



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

(DRAFT) MUNICIPAL GRID CONNECTION AND USE OF SYSTEM AGREEMENT

Made and entered into between
THE CITY OF CAPE TOWN
(hereinafter referred to as the "A i b]VydU]hm")
and

.....
(hereinafter referred to as the "; YbYfUrcf")

DISCLAIMER: This draft agreement is still under development. Upon presentation to potential Generators it does not constitute an offer to transact upon the terms and conditions stated herein.

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SECTION A: GENERAL

1. PARTIES

The Parties to this Municipal Grid Connection and Use of System Agreement are:

CITY OF CAPE TOWN

(the '**MUNICIPALITY**') herein represented by

Leslie John Rencontre
Director: Electricity Generation and Distribution
Bloemhof Electricity Headquarters
Bellville

Phone: 021 444 8499
Email: lesliejohn.rencontre@capetown.gov.za

and

[INSERT DETAILS OF IPP GENERATOR]

(registration number [●])

(the '**CUSTOMER**') herein represented by

[●]

in [his/her] capacity as [●] (*duly authorised*).

2. INTRODUCTION

- 2.1. It is recorded that the CUSTOMER has applied for the Connection of the Facility situated on the property as described in Annexure C (Generator Connection Particulars) and has received and accepted the Municipal Quotation Letter (Annexure A) in this regard.
- 2.2. This Agreement only sets out the terms and conditions upon which the Parties have agreed to:
 - 2.2.1. physically connect the Facility to the Distribution System at the [MUNICIPALITY's / CUSTOMER's] substation [INSERT NAME OF SUBSTATION] located at [INSERT PLACE] (the 'Point[s] of Connection') on Erf [INSERT PROPERTY DESCRIPTION] (hereinafter referred to as the '**Property**'); and
 - 2.2.2. to allow the CUSTOMER access to and the usage of the Distribution System to export electrical energy from the Facility,
 - 2.2.3. against the payment(s) by the CUSTOMER to the MUNICIPALITY of the applicable Charges (as set out in clause 5)
- 2.3. For the purposes of clarity, it is recorded that 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 hereof applies thereto.

3. DEFINITIONS AND INTERPRETATION

3.1. Definitions

In this Agreement, except where the context requires otherwise, the words and expressions shall have the meaning ascribed to them below and cognate expressions shall have corresponding meanings and any words or expressions for which no meanings have been ascribed below shall have the meanings ascribed to them in the Act or, failing the Act, the meanings ascribed to them in the Code(s), as defined.

- 3.1.1. '**Act**' means the Electricity Regulation Act of 2006, including any regulations issued pursuant thereto, as amended or re-enacted from time to time.
- 3.1.2. '**Affected Party**' means a party to this Agreement which is rendered unable to perform its contractual obligations due to the occurrence of a Force Majeure event.
- 3.1.3. 'Agreement' has the meaning given thereto in clause 1 and shall include the following Annexures:
 - 3.1.3.1. Annexure A (Municipal Quotation Letter);
 - 3.1.3.2. Annexure B (Generator System Operations Manual);
 - 3.1.3.3. Annexure C (Generator Connection Particulars);
 - 3.1.3.4. Annexure D (Generator Municipality Connection)
 - 3.1.3.5. Annexure E (Standard for the Interconnection of Generation);
 - 3.1.3.6. Annexure F (Generation Quality of Supply Specification);
- 3.1.4. '**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.

- 3.1.5. **'Bank Guarantee'** means a bank guarantee approved by the MUNICIPALITY at the date when the guarantee is issued. and (ii) constitutes an on demand, unconditional, and irrevocable commitment to pay by the bank by which it is issued.
- 3.1.6. **'Business Day'** means any day other than Saturday, Sunday or an official public holiday in South Africa.
- 3.1.7. **'Change(s) in Law'** means any of the following events occurring after the Effective Date as a result of any action by any Governmental Authority:
- 3.1.7.1. a change in amendment, reinterpretation or other modification or repeal of an existing Law;
 - 3.1.7.2. an enactment or making of any new Law; or
 - 3.1.7.3. a change in the manner in which a Law is applied or in the application or interpretation thereof,
- provided that a Change in Law shall not include the coming into effect of (i) any Law that was enacted or made but not yet in force as at the Effective Date if and to the extent that such law is materially unchanged when enacted and brought in effect, or (ii) any bill that was promulgated for comment at any time before the Effective Date if and to the extent that such bill is materially unchanged when enacted and brought in effect.
- 3.1.8. **'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 including the provision of a metering service as provided herein, which shall comprise the Connection Charge(s) and the Prescribed Tariff charges as set forth in Clause 5.
- 3.1.9. **'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.
- 3.1.10. **"Commercial Operation"** means a commercial arrangement such as the wheeling of energy over the City's Distribution System or the procurement of energy by the City from a Generator connected to the City's Distribution System. The commercial arrangement will be covered by a separate agreement to this Agreement.
- 3.1.11. **'Commissioning'** means in relation to the Facility, the Facility Connection Equipment and the Municipality Connection Equipment, the process of testing plant and equipment to demonstrate whether such plant and equipment meet the applicable requirements and specifications of the Code(s) and Annexures prior to the commencement of Commercial Operation, and in relation to the Facility and the Facility Connection Equipment only. It is also the process of testing plant and equipment to demonstrate whether such plant and equipment meet the applicable requirements set out in this Agreement, including the correction of defects identified during such testing.
- 3.1.12. **'Completion Date'** means the date on which the MUNICIPALITY delivers a written notice to the CUSTOMER certifying that the Municipality Connection Works have been completed and are ready to be commissioned
- 3.1.13. **'Connection Charge'** means charges recouped or to be recouped by the MUNICIPALITY from the CUSTOMER for the cost of connecting the Facility to the Distribution System, in addition to any tariff charges, which shall be either:
- 3.1.13.1. a Distribution Standard Connection Charge if the connection is a Standard Connection; or
 - 3.1.13.2. a Distribution Premium Connection Charge if the connection is a Premium Connection.

- 3.1.14. **'Connection Site'** means the site made or to be made available by the CUSTOMER to the MUNICIPALITY for the Municipality Connection Works and otherwise as provided in clause 10, as demarcated in Annexure C (Embedded Generator Connection Particulars).
- 3.1.15. **'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.
- 3.1.16. **'CUSTOMER'** has the meaning given to such term in Clause 1
- 3.1.17. **'Dispatch'** means the process of directing the delivery of electrical energy (whether active or reactive) by the System Operator or its delegated alternative to and from the Distribution System and a Unit and/or the provision of any ancillary services by a Unit in terms of the Scheduling and Dispatch rules.
- 3.1.18. **'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.
- 3.1.19. **'Distribution'** means the regulated business unit through which the MUNICIPALITY constructs, owns, operates and maintains the Distribution System in accordance with its licence and the Code(s).
- 3.1.20. **'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.
- 3.1.21. **'Distribution System'** means the MUNICIPALITY's network infrastructure consisting of assets operated at a nominal voltage of 132 kV or less.
- 3.1.22. **"Due Date"** means the date reflected on the City's invoice.
- 3.1.23. **'Early Termination Guarantee'** has the meaning given to such term in sub-clause 7.1
- 3.1.24. **'Early Termination Guarantee Amount'** has the meaning given to such term in sub-clause 7.2
- 3.1.25. **"Effective Date"** shall mean the first day of the calendar month following the date of signature by the CUSTOMER of this Agreement.
- 3.1.26. **'Export Capacity'** means the approval by the Municipality for the CUSTOMER to use the Distribution System to supply and deliver energy generated by the 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).
- 3.1.27. **'Facility'** means the CUSTOMER's plant together with the 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 Municipality Connection Equipment whether or not located at the Connection Site.
- 3.1.28. **'Facility Connection Equipment'** means the Facility equipment including the Point of Generator Connection, as specified in Annexure C (Embedded Generator Connection Particulars) to connect the Facility to the Distribution System, which shall be constructed, owned, operated and maintained by the CUSTOMER in accordance with this Agreement,, which 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

3.1.29. '**Facility Connection Works**' means the works to be carried out on the Facility's side of the Point of Connection, save as may otherwise be provided herein, and all related activities by which the Facility shall be connected to the Distribution System.

3.1.30. '**Force Majeure**' means means any act, event, or circumstance, or any combination of acts, events or circumstances which:

- (a) is beyond the reasonable control of the Affected Party;
- (b) is without fault or negligence on the part of the Affected Party and is not the direct or indirect result of a breach by the Affected Party of any of its obligations under any Project Document;
- (c) could not have been (including by reasonable anticipation) avoided or overcome by the Affected Party, acting in accordance with the standards of a Reasonable and Prudent Operator; and
- (d) prevents, hinders or delays the Affected Party in its performance of all (or part) of its obligations under this Agreement ("**Force Majeure Event**").

