



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

WHEELING AND USE-OF-SYSTEM AGREEMENT

Supplemental Agreement to Main Supply Agreement

Made and entered into between
THE CITY OF CAPE TOWN
(hereinafter referred to as the "**City**")
and

.....
(hereinafter referred to as the "**Consumer**")

PREAMBLE

WHEREAS the Consumer has applied to the City to be supplied with Wheeled Energy and the City is prepared to approve the same in accordance with the terms and conditions of this Agreement;

AND WHEREAS the City and the Consumer are desirous of entering into a written agreement recording and regulating the terms and conditions relating to the Wheeling of electricity to the Consumer;

NOW THEREFORE THE PARTIES HERETO HAVE AGREED EACH WITH THE OTHER:

1. DEFINITIONS

- 1.1 "Agreement" shall mean this Wheeling and Use-of-System agreement which is supplemental to the Main Supply Agreement, including all schedules thereto.
- 1.2 "City" shall mean The City of Cape Town metropolitan municipality, established in terms of the Local Government: Municipal Structures Act, 1998 read with the Western Cape Provincial Notice No. 479/2000 published in the Province of the Western Cape: Provincial Gazette 5588 dated 22 September 2000. The City is referred to in the City of Cape Town Electricity Supply By-Law 2010, as amended, interchangeably as the "Service Authority" and the "Service Provider".
- 1.3 "Conditions Precedent" shall mean the conditions precedent stipulated in Schedule 3 of this Agreement.
- 1.4 "Consumed Energy" shall mean the total quantity of energy delivered by the City and consumed by the Consumer, as measured by the City at the Point of Supply on a time-of-use basis.
- 1.5 "Consumer" shall mean the person or entity designated as such in the Main Supply Agreement.
- 1.6 "Consumer Pool" shall mean a mechanism established and underwritten by a Third-Party Supplier holding a Trading License whereby the allocation of Third-Party Supplied Energy which is to be Wheeled to the participating Consumers is made by the Consumer Pool.
- 1.7 "Deficit Wheeled Energy" shall mean the amount of Consumed Energy which exceeds the amount of Wheeled Energy during each half-hourly metering period.
- 1.8 "Dispatch Notice" shall mean a notice, in the form set out in Part II of Schedule 2, given by the Consumer to the City to amend the Nomination Percentage(s) or Consumer Pool participation specified in Part I of Schedule 2.
- 1.9 "Effective Date" shall mean the date on which the last of the Conditions Precedent is fulfilled, or waived, as the case may be.
- 1.10 "Electricity Grid" shall mean the Electricity Grid belonging either to Eskom or to the City as the case may be.
- 1.11 "Generator" shall mean the person or entity licensed by or registered with NERSA, as the case may be, to operate a Generation Facility and whom has entered into a Generator Grid Connection and Use-of-System Agreement for the Generation Facility.
- 1.12 "Generation Facility" shall mean the generation facility operated by the Generator which generates energy, a portion of which is wheeled to the Consumer under this Agreement.
- 1.13 "Generator Grid Connection and Use-of-System Agreement" shall mean the connection agreement entered into between the Generator and the City or Eskom, as the case may be, to physically connect the Generation Facility to the applicable Electricity Grid and to allow the Generator access to and the usage of that Electricity Grid to export electrical energy from the Generation Facility.
- 1.14 "Green Benefits" shall mean all the intangible benefits, including green attributes, associated with the generation of Renewable Energy which are distinctly separate from the energy itself.

