms of clause 7.3 of this Agreement, the Customer may elect to purchase Wheeled Energy from more than one Third Party Supplier.

Should a Customer elect to purchase Wheeled Energy from more than one Third Party Supplier, the Customer **[may/must?]** provide a ranking of Third Party Suppliers and **[may/must?]** include a percentage of Nominated Energy to be allocated from each Third Party Supplier.

Where the Customer elects to rank Third Party Suppliers, the Municipality shall first balance the Wheeled Energy with the Consumed Energy of the Third Party Supplier ranked first until 100% of the Wheeled Energy from that Third Party Supplier has been accounted for as Consumed Energy. The Municipality shall continue with the balancing accordingly in respect of each Third Party Supplier’s ranking until the Wheeled Energy is equal to or more than and the Total Consumed Energy.

Where the Customer elects a percentage Wheeled Energy allocation from more than one Third Party Supplier, the Customer must rank the Third Party Suppliers. The Municipality shall allocate the Wheeled Energy in accordance with the ranking, until 100% of the allocated percentage per Third Party Supplier is balanced, whereafter the Municipality will go to the next ranked Third Party Supplier until Wheeled Energy is equal to or more than the Total Consumed Energy.

|  |  |  |
| --- | --- | --- |
| Third Party Supplier’s Intake Points applicable to Customer | Ranking | Percentage |
|  |  |  |
|  |  |  |
|  |  |  |

Municipality to include other information required.

# **SCHEDULE 4: CUSTOMER’S POINT OF SUPPLY**

**[Should be dealt with in the Main ESA, but if not, can be described here]**

|  |  |
| --- | --- |
| Name of Customer |  |
| Location  Physical location  GPS coordinates |  |
| Customer POS |  |
| Intake Points applicable to Customer |  |
| Customer Notified Maximum Demand |  |
| Municipality to include other information required |  |