Without limiting the generality of the foregoing, a Force Majeure Event may include any of the following acts, events or circumstances, but only to the extent that it satisfies the requirements set out in sub-clauses (a) through (d) above:

- (i) any action or failure to act by a Responsible Authority, including without limitation, any Authorisation (a) ceasing to remain in full force and effect other than in accordance with the terms and conditions upon which it was issued or by reason of the failure of the holder thereof to comply with any of its terms or conditions or (b) not being issued or renewed upon application having been properly made;
- (ii) lightning, fire, earthquake, tsunami, drought, unusual flood, violent storm, cyclone, typhoon, tornado or other natural calamity or act of God;
- (iii) pandemic, epidemic or plague (including for the avoidance of doubt any effects of the outbreak of COVID-19 (or any mutations or further strains thereof)); and any instruction, regulation, directive legislation or the like issued by a Responsible Authority in response to such acts, events or circumstances;
- (iv) strikes, lock-outs and other industrial action other than by employees of the Affected Party or of any Affiliate of the Affected Party or of any contractor or supplier of the Affected Party or of any Affiliate of the contractor or supplier;
- (v) accidents or explosions;
- (vi) acts of war whether declared or not, invasion, armed conflict, act of foreign enemy or blockade in each case occurring within or involving the Republic of South Africa;
- (vii) acts of rebellion, riot, civil commotion, act or campaign of terrorism, or sabotage of a political nature, in each case occurring within the Republic of South Africa, except in respect of these acts forming part of or directly caused by strikes, lock outs and other industrial action by the employees of the Affected Party or of any Affiliate of the Affected Party or of any contractor or supplier of the Affected Party or of any Affiliate of the contractor or supplier;
- (viii) boycott, sanction or embargo;
- (ix) any restriction imposed by a Responsible Authority in respect of the supply of water to the Facility and or any limitation imposed by a Responsible Authority in respect of any water use right pursuant solely to any natural event, disaster or Act of God, (which includes but is not limited to cyclone, drought, fire, lightning, earthquake,

explosion, tsunami, tempest, unusual flood, violent storm, typhoon, tornado, ionising radiation, pandemic, epidemic or plague);

- (x) any failure or delay by a Responsible Authority to issue any permits, licenses or approvals which a Party is required to provide under this Agreement and for which such Party has duly and timeously applied for, and has diligently pursued in accordance with the standards of a Reasonable and Prudent Operator;
- (xi) includes Changes in Law.

Notwithstanding any other provision of this Agreement, the following shall not constitute Force Majeure:

- (A) 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;
- (B) 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;
- (C) 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 a Force Majeure Event;
- (D) 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;
- (E) delays resulting from reasonably foreseeable unfavourable weather or reasonably foreseeable unsuitable ground conditions or other similar reasonably foreseeable adverse conditions;
- (F) any failure by the Affected Party to obtain and/or maintain or cause to be obtained and/or maintained any Consent;
- (G) 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;
- (H) wear and tear or random flaws in materials and equipment or breakdown in or degradation of equipment or machinery of the Affected Party;
- (I) 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;
- (J) an event, circumstance or situation that arises as a direct or indirect result of any Responsible Authority imposing additional conditions on the Affected Party in terms of any Consents issued in terms of any environmental Laws.
- (K) Loss of connection to the grid due to load curtailment by the National System Operator.

3.1.31. **'Force Majeure Notice'** has the meaning given to such term in sub-clause 24.1

3.1.32. **'Government'** 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.

- 3.1.33. **'Injury Claim'** has the meaning given to such term in sub-clause 25.5
- 3.1.34. **'Insolvency Event'** has the meaning given to such term in sub-clause 26.3
- 3.1.35. **'Interest Rate'** means an interest rate equal to the prime rate charged by the City's appointed banker which will be adjusted quarterly to the prevailing rate on the last date of the quarter.
- 3.1.36. **'Island'** means the opening of a circuit breaker or circuit breakers resulting in the severance of the synchronous connection between the Distribution System and the Facility, or between the Distribution System and another section of the Distribution System containing a Synchronised generator.
- 3.1.37. **'Law'** means (a) any constitution, statute, ordinance, proclamation, primary or subordinate legislation, including the City of Cape Town Electricity Supply 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).
- 3.1.38. **'Losses'** means losses, damages, claims, liabilities, costs or expenses.
- 3.1.39. **'Maximum Export Capacity'** means the maximum capacity at the Point(s) of Supply notified by the CUSTOMER in terms of clause 14 and accepted by the MUNICIPALITY for the transmission of electrical energy between the Facility and the Distribution System.
- 3.1.40. **'Metering Installation'** means the meter(s) and the fittings, equipment, wiring and installations related to the meter(s) at the Point of Supply.
- 3.1.41. **'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.
- 3.1.42. **'Municipality Connection Equipment'** means the MUNICIPALITY equipment specified in Annexure C (Embedded Generator Connection Particulars) and in Annexure D (Embedded Generator Municipality Connection Equipment) to connect the Facility to the Distribution System and which shall be constructed in accordance with the Municipal Quotation Letter 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.
- 3.1.43. **'Municipality Connection Works'** means the works required, including (without limitation) the works to be constructed, changed, or enabled, to connect the Facility to the Municipality's Distribution System as specified in the 'Municipal Quotation Letter' (Annexure A)
- 3.1.44. **'Municipal Quotation Letter'** means the letter attached as Annexure A in which the costs relating to the provision of the municipal Connection Works by the MUNICIPALITY, and the cost of the associated shared Network Charges (SNC) are detailed as accepted by the CUSTOMER.
- 3.1.45. **'NERSA'** means the National Energy Regulator of South Africa established in terms of the National Energy Regulator Act, (Act No. 4 of 2004), or its legal successor.

- 3.1.46. **'Non-dispatchable'** means that 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.
- 3.1.47. **"Notified Maximum Demand"** shall mean the maximum demand notified in writing by the CONSUMER and accepted by the CITY as the maximum demand which the CONSUMER requires the CITY to be in a position to supply on demand.
- 3.1.48. **'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
- 3.1.49. **'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.
- 3.1.50. **'Operational Notification'** has the meaning given to such term in sub-clause 16.1
- 3.1.51. **Operational Procedures'** means the procedures in terms of the Code(s) and as set out in Annexure B (Embedded Generator System Operations Manual)
- 3.1.52. **'Parties'** means the Parties to this Agreement as described in clause 1 of this Agreement and **'Party'** shall be construed accordingly.
- 3.1.53. **'Point of Common Coupling (PCC)'** means the electrical node, typically a busbar, on the MUNICIPALITY's network, electrically nearest to the Facility, at which more than one customer of the MUNICIPALITY is or may be connected or metered, which PCC is used in the context of Quality of Supply emission requirements, and the location of which is described in Annexure C (Embedded Generator Connection Particulars).
- 3.1.54. **'Point(s) of Connection (POC)'** means the electrical node(s) on the Distribution System where the CUSTOMER's assets are physically connected to the MUNICIPALITY's assets
- 3.1.55. **'Point of Generator Connection (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 Facility is described in Annexure C (Embedded Generator Connection Particulars).
- 3.1.56. **'Point of Secure Supply (PSS)'** means that point on the MUNICIPALITY's network at which a single upstream contingency will not result in the islanding of a generator with a portion of the supply network, which PSS is used in the context of loss of Distribution System protection, and the location of which is described in Annexure C (Embedded Generator Connection Particulars).
- 3.1.57. **'Point(s) of Supply (POS)'** means the physical point(s) on the MUNICIPALITY's network from where electricity is supplied to the CUSTOMER by the MUNICIPALITY or from where the CUSTOMER supplies electricity to the MUNICIPALITY, and the location of which is described in Annexure C (Embedded Generator Connection Particulars).
- 3.1.58. **'Point of Utility Connection (PUC)'** means one or more circuit breakers and associated ancillary equipment (instrument transformers, protection, isolators), entirely independent of any PGC, that connects the Facility to the Distribution System, which PUC may be located near the Point of Connection or may be some other point(s) within the Facility between the PGC and Point of Connection, and the location of which Point(s) of Utility Connection is described in Annexure C (Embedded Generator Connection Particulars)
- 3.1.59. **'Premium Connection'** means a connection made or to be made between the 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

- 3.1.60. **'Premium Connection Charge'** means the charge payable by the CUSTOMER for a Premium Connection, which is set forth in Annexure A (Municipal Quotation Letter).
- 3.1.61. **'Premium Connection Condition'** means a condition that exists when the Connection between the Facility and the Distribution System comprises a technical configuration that is considered at the time of refurbishment to not be a Standard Connection.
- 3.1.62. **'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 Annexure D (Embedded Generator Municipality Connection Equipment)
- 3.1.63. **'Prescribed Tariff Charges'** shall mean the approved MUNICIPALITY's electricity tariffs, fees and charges for the supply to the CUSTOMER of electricity, Maximum Export Capacity and services, as approved by NERSA and amended from time to time.
- 3.1.64. **'Prescribed Tariff Charge Security'** means a deposit with the City or an approved guarantee submitted or rendered as security, prior to the connection of the Facility to the Distribution System, for the due payment of the CUSTOMER's account to be rendered in terms of this Agreement.
- 3.1.65. **'Property'** has the meaning given to it in clause 2.2.1.
- 3.1.66. **'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.
- 3.1.67. **'Renewable Energy Code'** means the Grid Connection Code for Renewable Power Plants (RPPs) Connected to the Electricity Transmission System (TS) or 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.
- 3.1.68. **'SANS 474'** means the code of 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.
- 3.1.69. **'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 energy output from a Unit.
- 3.1.70. **'Servitude Area'** means the areas of the Property over which rights of way are granted in favour of the MUNICIPALITY in accordance with clauses 21.1 and 21.2.
- 3.1.71. **'Shared Network Charge'** A charge to cover the cost incurred to increase the capacity of the shared network 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.
- 3.1.72. **'Standard Connection'** means a connection made to or to be made between the Facility and the MUNICIPALITY's network based on the lowest life- cycle costs design that meets the specifications in terms of NRS 048 and the Distribution Code for a technically acceptable solution.
- 3.1.73. **'Standard Connection Charge'** means the charge payable by the CUSTOMER for the Standard Connection, which is set forth in the Municipal Quotation Letter (Annexure A)