- 1.15 "Law" shall mean the provisions of the Local Government: Municipal Systems Act (Act No. 32 of 2000), the Electricity Regulation Act, (Act No. 4 of 2006) and Regulations and Codes thereto, the City of Cape Town Electricity Supply By-law, as well as any applicable law, proclamation, ordinance, act of parliament or other enactment having force of law.
- 1.16 "Main Supply Agreement" shall mean the electricity supply agreement between the Consumer and the City, entered into in terms of the City of Cape Town Electricity Supply By-Law.
- 1.17 "Nominated Percentage" means the percentage of Third-Party Supplied Energy which is to be Wheeled to the Consumer, as reflected in Part I of Schedule 3 or amended pursuant to a Dispatch Notice.
- 1.18 "Operative Provisions" means Schedule 3 and clauses 12 to 18 .
- 1.19 "Party" shall mean either the City or the Consumer, as applicable; "Parties" shall mean the City and the Consumer, collectively.
- 1.20 "Point of Generator Connection" shall mean the electrical node on the City or Eskom Electricity Grid, as the case may be, where the Generation Facility is physically connected to that Electricity Grid, as specified in the Generator Grid Connection and Use-of-System Agreement.
- 1.21 "Power Purchase Agreement" shall mean the agreement between the Consumer and a Third-Party Supplier in respect of the sale and purchase of electrical energy generated by the Generation Facility.
- 1.22 "Renewable Energy" includes all forms of energy produced from renewable sources in a sustainable manner, including bioenergy, geothermal energy, hydropower, ocean energy, solar energy and wind energy. Renewable energy resources are derived from natural processes and replenished at a faster rate than they are consumed.
- 1.23 "Surplus Wheeled Energy" shall mean the amount of Wheeled Energy which exceeds the amount of Consumed Energy during each half-hourly metering period.
- 1.24 "Third-Party Supplied Energy" shall mean the electrical energy injected onto the City's Electricity Grid by the Third-Party Supplier, as measured by Eskom or the City, as the case may be, at the Point of Generator Connection on a time-of-use basis.
- 1.25 "Third-Party Supplier" shall mean the person or entity detailed in Schedule 1, holding a trading license (if applicable), and authorized by the City (in its capacity as Service Authority) and contracted by the Consumer to supply Wheeled Energy to the Consumer in terms of the Power Purchase Agreement.
- 1.26 "Time-of-Use Periods" shall mean the time-of-use periods as defined in the Prescribed Tariff in accordance with the City's Electricity Tariff Policy.
- 1.27 "Wheeled Energy" shall mean the Nominated Percentage of the Third-Party Supplied Energy which is deemed to be Wheeled to the Consumer under this Agreement.
- 1.28 "Wheeling" shall mean the process of transporting or moving the Wheeled Energy supplied by a Third-Party Supplier through the City's Electricity Grid to a Consumer, and "Wheel" and "Wheeled" shall have corresponding meanings.

2. INTERPRETATION

- 2.1 Unless inconsistent with the context, an expression which denotes:
- 2.1.1. any gender includes the other genders;
 - 2.1.2. a natural person includes a juristic person and vice versa;
 - 2.1.3. the singular includes the plural and vice versa.
- 2.2 The headings of the clauses of this Agreement shall not be deemed part of or affect the interpretation or construction thereof.
- 2.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it only appears in a definitions clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement.
- 2.4 In the event of any conflict or inconsistency between this Agreement and the Main Supply Agreement, the terms and conditions of this Agreement will prevail.
- 2.5 Words and expressions used in this Agreement which are not defined herein but are defined in the Main Supply Agreement and/or the City of Cape Town Electricity Supply By-law, as amended, bear the same meaning as that defined therein.
- 2.6 If and to the extent that an ambiguity, conflict, discrepancy or inconsistency exists or arises between this Agreement and any Schedule attached to this Agreement, then the Agreement shall prevail.

3. SUPPLY OF ELECTRICITY

The City approves the Consumer to be supplied with Wheeled Energy from a Third-Party Supplier via the City's Electricity Grid, subject to the terms and conditions contained herein.

4. ENERGY MEASUREMENT

- 4.1 The Consumed Energy shall be measured monthly by the City at the Point of Supply for each billing period on a half-hourly basis.
- 4.2 The energy generated by the Generation Facility will be measured monthly, either by the City or Eskom, as the case may be, at the Point of Generator Connection for each billing period on a half-hourly basis. Where the generated energy is to be measured by Eskom, the half-hourly meter readings must be provided by Eskom to the City.
- 4.3 The amount of Wheeled Energy, Deficit Wheeled Energy and Surplus Wheeled Energy will be calculated [on a monthly basis] using the City and Eskom meter readings, as applicable.
- 4.4 Only energy where meter readings have been provided by Eskom and credited to the City's Eskom account will be considered to have been injected onto the City's Electricity Grid. Failing this, Third-Party Supplied Energy shall be zero.
- 4.5 For any period when the City has not received Eskom meter readings within the prescribed time or in the prescribed format, the relevant Wheeled Energy will be deemed to be zero. The account will be adjusted at a later stage once the relevant meter readings have been received by the City, in accordance with the City of Cape Town Electricity Supply By-law.

- 4.6 If the half-hourly meter readings for a given month are not provided by Eskom to the City in accordance with clause 4.2 above, or are manifestly incorrect, then the Consumer shall be entitled to appeal the readings with Eskom for correction.
- 4.7 For a Consumer Pool, the Deficit Wheeled Energy and Surplus Wheeled Energy shall be calculated and billed at Consumer Pool level and not at Consumer level.
- 4.8 All meters will be commissioned and maintained in accordance with SANS 474.
- 4.9 The accuracy and estimation of City metering is governed by the City of Cape Town Electricity Supply By-law.
- 4.10 Subject to clause 16, to the extent the Consumer disputes any of the meter readings provided by the City the Consumer shall be entitled [at its own cost] to refer any such dispute to an approved testing authority in accordance with the City of Cape Town Electricity Supply By-law, the result of which shall be binding on both parties.

5. ALLOCATION OF WHEELED ENERGY

- 5.1 The City will allocate or deliver the Wheeled Energy to the Consumer at the Point of Supply in accordance with Part I of Schedule 2, unless amended in accordance with clause 5.2 and 5.3.
- 5.2 If the Consumer wishes to amend the allocation of Wheeled Energy it shall do so by issuing a Dispatch Notice to the City.
- 5.3 The City will implement and action a Dispatch Notice as soon as possible and in any event no later than 30 days after the date of receipt by the City.
- 5.4 The Consumer holds the City harmless for any damages or losses that the Consumer may suffer from the City implementing a Dispatch Notice, whether this results from a modification to the agreement between the Consumer and Third-Party Supplier, and whether communicated to the City or not.
- 5.5 The Nominated Percentage or Consumer Pool participation specified in Part I of Schedule 2 or amended pursuant to clause 5.2 and 5.35.3 (if any) will be applied for each Time-of-Use Period.

6. CHARGES FOR ELECTRICITY

- 6.1 The Consumer or Consumer Pool (where applicable) shall be liable under this agreement for all charges as per the City's Prescribed Tariff as amended from time to time. All charges, as applicable, will be billed monthly on the electricity account.
- 6.2 The City may recover Consumer Pool charges from all or any of the Consumer Pool and participating Consumers who may be held liable for the full amount of the charges.
- 6.3 The City's Time-of-Use Periods will be used in the calculation of all time-of-use related charges.
- 6.4 Unless appointed in terms of the City's Supply Chain Management Policy, Consumers will not be paid if the monthly bill goes into credit due to Surplus Wheeled Energy credits, and any credit balance will be carried forward to the following month.

6.5 The Prescribed Tariff is amended annually on 1 July of each calendar year, as regards quantum and structure, and are applicable to all existing and new Wheeling Consumers. The City reserves the right to make amendments to the Prescribed Tariff and does not warrant the financial viability of the Consumer's Wheeling arrangements.

6.6 The Prescribed Tariff shall be furnished to the Consumer upon written request to the City.

7. ENERGY OFF-SETTING

7.1 Consumed Energy at both the Consumer's Point of Supply and the Third-Party Supplied Energy at the Point of Generator Connection will be metered over half-hourly metering periods and energy off-setting will be done over the same period. Deficit Wheeled Energy will be charged and Surplus Wheeled Energy will be credited in accordance with the Prescribed Tariff.

7.2 In the event of the Third-Party Supplier not being able to inject energy onto the City's Electricity Grid for whatsoever reason, Consumed Energy which is, as a result, not off-set with Wheeled Energy will be considered to be Deficit Wheeled Energy.

7.3 In the event of the Consumer not being able to receive electricity for whatsoever reason, Wheeled Energy which is, as a result, not off-set with the Consumed Energy will be considered to be Surplus Wheeled Energy.

7.4 For Consumers participating in a Consumer Pool, off-setting will be done at Consumer Pool level and not at Consumer level.

8. GREENING MECHANISM / PURCHASE OF SURPLUS WHEELED ENERGY

8.1 In order to allow consumers to green their consumption of electrical energy the City will purchase the Surplus Wheeled Energy on a time-of-use feed-in basis but excluding the purchase of the associated Green Benefits. This purchase will allow the Green Benefits to be retained by the Consumer to green the Deficit Wheeled Energy purchased.

8.2 The City will not be responsible for the verification of Green Benefits of the Wheeled Energy.

9. OWNERSHIP OF GREEN BENEFITS

The City will not be responsible for the verification or certification of Green Benefits of the Wheeled Energy (ownership of the Green Benefits should be addressed in the Power Purchase Agreement. Where the Consumer enters into a greening mechanism with the City, the Consumer will need to certify that they have ownership of the Green Benefits of the Wheeled Energy).

10. POOL

Notwithstanding, the City may recover the charges for Deficit Wheeled Energy and Surplus Wheeled Energy from all or any of the Consumer Pool and participating Consumers who may be held liable for the full amount of the charges.