- 3.1.74. **'Synchronise'** means the act of closing of a circuit breaker to bring the Distribution System and the Facility into synchronism with respect to voltage magnitude, phase relationship, and frequency.
- 3.1.75. **'System Operator'** means the MUNICIPALITY of Cape Town'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.
- 3.1.76. **'Third Party Expert'** has the meaning set forth in 27.3.2
- 3.1.77. **'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.
- 3.1.78. **'Transmission System'** means Eskom's electricity system consisting of all lines and substation equipment where the nominal voltage is above 132kV.
- 3.1.79. **'Unit'** means a separate electricity-generating unit or section (comprising multiple units) forming part of the Facility and **'Units'** means all or any combination of them.
- 3.1.80. **'VAT'** means value added tax levied in terms of the Value Added Tax Act of 1991

3.2. Interpretation

- 3.2.1. The headings to the clauses and sub-clauses in this Agreement are for the purpose of convenience and reference only, and shall not be used in the interpretation, modification, and/or amplification of any clause thereof.
- 3.2.2. In this Agreement, unless a contrary intention clearly appears:
- 3.2.2.1. any words or expressions for which no meanings have been ascribed in sub-clause 3.1 (Definitions) or elsewhere in this Agreement shall have the meanings ascribed to them in the Act or, in the absence of such meanings, the meanings ascribed to them in the Code(s), or in the absence of any term not defined in either this Agreement, the Act or the Code(s) shall have the meaning commonly used in the power industry or, if no such common meaning exists, then in the English language;
- 3.2.2.2. words and expressions importing:
- 3.2.2.2.1. any one gender includes the other gender;
- 3.2.2.2.2. the singular includes the plural and vice versa;
- 3.2.2.2.3. natural persons include juristic persons and vice versa.
- 3.2.2.3. words and expressions defined in this Agreement shall bear the same meanings in the Annexures to this Agreement unless specifically defined in those Annexures;
- 3.2.2.4. any reference to any law shall include any amendments, modifications, extensions, replacements or re-enactments thereof then in force;
- 3.2.2.5. any reference to 'this Agreement' shall mean this Agreement together with its Annexures;
- 3.2.2.6. any reference to 'writing' or 'written' shall include all methods of reproducing words in a legible and non-transitory form;

- 3.2.2.7. any reference to 'persons' shall include individuals, firms and corporations, joint ventures, trusts, unincorporated associations and organisations, partnerships and any other entities, in each case whether or not having a separate legal personality;
- 3.2.2.8. any reference to either 'Party' or 'any person' shall include its legal successors and permitted assignees;
- 3.2.2.9. any reference in this Agreement to a 'clause' or 'sub-clause' is a reference to a clause or sub-clause contained in this Agreement;
- 3.2.2.10. any reference to an 'Annexure' or 'Annex' is a reference to an annexure or annex to this Agreement;
- 3.2.2.11. where figures are referred to in numerals and in words, if there is any conflict between the 2 (two), the words shall prevail; and
- 3.2.2.12. the rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting or preparation hereof, shall not apply.

4. GENERAL AGREEMENT

4.1. General agreement

- 4.1.1. The Parties agree that the Connection to the Distribution System by the Facility shall be on the terms and conditions set out in this Agreement, subject to the provisions of the Code(s), the Act, the Parties' licences issued by NERSA, the Prescribed Tariff Charges, and any other applicable Law.
- 4.1.2. Subject to the terms and conditions set out in this Agreement and the Parties' Approvals, both Parties shall obtain and maintain all Approvals as may be required under any applicable Law, and perform its obligations in a manner that complies with all applicable Law, its Approvals and the Code(s).
- 4.1.3. This Agreement shall commence on the Effective Date and shall continue for a minimum period of 12 months and thereafter continue indefinitely unless terminated by either party, in terms of Clause 16 of this Agreement

4.2. Codes

- 4.2.1. The Parties acknowledge that this Agreement is not intended to require either Party to act in any way that would put it in breach of the Code(s), compliance with which is a condition of the CUSTOMER's licence and the MUNICIPALITY's licences, issued by NERSA.
- 4.2.2. Accordingly, if any provision of this Agreement would appear to result in a breach of the Code(s), the Parties shall meet promptly and, acting in good faith, shall agree such reasonable changes as may be necessary to this Agreement to replicate (taking account of all the factors including the costs to be incurred), as closely as possible, the intent of this Agreement but in such a way as to ensure that it does not result in a breach of the Code(s).
- 4.2.3. To the extent that this Agreement (including any obligation herein for either Party to comply with the standards of a Reasonable and Prudent Operator) conflicts with the Code(s), the provisions of the Code(s) shall prevail to the extent of such conflict. Further, to the extent that this Agreement deals with an issue or provides a definition on which the Code(s) is silent or does not yet deal in sufficient detail with an issue or a definition which is dealt with in this Agreement, the provisions or definitions of this Agreement shall prevail, provided that they do not require either Party to act in any way that would put it in breach of an obligation under the Code(s).

4.2.4. Nothing in this Agreement shall inhibit, prevent or otherwise limit either Party's rights to propose any amendments to the Code(s), or to comment on or object to amendments to the Code(s) proposed by any other person.

4.3. **Other agreements**

In the event of any conflict between this Agreement and any other agreement between the Parties relating to the connection to the Distribution System by the Facility, this Agreement shall prevail to the extent of such inconsistency, unless such conflict is between this Agreement and any power purchase agreement between the parties, in which event the provisions of the power purchase agreement shall prevail, provided that the Electricity Supply By-Law will prevail in every circumstance.

4.4. **Duration**

This Agreement will be effective from the Effective Date and terminate on the date that the CUSTOMER advises the MUNICIPALITY in writing that it no longer requires connection to the MUNICIPALITY's Distribution System, or earlier if it is terminated in accordance with its terms.

SECTION B: FINANCIAL

5. CHARGES

5.1. **Connection Charge**

5.1.1. The Connection Charges as set out and paid in accordance with the terms of the Municipal Quotation Letter are recorded in Annexure "A" (Municipal Quotation Letter.) The charges include, but are not limited to: dedicated assets and costs, upstream assets and costs not recovered through SHARED NETWORK CHARGES (SNC), and any recoverable work costs.

5.1.2. Connection Charge for the refurbishment of Premium Equipment (as applicable)

5.1.2.1. As the Premium Equipment will of necessity eventually need to be replaced or refurbished, it is accordingly agreed that when the said replacement or refurbishment (ordinary maintenance and repairs being specifically excluded) becomes necessary in the MUNICIPALITY's opinion (acting as a Reasonable and Prudent Operator) in order for the MUNICIPALITY to continue to make available the Premium Connection to the CUSTOMER to meet the standard of reliability and security in Annexure D (Generator Municipality Connection), the MUNICIPALITY shall notify the CUSTOMER in writing thereof, giving details of the replacement and/or refurbishment work that has to be carried out, how the quality of the connection will be affected if the necessary replacement and/or refurbishment is not effected and the estimated costs of such work (the '**Premium Equipment Refurbishment Work**'), which notice shall be accompanied by a quote for the charge to be levied by the MUNICIPALITY for such Premium Equipment Refurbishment Work.

5.1.2.2. If the CUSTOMER disputes in writing the need for the replacement and/or refurbishment work referred to, within [90 (ninety) days] of receipt by the CUSTOMER of the MUNICIPALITY's notice in this regard, the matter shall be finally determined by NERSA. The MUNICIPALITY shall, however, until such time as the dispute is adjudicated on, have the right to disconnect and/or remove such Premium Equipment if in the MUNICIPALITY's opinion (acting as a Reasonable and Prudent Operator) it becomes necessary for safety or technical reasons, provided that such disconnection or removal shall not cause

the Premium Equipment to fall below the standard of reliability and security provided by a Standard Connection, or

- 5.1.2.3. if the CUSTOMER does not accept the MUNICIPALITY's quotation to carry out the said replacement and/or refurbishment work within the period as may be stated in the quotation, then the MUNICIPALITY shall have the right to disconnect and/or remove such Premium Equipment if in the MUNICIPALITY's opinion (acting as a Reasonable and Prudent Operator) it becomes necessary for safety or technical reasons, provided that such disconnection or removal shall not cause the Premium Equipment to fall below the standard of reliability and security provided by a Standard Connection.
- 5.1.2.4. If the CUSTOMER agrees in writing and accepts the quotation within the period stated in the quotation for the whole of such Premium Equipment Refurbishment Work, the MUNICIPALITY may temporarily for safety or technical reasons (acting as a Reasonable and Prudent Operator) with effect from the expiry of such period and until such time as such Premium Equipment Refurbishment Work is completed and commissioned, deviate from the standard of reliability and security provided by a Premium Connection and disconnect and/or remove such Premium Equipment from service; provided that such deviation shall not fall below the standard of reliability and security provided by a Standard Connection. The terms and conditions of the agreement for the carrying out of such Premium Equipment Refurbishment Work shall otherwise be as set forth in the MUNICIPALITY's notice and quote in respect thereof and will form an amendment to this Agreement.

5.2. Prescribed Tariff Charges

- 5.2.1. With effect from the Effective Date the CUSTOMER shall pay to the MUNICIPALITY the applicable Prescribed Tariff charges for the supply of electricity and for the Facility's connection to the Distribution System.
- 5.2.2. The Prescribed Tariff Charges payable by the CUSTOMER shall be set out in the MUNICIPALITY's Prescribed Tariff Charges.
- 5.2.3. All accounts shall be payable on the Due Date as reflected on the face of the account. The CUSTOMER acknowledges and agrees that should the account not be settled by the Due Date the MUNICIPALITY strictly reserves the right to disconnect the Facility from the Distribution System should the account remain unpaid. 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.
- 5.2.4. An error or omission in any account or failure to render an account shall not relieve the CUSTOMER of his/her obligation to pay the Charges. The onus shall be on the CUSTOMER to satisfy himself/herself that the account rendered is in accordance with the prescribed Charges.
- 5.2.5. The CUSTOMER acknowledges that, in the event of there being a disconnection of the Facility for non-payment of an account, he/she shall be liable for the prescribed fee for re-connecting the Facility.
- 5.2.6. Should the CUSTOMER dispute an amount stated in any MUNICIPALITY invoice, it shall not be entitled to reduce, or set off, or defer payment thereof beyond the Due Date for such amount as stated in the invoice but:
 - 5.2.6.1 shall serve notice on the MUNICIPALITY specifying the amount and the basis of the dispute; and
 - 5.2.6.2 shall nevertheless pay the disputed amount by the Due Date

6. SECURITY FOR PRESCRIBED TARIFF CHARGES

- 6.1. As security for the due payment of the accounts to be rendered in terms of this Agreement, the CUSTOMER shall, prior to the connecting of the 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.
- 6.2. In the event of any account not been settled by due time, the MUNICIPALITY shall be entitled to call upon the Prescribed Tariff Charge Security without any notice to the CUSTOMER.
- 6.3. 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 3 (three) 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.
- 6.4. If and whenever the Bank Guarantee provided by the CUSTOMER in accordance with this clause 8 ceases (for any reason whatsoever) to be of full force and effect or otherwise to comply with this clause 8, the CUSTOMER shall, [30 (thirty)] before the cease of the Bank Guarantee provide to the MUNICIPALITY a new all reissued Bank Guarantee or cash deposit which meets the requirements of this clause 6.

7. EARLY TERMINATION GUARANTEE

- 7.1. The CUSTOMER acknowledges that the MUNICIPALITY will, in connecting the Facility to the Distribution System, incur certain expenditures 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.
- 7.2. The CUSTOMER shall furnish the MUNICIPALITY with an early termination guarantee in the amount of R..... 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.
- 7.3. The amount of the Early Termination Guarantee set out in clause 7.2 will decrease by 1/10th (one tenth) per year, starting 4 (four) years after the Completion Date and will be completely extinguished after 13 (thirteen) years.
- 7.4. The MUNICIPALITY shall return the Early Termination Guarantee to the CUSTOMER within [20 (ten)] Business Days 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 the termination of this Agreement; provided that the CUSTOMER has paid all amount owing by it in respect of this Agreement.
- 7.5. If this Agreement is terminated before the 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 [●] Months.

SECTION C: TECHNICAL

8. CONNECTION SITE

- 8.1. The CUSTOMER shall, at the inception of this of this Agreement, provide proof of ownership of the land on which the Connection Site for the Municipality Connection Works are to be situated, alternatively of a registered lease or servitude in favour of the CUSTOMER in respect of such land.
- 8.2. Should the rights of the CUSTOMER to the land on which the Municipality Connection Works 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 this will constitute an event of default.
- 8.3. The CUSTOMER shall afford unobstructed access to and make available to the MUNICIPALITY, in accordance with the provisions of this Agreement and the Distribution Code, the Connection Site for the Municipality Connection Works and for connecting the Facility to the Distribution System, and thereafter in order for the MUNICIPALITY to operate and maintain the Municipality Connection Equipment in accordance with the Distribution Code.
- 8.4. The responsibility for all cable/conductor terminations at the Point of Connection shall be set out in Annexure B (Embedded Generator System Operations Manual).
- 8.5. The CUSTOMER shall, at the MUNICIPALITY's cost and by Notary nominated by the MUNICIPALITY for this purpose, cause all such servitudes as the MUNICIPALITY may require for the purposes of securing rights to the Connection Site, on written notice to the CUSTOMER be incorporated into a notarial deed(s) of servitude and be registered against the title deed under which the Connection Site is held. The CUSTOMER shall perform all necessary actions and sign all necessary documents to achieve the notarial execution and registration (in the office of the Registrar of Deeds) of such deed(s) of servitude.
- 8.6. The Parties agree that if, despite both of their reasonable endeavours, the MUNICIPALITY is still not able to gain access to the Site for the purposes of fulfilling its obligations in terms of this Agreement, the MUNICIPALITY's obligations will be suspended for the period of such lack of access and the CUSTOMER will not have any claim for any damages to the extent arising from the lack of access during this period.
- 8.7. The CUSTOMER shall, for the duration of this Agreement, use its reasonable endeavours to provide unobstructed access to and make available to the MUNICIPALITY, in accordance with the provisions of this Agreement and the Code(s), the Connection Site for the Municipality Connection Works and for connecting the Facility to the Distribution System, and thereafter in order for the MUNICIPALITY to operate and maintain the Municipality Connection Equipment in accordance with the Code(s).
- 8.8. The CUSTOMER shall use its reasonable endeavours to ensure that the MUNICIPALITY shall be entitled to append such notices at the Connection Site as (acting reasonably) deems appropriate to indicate the MUNICIPALITY's ownership of the Municipality Connection Equipment which is located on the Connection Site.

9. NETWORK PERFORMANCE AND QUALITY OF SUPPLY

- 9.1. The MUNICIPALITY is required to provide a standard of quality of supply, which complies with NRS 048 as is required by NERSA.
- 9.2. The CUSTOMER will be required to comply with the quality of supply limits, determined in accordance with the MUNICIPALITY's Apportioning of Quality Supply Procedure as detailed in the

Quality of Supply Specification (Annexure F), and the CUSTOMER will be deemed to have knowledge of the content. All costs incurred by the CUSTOMER in respect of such compliance shall be for the CUSTOMER's account.

- 9.3. The MUNICIPALITY will use its reasonable endeavours to furnish the CUSTOMER with reliable and continuous network availability appropriate to the connection chosen by the CUSTOMER (Premium Connection or Standard Connection). However, the MUNICIPALITY does not guarantee that the continuity and voltage quality of the connection will always be maintained under all contingencies. The CUSTOMER shall take adequate measures to protect the Facility against any damage and/or losses that could arise from voltage interactions, voltage dips, or any other variations in the voltage quality, and, if necessary, ascertain the protection requirements from the MUNICIPALITY.
- 9.4. The MUNICIPALITY generally contracts with customers for a Standard Connection in terms which no specific voltage dip or interruption limits will be specified in the contract. Indicative levels of voltage and interaction performance may be obtained on request from the MUNICIPALITY. Dip and interaction performance is managed according to the requirements of the NERSA Power Quality Directive, whereby customer concerns are addressed on a case-by-case basis. In order to ensure greater levels of assurance on interruption (and in some cases dip) performance, the CUSTOMER may elect to:
 - 9.4.1. pay for the necessary infrastructure required to provide a connection with higher levels of reliability; and
 - 9.4.2. pay for additional monitoring equipment to effect monitoring of performance at the Point of Supply.

10. PROTECTION, SYNCHRONISING, AND EARTHING REQUIREMENTS

- 10.1. The Parties shall comply with the requirements of the Code(s) and Annexure E (Standard for the Interconnection of Embedded Generation) with respect to the protection system for the protection of the Facility or the Facility Connection Equipment as well as Synchronisation and earthing of the connection of the Facility to the Distribution System, as such requirements are expressly modified under this Agreement.
- 10.2. The MUNICIPALITY's protection system shall include Synchronism check and/or live line close-blocking functionality on the circuit breakers supplying parts of the Distribution System that could reasonably become Islanded with the Facility
- 10.3. The CUSTOMER shall, at its own expense and acting in accordance with the standards of a Reasonable and Prudent Operator and the Code(s) provide, install, maintain and operate a protection system on the Facility side of the Point of Connection which:
 - 10.3.1. shall be in accordance with the specifications in Annexure E (Standard for the Interconnection of Generation) and otherwise be compatible with the Distribution System protection system; and
 - 10.3.2. shall safeguard the Facility and 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.
- 10.4. The CUSTOMER shall ensure that the protection settings of the Facility are coordinated with the MUNICIPALITY 's protection settings from time to time
- 10.5. Subject to the Code(s), the MUNICIPALITY may disconnect the whole or part of the Facility from the Distribution System, or may operate circuit-breakers upstream of the CUSTOMER's Facility, thereby Islanding the Facility with a portion of the Distribution System. In the event of such an Island

developing, the CUSTOMER shall ensure that the Facility is disconnected from the Distribution System within 2 (two) seconds and its failure to do so shall constitute a breach of this Agreement.

- 10.6. Prior to Commissioning the Facility Connection Equipment or the Facility, the CUSTOMER shall perform tests in accordance with the Annexures, and thereafter furnish the MUNICIPALITY with such test certificate/s indicating the results of the test/s performed, before the Facility may be commissioned.

11. CONNECTION TO THE DISTRIBUTION SYSTEM

The MUNICIPALITY shall allow the CUSTOMER to connect to the Distribution System to supply and deliver energy generated by the 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). The MUNICIPALITY shall also allow the CUSTOMER to receive energy from the Distribution System at times when generation is not sufficient to supply all of the load of the FACILITY.