11. EFFECTIVE DATE AND DURATION

- 11.1 This Agreement will commence on the first day of the calendar month following the Effective Date and will endure indefinitely unless terminated by either party, in terms of the provisions of the Main Supply agreement.
- 11.2 This Agreement shall terminate with immediate effect if the Main Supply Agreement is terminated for any reason.

12. BREACH

- 12.1 Should either Party hereto breach or fail to comply with any term or condition of this Agreement, then the Party aggrieved thereby must give the defaulting Party written notice to rectify such a breach.
- 12.2 In the event of the defaulting Party failing to rectify such a breach within fourteen (14) days of the delivery of such notice, the aggrieved Party shall be entitled to give written notice of termination of this Agreement to the other Party. Such termination shall take effect upon delivery of such notice to the other.
- 12.3 Termination of this Agreement shall be without prejudice to any other rights or remedies of the aggrieved Party under this Agreement or at Law and will not affect any accrued rights or liabilities of the aggrieved Party at the date of termination.

13. TERMINATION

This Agreement shall terminate with immediate effect upon the happening of any of the following events:

- 13.1 The Main Supply Agreement is terminated for any reason.
- 13.2 If either Party fails to rectify a breach of this Agreement as provided for in terms of Clauses 12.1, 12.2 and 12.3.
- 13.3 If the Consumer gives two working days' notice in writing of him/her no longer requiring a supply of electricity.
- 13.4 If the City gives a valid notice of termination to the Consumer following the Consumer having committed any act of insolvency.
- 13.5 If the City gives a valid notice of termination to the Consumer following the Consumer having contravened the provisions of any Law relevant to the implementation of this Agreement.
- 13.6 If any of the enabling agreements or authorisations rendering the implementation of this agreement possible fails or is terminated, including but not necessarily limited to the City's supplemental agreement with Eskom, generation license withdrawal, Third-Party Supplier trading license withdrawal (if applicable), termination of the Grid Connection and Use of System Agreement between the Generator or Third-Party Supplier and the Supply Authority, decommissioning of the Generation Facility, termination of agreements and authorisations relating to the use and occupation of land.
- 13.7 The Parties mutually agree to terminate this Agreement.

14. CESSION

The consumer shall not cede or assign this Agreement or any part thereof or any benefit, obligation or interest herein or hereunder without the prior written consent of the City.

15. LIABILITY

- 15.1 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, fraud or unlawful intent of the defaulting Party.
- 15.2 If either Party is liable for damages caused to the other Party in terms of 15.1 above, such liability will be limited to direct damages and will exclude consequential damages, provided that consequential damages shall include, but shall not be limited to, loss of production, revenue, income or profit.
- 15.3 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 intent or fraud of the first Party.
- 15.4 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:
- 15.4.1. death of or injury to a person; or
 - 15.4.2. loss of or damage to property; or
 - 15.4.3. 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.

16. DISPUTE RESOLUTION

- 16.1 If any dispute, claim or disagreement arises out of or in connection with this Agreement, which is not capable of being resolved under the City of Cape Town Electricity Supply By-law ("**Dispute**"), and provided the Consumer has exhausted all its rights under the City of Cape Town Electricity Supply By-law, representatives of the Parties with authority to settle the Dispute will, within 14 days of a written request from one Party to the other, meet in a good faith effort to resolve the Dispute.
- 16.2 Any Dispute between the Parties which cannot be amicably resolved between the Parties at a meeting held pursuant to the provisions of clause 16.1 shall be resolved by arbitration.
- 16.3 A Party may, on written notice to the other Party, refer a Dispute that could not be resolved pursuant to the provisions of clause 16.1 to arbitration, to be dealt with in accordance with the arbitration procedures set out in this clause. The arbitration shall be conducted:
- 16.3.1. in the English language;
 - 16.3.2. in Cape Town, South Africa;
 - 16.3.3. by an arbitrator appointed by the Parties; and

16.3.4. in accordance with the rules of the Arbitration Foundation of Southern Africa (“AFSA”).

16.4 Notwithstanding anything to the contrary in this clause, any Party shall be entitled to apply for, and if successful, be granted, an interdict or other interim and/or urgent relief from any competent court having jurisdiction.

16.5 Save as expressly provided in this Agreement to the contrary, the arbitration shall be subject to the applicable commercial arbitration rules for the time being in force of the AFSA.