12. MAXIMUM EXPORT CAPACITY

- 12.1. The Maximum Export Capacity of the Facility at the date of this Agreement is set out in Annexure C (Generator Connection Particulars).
- 12.2. The CUSTOMER shall at any time be entitled to request a change in the Maximum Export Capacity. Should the CUSTOMER request a change in the Maximum Export Capacity, the CUSTOMER shall give adequate notice in writing to the MUNICIPALITY of such requested change. A change in the Maximum Export Capacity shall be subject to the CUSTOMER obtaining its Approvals in this regard and before being approved by the MUNICIPALITY shall take account of at least:
 - 12.2.1. the additional capital expenditure incurred or to be incurred by the MUNICIPALITY in affecting the change proposed by the CUSTOMER;
 - 12.2.2. the additional capacity (if any) of the Distribution system required to meet the change in the CUSTOMER's requirements;
 - 12.2.3. whether any of the Municipality Connection Equipment may have to be removed and replaced, and any associated costs not covered in clause 12.2.1 and
 - 12.2.4. the upstream SHARED NETWORK CHARGES or Shared Network Upgrade Costs that were paid under the original Connection Charge.
- 12.3. Notwithstanding anything to the contrary herein, the CUSTOMER shall be temporarily permitted to exceed the Maximum Export Capacity with the prior written approval of the MUNICIPALITY, such approval not to be unreasonably withheld or delayed, which may be sought by the CUSTOMER, provided that this shall only be for the period as approved by the MUNICIPALITY and subject to the CUSTOMER obtaining its Approvals in this regard.
- 12.4. Where it is technically possible and subject to the CUSTOMER obtaining its Approvals in this regard, the CUSTOMER may be instructed or requested by the MUNICIPALITY in writing to increase the Maximum Export Capacity in order:
 - 12.4.1. to 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
 - 12.4.2. to comply with the requirements of the Code(s); or
 - 12.4.3. to maintain safety in accordance with the standards of a Reasonable and Prudent Operator as may be reasonably necessary or expedient..

- 12.5. Save for clauses 12.3 and 12.4, an exceedances of the Maximum Export Capacity shall constitute a breach of this Agreement.

13. THE MUNICIPALITY'S OBLIGATIONS

Subject to the terms and conditions set out in this Agreement, the MUNICIPALITY shall, acting as a Reasonable and Prudent Operator:

- 13.1. maintain its Distribution System in accordance with NRS 082;
- 13.2. maintain the Approvals for the MUNICIPALITY's live equipment included in the Municipality Connection Equipment in accordance with the electrical regulations of the Occupational Health and Safety Act, (Act 85 of 1993);
- 13.3. provide the Municipality Connection Equipment;
- 13.4. ensure that the Municipality Connection Equipment complies with the requirements of this Agreement for the purposes of connecting the Facility to the Distribution System;
- 13.5. engineer, design, commission, maintain and operate the Municipality Connection Equipment in accordance with the parameters set forth in the Code(s) and as set out in Annexure B (Generator System Operations Manual) and Annexure E (Standard for the Interconnection of Generation).
- 13.6. accept into its Distribution System electricity 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 12;
- 13.7. certify to the CUSTOMER in writing when the Municipality Connection Equipment has been successfully commissioned;
- 13.8. measure the energy exported at the Point of Supply for the purposes set out in Clause 19.2, and
- 13.9. notify the CUSTOMER of any access protocols, health and safety rules, procedures and the like, and any other reasonable requirements.

14. THE CUSTOMER'S OBLIGATIONS

Subject to the terms and conditions set out in this Agreement, the CUSTOMER shall, acting as a Reasonable and Prudent Operator:

- 14.1. ensure that the Facility complies with the requirements of this Agreement for the purposes of connecting the Facility to the Distribution System;
- 14.2. engineer, design, commission, maintain and operate the Facility in accordance with the parameters set forth in the Code(s) and as set out in Annexure B (Generator System Operations Manual) and Annexure E (Standard for the Interconnection of Generation).
- 14.3. obtain all Approvals as may be required under applicable Law, for the construction, Commissioning, operation and maintenance of the Facility and the export of electricity from the Facility into the Distribution System;
- 14.4. obtain written permission from the MUNICIPALITY before first attempting the Synchronisation of the Facility with the Distribution System. The permission by the MUNICIPALITY shall not be

unreasonably withheld or delayed, provided that such permission shall be only granted upon successful completion of pre-commissioning tests as required in Annexure E (Standard for the Interconnection of Generation) and subject to clause 10.6;

- 14.5. comply with and ensure that the Facility is in compliance with all relevant provisions of the Code(s) and applicable Law in relation to the 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;
- 14.6. grant the MUNICIPALITY access to the Connection Site in accordance with this Agreement;
- 14.7. 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 Municipality Connection Equipment;
- 14.8. 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
- 14.9. export onto the Distribution System electricity generated by the CUSTOMER at the Point of Supply, in terms of the Maximum Export Capacity conditions set out in clause 12.

15. SITE FOR THE MUNICIPALITY'S EQUIPMENT

The CUSTOMER shall continue for the duration of this Agreement to 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, in conformity with the requirements of the City of Cape Town Electricity Supply By-law for the provision of substation accommodation.

16. COMMENCEMENT OF USE OF DISTRIBUTION SYSTEM

- 16.1. Promptly following the Completion Date and the MUNICIPALITY's receipt of the test certificates referred to in sub-clause 10.6 and subject to the MUNICIPALITY's acceptance of these certificates pertaining to the Facility Connection Equipment and/or the Facility, which shall be in accordance with the Code(s) and the parameters set forth in **Error! Reference source not found.**, the MUNICIPALITY shall notify the CUSTOMER in writing in respect of the Facility Connection Equipment and the Facility (the 'Operational Notification') that the CUSTOMER has the right to Connect the Facility Connection Equipment to the Distribution System, in accordance with this Agreement in order only to complete the required commissioning tests which could not be carried out prior connection to the Distribution System.. The Operational Notification issued for completion of commissioning is strictly not authorisation to commence with Commercial Operation.
- 16.2. Following the successful completion of all outstanding commissioning tests and the MUNICIPALITY's receipt of all associated test certificates, the MUNICIPALITY will provide the CUSTOMER in writing with a second Operational Notification that the CUSTOMER that Commercial Operation may begin, subject to the provisions of other agreements which govern the Commercial Operation.
- 16.3. In the event that the MUNICIPALITY does not accept the test certificates in accordance with the requirements of the Code(s), Annexure B (Generator System Operations Manual) and Annexure E (Standard for the Interconnection of Generation), the CUSTOMER will be required to retest its compliance with clause 10.6.
- 16.4. The CUSTOMER shall:

- 16.4.1. under no circumstances whilst Connected to the Distribution System, Commission, test, use or otherwise operate the Facility or other equipment for which the CUSTOMER is responsible and that could impact the Distribution System, without having received the permission in clause 16.1, an Operational Notification, or a written exemption from the MUNICIPALITY;
- 16.4.2. without limiting its rights and obligations under the Code(s) and this Agreement in respect of the testing of the Facility, forthwith upon being requested by the MUNICIPALITY to do so, undertake such Commissioning and testing of the Facility and any other equipment for which the CUSTOMER is responsible as required by the Code(s);
- 16.4.3. comply with the requirements of the Code(s) and Annexure E (Standard for the Interconnection of Generation) with respect to governor and excitation control of its generator/s included in the Facility; and
- 16.4.4. operate its generator/s included in the Facility within the real and reactive power limits and / or real power and voltage limits set forth in the Code(s) or if not specified in the Code(s) as set forth in Annexure E (Standard for Generation), any additional requirements that may be outlined in Annexure B (Generator System Operations Manual).
- 16.4.5. "Commencement of Use of Distribution System" is not the same as "Commencement of Commercial Operation" which will be covered by other contracts outside of this Agreement.

17. SCHEDULING AND DISPATCH

With regard to Scheduling and Dispatch, the Party shall be required to act in accordance with the requirements of the Scheduling and Dispatch rules and the Code(s).

17.1. DISPATCH

The Parties agree that the Facility will be Non-dispatchable under Normal Operating Conditions.

17.2. SCHEDULING

- 17.2.1. The CUSTOMER shall provide the MUNICIPALITY or its delegated alternative with all information as may be required from time to time, for the balancing and reliability of the Distribution System in respect of each Unit, including a schedule of the expected energy output, outages, maintenance schedules or any other information as may be required under the Scheduling and Dispatch Rules.
- 17.2.2. The information shall be provided by the CUSTOMER in the form and means as may be specified by the MUNICIPALITY or its delegated alternative.
- 17.2.3. The CUSTOMER shall use reasonable endeavours to ensure that all such information provided by the CUSTOMER to the MUNICIPALITY or its delegated alternative is completely accurate. If the CUSTOMER becomes aware of any act, event, condition or circumstance which may render any such information incorrect or misleading or otherwise of any inaccuracy such information, the CUSTOMER shall notify the MUNICIPALITY or its delegated alternative forthwith of such act, event, condition, circumstance or inaccuracy as soon as it becomes aware of this information.

18. RIGHT TO CURTAIL OR INTERRUPT UNDER EMERGENCY CONDITIONS

18.1. CURTAILMENT OF GENERATION

The Customer shall, if and when required and on instruction by the MUNICIPALITY, reduce peak generation during abnormal system conditions or low load periods.

18.2. EMERGENCY INTERRUPTION

Either Party shall have the right to disconnect the 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 Facility (as the case may be). The Parties shall give reasonable advance notice of such action where possible. In respect of the MUNICIPALITY's rights under this clause, the disconnection may be effected by the MUNICIPALITY in such a way that the CUSTOMER will not be able to close the relevant circuit breaker until the MUNICIPALITY has reset the open command

18.3. RE-CONNECTION FOLLOWING AN EMERGENCY INTERRUPTION

The MUNICIPALITY shall rectify the conditions leading to the emergency interruption as quickly as reasonably practicable and shall notify the CUSTOMER as quickly as reasonably practicable after such emergency conditions have passed. Thereafter, following receipt of such notification the CUSTOMER may re-synchronise the Facility to the Distribution System.

18.4. LOAD SHEDDING

The Customer shall, if and when required, switch off generation during load shedding according to published load shedding schedules.

19. METERING OF ELECTRICITY

Metering of electricity shall be subject to the provisions of the Electricity By-law which may be amended from time to time, insofar as they are relevant.

19.1. For the avoidance of any doubt, the MUNICIPALITY owned Metering Installation is referred to in this clause 19 and is separate from any metering installation installed by the CUSTOMER.

19.2. The MUNICIPALITY shall, at the Customer's cost, provide, install, commission, operate and maintain the Metering Installation to be used for measuring the imported and exported active and reactive energy from and into the Distribution System respectively at the Point of Supply for the purposes of calculating of any Charges payable under this Agreement.

19.3. The Metering Installation shall comply with the requirements of the accuracy class as specified in SANS 474.

19.4. The Parties agree that the MUNICIPALITY shall, for invoicing purposes under this Agreement, collect all such meter readings from both the main meter and, if applicable, any check or back-up meter included in the MUNICIPALITY's Metering Installation. The readings from the main meter shall be used for billing.

19.5. Where duplicate meters 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 CITY'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 CONSUMER will be adjusted accordingly after the inaccuracy has been ascertained.

- 19.6. Where electricity is supplied or made available at more than one point of supply to an 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.
- 19.7. In the event that either Party has grounds for believing that the Metering Installation is operating outside the relevant accuracy class in SANS 474, it shall forthwith notify the other Party of those grounds and the Metering Installation shall be tested in accordance with Electricity By-law of the City of Cape Town of 2010 and SANS 474.

SECTION D: LEGAL

20. FACILITY SITE RIGHT(S) OF WAY

- 20.1. The CUSTOMER grants to the MUNICIPALITY an irrevocable right-of-way in perpetuity, free of charge to convey electricity and telecommunication over the Property on the following terms and conditions.
- 20.2. The right(s)-of-way shall be binding on the CUSTOMER, its heirs, assignees and legal successors, and shall include where applicable, the following rights in favour of the MUNICIPALITY:
 - 20.2.1. the right to transmit electricity free of charge over the Property;
 - 20.2.2. 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;
 - 20.2.3. the right to retain any existing line(s) and/or cable(s) on the Property;
 - 20.2.4. 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;
 - 20.2.5. the right to have access to and egress from the Property and the right to use existing roads giving access to and egress from the Property or roads running across the Property and gates on the Property and to erect such gates in any fence on such Servitude Area as may be necessary or convenient to gain access to and egress from the Property; provided that the MUNICIPALITY shall ensure that any gates on the Property used by it, its employees, its contractors or its contractors' employees shall be kept closed when not in use by them; and
 - 20.2.6. the right to remove 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 20.3 hereof; provided that the MUNICIPALITY shall endeavour to consult with the CUSTOMER prior to doing so.

20.3. The following special restrictions are placed for the MUNICIPALITY's benefit on the use of the Property:

20.3.1. The CUSTOMER shall ensure that no building or structure may be erected or installed above or below the surface of the ground, neither may any material which might endanger the safety of the Municipality Connection Works or the Cable Works and all associated equipment be placed 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	18 metres (15.5 – 20 metres)

20.3.2. 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

20.3.3. 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 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.

20.4. The CUSTOMER shall ensure that the rights hereby granted to the MUNICIPALITY:

20.4.1. shall be brought to the attention of any potential purchaser or transferee of the Property (or of any portion thereof) or the seller (at that time) of the Property (or any portion thereof) before it is sold and/or transferred to such purchaser or transferee; and

20.4.2. shall, if the MUNICIPALITY so requests in writing, at the MUNICIPALITY's cost and by Notary appointed by the MUNICIPALITY for this purpose, be incorporated into a notarial deed of servitude and be registered against the title deed under which the Property is held. The CUSTOMER shall perform all necessary actions and sign all necessary documents to achieve the notarial execution and registration (in the office of the Registrar of Deeds) of a deed of servitude, as envisaged above.

20.5. If the CUSTOMER is not the owner of the Property, the CUSTOMER shall be required to obtain from the owner of the Property a grant to the MUNICIPALITY of all such rights as described in this clause 20, free of charge, over the Property. Should the CUSTOMER fail to obtain the rights-of-way or free of charge, such failure shall suspend all of the MUNICIPALITY's obligations in terms of this Agreement.

20.6. 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.

21. OWNERSHIP OF THE MUNICIPALITY CONNECTION EQUIPMENT

- 21.1. The MUNICIPALITY shall at all times retain ownership of and title to the Municipality Connection Equipment. The CUSTOMER shall not encumber or attempt to encumber any of the Municipality Connection Equipment nor shall it grant or attempt to grant any encumbrance over any of the Municipality Connection Equipment in favour of any of its creditors.
- 21.2. The Parties acknowledge and agree (in keeping with the requirements of the Code(s)) that none of the performances required under this Agreement, including the payment by the CUSTOMER of the Charges, confers on the CUSTOMER any right of ownership or security in, or other legal or beneficial right in respect of, any asset to which that charge may relate, including the Municipality Connection Equipment.

22. ASSIGNMENT AND CHANGE IN CONTROL

22.1. ASSIGNMENT

Save as provided in this clause 23, neither Party shall be entitled to sell, cede, delegate, assign, transfer or otherwise dispose of (collectively '**Assign**') all or any part of its rights and/or obligations hereunder without the prior written approval of the other Party.

22.2. AGREEMENT BINDING ON SUCCESSORS IN LAW, ASSIGNEES AND DELEGES

- 22.2.1. this Agreement shall be, and remain binding on, the Parties, notwithstanding any alteration or change of control by any Party, irrespective of how such changes brought about.
- 22.2.2. It is expressly agreed between the Parties that if the CUSTOMER wishes to alienate the Connection Works it will do so on terms and conditions binding the alienee to this agreement.

23. FORCE MAJEURE

- 23.1. if a Party (the '**Affected Party**') is unable to perform all or a material part of its obligations in terms of this Agreement in due to a Force Majeure Event, then the Affected Party shall, as soon as reasonably practicable, notify the other Party in writing (a '**Force Majeure Notice**') setting out:
- 23.1.1. the full particulars of the Force Majeure Event;
- 23.1.2. the impact of the Force Majeure Event on the Affected Party's obligations under this Agreement;
- 23.1.3. the Affected Party's reasonable estimate of the length of time which its performance has been and will be affected by the Force Majeure Event; and
- 23.1.4. the steps, which it is taking or intends to take to remove and mitigate the adverse consequences of the Force Majeure Event on its performance hereunder.

- 23.2. The Affected Party shall have the burden of proving both the existence of the Force Majeure Event and the effect (both as to nature and extent) which such Force Majeure Event has on its performance.
- 23.3. If the Parties are on the basis of the Force Majeure Notice and any supporting documentation, unable to agree as to the existence or as to the effect of a Force Majeure Event by the date falling [60 (sixty) days after the receipt by the non-Affected Party of the Force Majeure Notice, then either party shall be entitled to refer the matter to dispute resolution in accordance with clause 26.
- 23.4. If it is agreed or determined that a Force Majeure Event has occurred, the Affected Party shall, provided that it is complied with the requirements of this clause 23, not be liable for any failure to perform any obligation under this Agreement but only to the extent that:
- 23.4.1. such performance is prevented, hindered, or delayed by a Force Majeure Event; and
- 23.4.2. such failure could not have been removed, mitigated, rectified, or overcome by the Affected Party acting as a Reasonable and Prudent Operator.
- 23.5. The Affected Party shall use all reasonable efforts to remove, mitigate, rectify, and overcome the effects of any Force Majeure Event(s) and to minimise the effect thereof on the other Party, and shall give the other Party (i) regular reports on the progress of such measures and (ii) prompt notice of the cessation of the Force Majeure Event(s).
- 23.6. If the Affected Party's performance of all or a material part of its obligations under this Agreement is prevented, hindered, or delayed by a Force Majeure Event, then, provided that the Affected Party has complied with the requirements of this clause 23, the time limits for the performance of those obligations (or any dates by which performance of those obligations are to be achieved) shall be extended by a period equal to the period by which its performance is prevented, hindered, or delayed.
- 23.7. If the Force Majeure Event subsists for more than 24 (twenty-four) months, the non-Affected Party shall have the right to terminate this Agreement after having given the other party no less than [30 (thirty)] days' written notice without prejudice to any claim either Party may have in terms of this Agreement, provided that the Force Majeure Event is still continuing.

24. DAMAGES / LIABILITY

- 24.1. 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.
- 24.2. If either Party is liable for damages caused to the other Party in terms of clause 24.1, such liability shall be limited to direct damages and will exclude consequential damages, provided that
- 24.2.1. consequential damages shall include, but shall not be limited to, loss of production, revenue, income or profit
- 24.2.2. the liability of the defaulting Party in respect of all Losses suffered or incurred by the non-defaulting Party shall in no circumstances exceed [ZAR 1 000 000,00 (one million Rand)] per incident or series of related incidents arising out of or in connection with any 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 [ZAR 5 000 000,00 (five million Rand)];

- 24.2.3. In the determination of the Aggregate Liability, the total amount of any Losses from a single event totalling less than ZAR [1 000 000,00 (one million Rand)] shall be included in the calculation of the Aggregate Liability and in the event that any Losses total more than ZAR 1 000 000,00 (one million Rand) only ZAR [1 000 000,00 (one million Rand)] will be counted toward the calculation of the Aggregate Liability.
- 24.3. Despite anything to the contrary in this Agreement, save for clause 24.4, 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
- 24.4. Despite clause 24.3, 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.
- 24.5. 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'**).
- 24.6. In the event of any Injury Claim being made against an Indemnified Party, the indemnifying Party shall be promptly notified of the Injury Claim and may at its own expense conduct all negotiations for the settlement of the same, and any litigation that may arise from the Injury Claim.
- 24.7. The indemnified Party shall not, unless and until the indemnifying Party has failed to unconditionally agree in writing to take over the conduct of the negotiations or litigation in respect of the Injury Claim within 10 (ten) Business Days of receiving notice from the indemnified Party requesting it to do so, make any admission, which might be prejudicial to the claim
- 24.8. The conduct by the indemnifying Party of such negotiations or litigation shall be conditional upon the indemnifying Party having first given to the indemnified Party such reasonable security as the indemnified Party shall from time to time notify the indemnifying Party that it requires to cover the amount ascertained or agreed or estimated, as the case may be of any Losses for which the indemnified Party may become liable in respect of the Injury Claim.
- 24.9. The indemnified Party shall, at the request of the indemnifying Party, afford all reasonable assistance for the purpose of contesting the Injury Claim, and shall be paid by the indemnifying Party (within 10 (ten) Business Days of the date of its invoice thereof) all reasonable expenses incurred in so doing
- 24.10. The rights and remedies provided by this Agreement to the Parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies expressed or implied and provided by common law or statute in respect of the subject matter of this Agreement, including without limitation any rights either Party may possess in delict which shall include without limitation actions brought in negligence and/or nuisance. Accordingly, each of the Parties hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute, and releases the other Party, its officers, directors, employees, contractors and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this Agreement and undertakes not to enforce any of the same except as expressly provided herein. For the avoidance of doubt, the rights and remedies provided in this Agreement shall not be construed so as to limit the rights and/or remedies that the CUSTOMER may have under any other agreement between them.

24.11. Each of the Parties agrees that the other Party holds the benefit of clauses 25.3, 25.6 to 24.9 and 24.14 for itself and as trustee and agent for its officers, directors, employees, contractors and agents, and that such clauses constitute a stipulation or contract for the benefit of such persons.

24.12. To the extent that a Party is entitled to indemnification for any Losses or is otherwise entitled to recover any Losses under this Agreement, it shall use its reasonable endeavours to mitigate any such Losses.

24.13. For the avoidance of doubt:

24.13.1. nothing in this clause 25 shall prevent or restrict either Party enforcing any obligation (including suing for a debt or for specific performance or to apply for an interdict) owed to it under or pursuant to this Agreement; and

24.13.2. each Party acknowledges and agrees that the provisions of this clause 25 are fair and reasonable having regard to the circumstances as at the date hereof.

24.14. 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

24.14.1. death of or injury to a person; or

24.14.2. loss of or damage to property; or

24.14.3. 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 or by the Indemnifying Party.

25. DISCONNECTION AND TERMINATION

25.1. BREACH BY THE CUSTOMER

25.1.1. 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:

- a) the MUNICIPALITY to be in immediate breach of any of its Approvals and such breach requires disconnection of the Facility in terms of those Approvals; or
- b) personal injury to the MUNICIPALITY or CUSTOMER staff or members of the public; or
- c) immediate material damage as a result of the malfunctioning of the Facility on the CUSTOMER's premises or on the Distribution System,

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

25.1.2. In addition, if the CUSTOMER is in breach of any provision of this Agreement, then the MUNICIPALITY must give written notice to the CUSTOMER specifying in reasonable detail the nature of the breach and requiring the CUSTOMER within [30 (thirty)] days after

receipt of such notice to remedy the breach (or within any longer period as approved by the MUNICIPALITY, such approval not to be unreasonably withheld or delayed).

- 25.1.3. Whenever the MUNICIPALITY serves a notice on the CUSTOMER pursuant to clause 26.1.2, the Parties shall engage in discussions without delay on the nature and effects of the breach and each shall use all appropriate procedures available to them under this Agreement or the Code(s) (including testing rights and the procedures set out in the Code(s)) in an attempt to establish as quickly as reasonably practicable a mutually acceptable way of ensuring future compliance by the CUSTOMER with the relevant provision of the Agreement; provided that the failure of either Party to participate in such discussions shall not prevent the MUNICIPALITY from proceeding in accordance with the remaining provisions in this clause 25.1.
- 25.1.4. If the breach is not remedied after notice is given by the MUNICIPALITY as described in clause 25.1.2, or if NERSA makes an order against the CUSTOMER, the MUNICIPALITY may disconnect the Facility (if it has not done so already in terms of clause 25.1.1) in terms of the Electricity Supply By-Law upon the expiry of at least 14 days prior written notice to the CUSTOMER if at the time of expiry of the notice the CUSTOMER still has not remedied the breach and/or complied with the order of NERSA.
- 25.1.5. If, following the disconnection of the Facility pursuant to this clause 25.1, the CUSTOMER has remedied the breach; the MUNICIPALITY shall reconnect the Facility without unreasonable delay.
- 25.1.6. If, following the disconnection of the Facility pursuant to this clause 25.1, the CUSTOMER applies to the MUNICIPALITY for the 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 be obliged to re-connect the Facility only if required to do so by the determination of the NERSA or the arbitrator in terms of clause 26.2.
- 25.1.7. If any breach of this Agreement by the CUSTOMER due to or for which there is a disconnection of the Facility remains un-remedied for a period 6 (six) months reckoned from the date of the breach the MUNICIPALITY may terminate this Agreement immediately upon written notice to the CUSTOMER.

25.2. BREACH BY THE MUNICIPALITY

- 25.2.1. 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 Facility, then the CUSTOMER shall be entitled to disconnect the Facility from the Distribution System immediately without giving notice.
- 25.2.2. In addition, the CUSTOMER may give written notice to the MUNICIPALITY specifying in reasonable detail the nature of the breach and requiring the MUNICIPALITY within [30 (thirty)] days after receipt of such notice to remedy the breach (or within any longer period as approved by the CUSTOMER, such approval not to be unreasonably withheld or delayed).
- 25.2.3. If the MUNICIPALITY does not remedy the breach within the notice period set out in clause 25.2.2, the CUSTOMER may terminate the Agreement immediately upon written notice.

25.3. INSOLVENCY EVENT

If either Party undergoes an Insolvency Event, which for the purpose of this Agreement is defined to mean, in relation to either Party, that (a) that Party passes a resolution or files any application for action for relief under any insolvency Law, or (b) 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 (c) 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 declares a moratorium or reorganisation in respect of its debts, the other Party may terminate this Agreement immediately upon written notice to the affected Party

25.4. TERMINATION BY CUSTOMER.

Subject to clause 25.5, 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.

25.5. CONSEQUENCES OF TERMINATION

- 25.5.1. 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.
- 25.5.2. 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.
- 25.5.3. 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.
- 25.5.4. Upon termination of this Agreement for any reason, and without prejudice to any other subsisting rights of either Party, the CUSTOMER shall, following receipt of the MUNICIPALITY's invoice therefore within [5 (five)] working days, pay to the MUNICIPALITY any other amounts owing to the MUNICIPALITY under this Agreement.
- 25.5.5. If the Prescribed Tariff Charge Security is not adequate to fully discharge the CUSTOMER's debts in respect of the Prescribed Tariff Charges, the CUSTOMER will remain liable for such debt as set out above.
- 25.5.6. If the Early Termination Guarantee is not adequate to fully discharge the CUSTOMER's debts in respect of the connection costs upon termination, the CUSTOMER will remain liable for such debt as set out above.
- 25.5.7. The MUNICIPALITY may disconnect the Facility following the termination of this Agreement in accordance with this clause 25.

26. DISPUTE RESOLUTION

26.1. DECLARATION OF A DISPUTE

Each Party shall notify the other Party in writing upon the occurrence of any dispute between them arising out of, relating to or in connection with this Agreement or the Code(s) which that Party

wishes to refer for resolution in accordance with this clause **Error! Reference source not found.** (a "Dispute"). This clause 26 shall survive the termination of this Agreement and will remain in effect even if this Agreement is terminated, lapses or is declared invalid for any reason.

26.2. REFERRAL TO NERSA

Subject to clause 26.3 (Expedited Dispute Resolution), 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) but, in the absence of such written agreement, either Party may refer such Dispute forthwith to arbitration in accordance with clause 26.4 (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 in accordance with clause 27.4 (Arbitration)

26.3. EXPEDITED DISPUTE RESOLUTION.

26.3.1. If the Parties are in dispute as to any matter concerning this Agreement and the Parties agree at the time upon an Expedited Dispute Resolution of such a matter, then either Party shall be entitled to refer the Dispute to a Third Party Expert.

26.3.2. The term "**Third Party Expert**" as used herein shall mean a qualified engineer of not less than 15 (fifteen) years' experience in the design, construction, installation, operation and maintenance of power transmission interconnection facilities as agreed by the Parties or, failing agreement within [5 (five)] Business Days after the first Party has delivered written notice to the other Party designating its nominee for "Third Party Expert", as determined by the President of the Engineering Council of South Africa (the "ECSA"). If either Party does not accept the nomination of the other Party as aforesaid, it shall be entitled on written notice to the President of ECSA (copied to the other Party) to request him/her to make his/her determination as to the Third Party Expert by written notice to both Parties within [10 (ten)] Business Days of such request. Following such agreement or determination, either Party shall be entitled to appoint the engineer as agreed or determined as the Third Party Expert and such appointing Party shall be liable for all fees and costs as agreed between it and the Third Party Expert, subject to clause 26.3.8.

26.3.3. Where any Dispute is expressly provided herein to be subject to resolution in accordance with this clause 26.3, either Party may require on written notice to the other Party that such Dispute be submitted to the Third Party Expert. Within [15 (fifteen)] Business Days of the appointment of the Third Party Expert becoming effective, each Party shall submit to the Third Party Expert a notice (herein referred to as a "Position Notice") setting out in detail such Party's position in respect of the issues in Dispute. Such notice shall include supporting documentation, if appropriate.

26.3.4. The Third Party Expert shall complete all proceedings and issue his decision with reasons with regard to the Dispute as promptly as reasonably possible, but in any event within [15 (fifteen)] Business Days of the date on which both Position Notices are submitted unless the Third Party Expert reasonably determines that additional time is required in order to give adequate consideration to the issues raised. In such case the Third Party Expert shall state in writing his reasons for believing that additional time is needed and shall specify the additional period required, which period shall not exceed [10 (ten)] Days unless the Parties agree otherwise.

26.3.5. In resolving a Dispute, the Third Party Expert shall (a) consider all facts and circumstances he deems reasonable given the nature of the Dispute, and (b) choose either the position of the MUNICIPALITY as set out in the MUNICIPALITY's Position Notice or the position of the CUSTOMER as set out in the CUSTOMER's Position Notice.

26.3.6. If the Third Party Expert should fail to notify the Parties of his decision with respect to any Dispute referred to him pursuant to this Agreement within [60 (sixty)] days of such referral,

any Party may give notice within [30 (thirty)] days after expiration of such time limit that the Dispute is to be referred for arbitration pursuant to clause 26.4 (Arbitration) whereupon the Third Party Expert shall give no further consideration to the Dispute and shall not issue a decision.

- 26.3.7. The decision of the Third Party Expert regarding a Dispute shall be final and binding on the Parties unless written notice of dissatisfaction with the decision is given by one Party to the other Party, with a copy to the Third Party Expert, within [30 (thirty)] Days of such Party's receipt of the Third Party Expert's decision, in which event such Dispute shall be referred for arbitration pursuant to clause 29.4 (Arbitration), provided that a Party commences such arbitration within [60 (sixty)] days from the date of the receipt by a Party of the written notice of dissatisfaction. If no arbitration is so commenced within [60 (sixty)] days of the issuance of the notice of dissatisfaction, the Third Party Expert's decision shall be final and binding upon the Parties, notwithstanding the notice of dissatisfaction given by the Party.
- 26.3.8. All fees and costs of the Third Party Expert shall be borne by the unsuccessful Party as determined by the Third Party Expert's decision and the successful Party shall accordingly be entitled to full reimbursement of all such costs and fees incurred by it if it is the Party that appointed the Third Party Expert, unless a Party has given notice in accordance with the provisions of clause 26.3.6 hereof that the Dispute shall be referred for arbitration prior to the rendering of a decision by the Third Party Expert. In such event, the Party that appointed the Third Party Expert shall remain liable for all such fees and costs for the time being, but it shall be entitled to claim for reimbursement of such fees and costs in the arbitration. Each Party shall bear its own costs (including costs of its advisors or consultants) with respect to a Dispute submitted to a Third Party Expert.

26.4. ARBITRATION

- 26.4.1. Any Dispute not resolved in accordance with the afore-going provisions of this clause 26 shall be resolved in terms of the Rules of the Arbitration Foundation of Southern Africa from time to time in force (the "**AFSA Rules**"), subject to the remaining provisions of this clause 26.4.
- 26.4.2. Where a Party refers a matter to arbitration in accordance with clause 26.2 (*Referral to the NERSA and/or Arbitration*) or 26.3 (*Expedited Dispute Resolution*), as applicable, it shall serve a written notice on the other Party to that effect and the AFSA Rules shall govern such arbitration.
- 26.4.3. Any arbitration conducted in accordance with this clause 26.4 shall be conducted
- 26.4.3.1. in the Municipality of Cape Town in South Africa, unless the Parties agree otherwise
- 26.4.3.2. in English; and
- 26.4.3.3. by one arbitrator, who shall be appointed by the Secretariat of AFSA, if the Parties fail to agree on the arbitrator to be appointed with [30 (thirty)] Business Days of the dispute arising.
- 26.4.4. The Parties acknowledge that the AFSA Rules require arbitrators to be appointed from the relevant panel held by AFSA. Notwithstanding this, the Parties agree that, if one Party wants to appoint as an arbitrator an individual who is not on the relevant panel, both Parties shall make appropriate representations to AFSA in that individual's favour and use reasonable endeavours to ensure that such individual is appointed to the relevant AFSA panel.
- 26.4.5. The administration of the arbitration shall not be conducted by AFSA unless the parties expressly agree to the contrary.

26.4.6. Any arbitral award made shall be final and binding on the Parties. The arbitrator must allocate the cost of arbitration between the Parties to the arbitration in any arbitral award by the arbitrator.

26.5. RECOURSE TO THE HIGH COURT

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.

27. REPRESENTATIONS AND WARRANTIES

27.1. CUSTOMER REPRESENTATIONS AND WARRANTIES

The CUSTOMER represents and warrants to the MUNICIPALITY that as at and from the Effective Date, for the duration of the Agreement:

- 27.1.1. 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;
- 27.1.2. 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;
- 27.1.3. 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
- 27.1.4. all the information supplied to the MUNICIPALITY by the CUSTOMER is true and correct in all material respects.

27.2. MUNICIPALITY REPRESENTATIONS AND WARRANTIES

The MUNICIPALITY represents and warrants to the Customer that as at and from the Effective Date, for the duration of the Agreement:

- 27.2.1. it has the power to enter into and perform its obligations under this Agreement;
- 27.2.2. 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
- 27.2.3. 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.

28. CONFIDENTIALITY

- 28.1. 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
- 28.1.1. such Party notifies the recipient in advance of such disclosure that the information is subject to the non-disclosure restrictions contained in this clause 28; and
 - 28.1.2. 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.
- 28.2. 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.
- 28.3. These provisions do not apply to information which is:
- 28.3.1. publicly known or becomes publicly known through no unauthorised act of the recipient Party;
 - 28.3.2. rightfully received by the recipient Party from a third party;
 - 28.3.3. independently developed by the recipient Party without use of the other Party's information;
 - 28.3.4. disclosed by the other Party to a third party without similar restrictions;
 - 28.3.5. 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;
 - 28.3.6. publicly disclosed with the other Party's written consent;
 - 28.3.7. 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, and in any event as soon as reasonably practicable thereafter, 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. Where a copy of such disclosure or statement has been supplied prior to making the disclosure, the other Party may give comments on that disclosure or statement to the Party proposing to make it. The Party proposing to make the disclosure shall, if reasonably practicable in the time available, consult with the other Party as to any such comments and consider whether the disclosure is to be amended to take into account the comments; or

- 28.3.8. 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 (including in relation to the application by any person for connection to the Distribution System), provided that (a) only confidential information which is necessary for such purpose is disclosed by the MUNICIPALITY, and (b) the MUNICIPALITY notifies the recipient in advance of such disclosure that the information is confidential and should not be disclosed by the recipient to third parties.
- 28.4. 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.
- 28.5. The provisions of this clause 28 shall survive the expiry or termination of this Agreement for a period of 5 (five) years
- 28.6. 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.
- 28.7. Subject to this clause 28, 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).

29. MISCELLANEOUS

29.1. SEVERABILITY

If any provision of this Agreement is found to be illegal, void or unenforceable then the Parties shall negotiate in good faith in order to agree about the terms of a satisfactory provision to be substituted for the provision so found to be illegal, void or unenforceable and, in such event, the other provisions of this Agreement shall remain binding on the Parties.

29.2. NOTICES / ADDRESSES

29.2.1. All notices, notifications, requests, demands or other communications including accounts, shall be deemed to have reached the other Party-

29.2.1.1. if delivered by hand, on the date of delivery;

29.2.1.2. if posted by ordinary mail or registered post, on the [10th] business day following the date of such posting, and in the case of an account on the [10th] business day following the date of the account;

29.2.1.3. if transmitted by any electronic medium acceptable to both Parties, on the [1st (first)] Business Day following the date of transmission / publication / delivery.

29.2.2. For the purpose of this Agreement, the CUSTOMER's *domicilium citandi et executandi* shall be:

Address: _____

Email: _____

marked for attention _____ (*insert name*)

29.2.3. and the MUNICIPALITY's *domicilium citandi et executandi* shall be:

Address: _____

Email: _____

marked for attention _____ (*insert name*)

Either Party may, by written notice to the other, change its abovementioned *domicilium* to any other physical address in South Africa.

29.3. ENTIRE AGREEMENT AND VARIATION

29.3.1. This Agreement constitutes the sole and entire agreement between the Parties and supersedes all previous negotiations, arrangements or agreements in respect of the subject-matter of this Agreement.

29.3.2. Save as provided for anywhere in this Agreement, no variation, modification, waiver, failure, delay, relaxation or indulgence of any provision of this Agreement, including this sub-clause, or consent to any departure therefrom, shall in any way be of any force or

effect unless confirmed in writing and signed by both Parties and then such act or omission as stated above shall be effective only in a specific instance and for the purpose and to the extent for which it was made or given.

29.4. WAIVER

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

29.4.2. The waiver of any right under this Agreement or applicable law shall be binding on the waiving Party only to the extent that the waiver has been reduced to writing and signed by the duly authorised representative(s) of the waiving Party.

29.5. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement shall be deemed to constitute a partnership, or establish a relationship of principal and agent or any other similar relationship between the Parties.

29.6. GOVERNING LAW

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

(The remainder of this page is left blank deliberately)

IN WITNESS WHEREOF, the Parties each acting through their duly authorised signatories enter into this Agreement .

SIGNED for and on behalf of the **CUSTOMER** by the signatory below who warrants that he/she is duly authorised.

Date: _____

Name:
Title:

As Witnesses:

1. _____
2. _____

SIGNED for and on behalf of the **MUNICIPALITY** by the signatory below who warrants that he/she is duly authorised.

Date:

Name:
Title:

As Witnesses:

1. _____
2. _____

[Insert Annexures]