16.6 The arbitrator shall be, if the matter in dispute is principally:

16.6.1. an accounting/financial related matter, an independent auditor or, failing agreement by the Parties within 10 (ten) days after delivery of the notice referring the Dispute to arbitration, at the request of either of the Parties shall be nominated by the chairman (or equivalent or successor) for the time being of AFSA; and

16.6.2. any other matter, an independent legal expert appointed by the Parties or, failing agreement by the Parties within 10 (ten) days after delivery of the notice referring the Dispute to arbitration, at the request of either of the Parties shall be nominated by the chairman (or equivalent or successor) for the time being of AFSA,

provided that if the Parties are unable to agree whether it is primarily an accounting/financial related matter or other matter, then the matter shall be deemed to be any other matter.

16.7 The Parties shall keep the evidence in the arbitration proceedings and any order or award made by any arbitrator confidential unless otherwise contemplated herein.

16.8 The arbitrator shall be obliged to give his award in writing fully supported by reasons.

16.9 The arbitrator may make such award or awards, whether interim, provisional or final, as he may consider appropriate, including without limitation interim measures, *ex parte* awards, declaratory orders, injunctions and awards for specific performance, restitution, damages, interest and security for costs or restitution.

16.10 The provisions in this clause¹⁶ shall be severable from every other part of this Agreement and shall survive the termination or cancellation for whatever reason of this Agreement, notwithstanding that the rest of this Agreement may be void or voidable.

16.11 The Parties hereby consent to the non-exclusive jurisdiction of the High Court of South Africa, Western Cape Division, seated at Cape Town for any proceedings contemplated in clause 16.4 or for purposes of making any arbitral award an order of court.

17. CONFIDENTIALITY

The Parties agree that, except for matters of public record as of the date of this Agreement, they will keep the terms and contents of this Agreement confidential, and that they will not hereinafter disclose the terms of this Agreement to other persons except as compelled by applicable Law or to individuals who have a need to know about this Agreement and its contents, such as Parties' legal counsel, tax advisors, or other retained professional representatives, all of whom shall be informed and bound by this confidentiality clause. In no event will any Party make or cause to be made any comment, written statement, or press release to any member of the media concerning the existence or contents of this Agreement.

18. MISCELLANEOUS

18.1 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.

18.2 NOTICES / ADDRESSES

18.2.1. Any notice, notification, request, demand or other communication for any purpose under this Agreement shall be in writing addressed, in the case of the Consumer, to the following address:

.....

.....

.....

Account Number

Email:

marked for attention

and in the case of the City to the following address:

Director: Electricity Generation and Distribution
Bloemhof Complex
Bloemhof Rd, Oakdale, Bellville
Cape Town, 8001

Email: edgar.capes@capetown.gov.za

marked for attention of Mr Edgar Capes

18.2.2. All notices, notifications, requests, demands or other communications including Accounts, shall be deemed to have reached the other Party —

18.2.2.1 if delivered by hand, on the date of delivery;

18.2.2.2 if posted by ordinary mail or registered post, on the 5th (fifth) day following the date of such posting, and in the case of an Account on the 5th (fifth) day following the date of the Account

18.2.2.3 If transmitted by facsimile or any other electronic medium acceptable to both Parties, on the 1st (first) Business Day following the date of transmission / publication / delivery.

18.2.3. Delivery via email will be an acceptable method of delivery provided receipt is confirmed or a read receipt is available.

18.2.4. For the purpose of this Agreement the Consumer's *domicilium citandi et executandi* is:

.....

.....

.....

.....

and the City's *domicilium citandi et executandi* is:

Director: Electricity Generation and Distribution
Bloemhof Complex
Bloemhof Rd, Oakdale, Bellville
Cape Town, 8001

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

18.3 ENTIRE AGREEMENT AND VARIATION

18.3.1. 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.

18.3.2. 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.

18.4 WAIVER

18.4.1. 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).

18.4.2. 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.

18.5 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.

18.6 GOVERNING LAW

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

18.7 COUNTERPARTS

This Agreement may be executed in two counterparts which together will constitute the original agreement, and separately and individually will be considered evidentiary proof of the agreement.

SIGNED at Cape Town on the _____ day of _____ 20_.

AS WITNESSES:

1. Name Signature.....

2. Name Signature.....

K Nassiep

For the City

SIGNED at _____ on the _____ day of _____ 20_.

AS WITNESSES:

1. Name Signature.....

2. Name Signature.....

.....
For the Consumer

SCHEDULE 1

Details of Third-Party Supplier / Generator

- Name:
- Address:
- Contact details:

Third-Party Supplier NERSA Trading License (if applicable)

- License Number:
- Approval date:.....

Where the Third-Party Supplier will Wheel energy to the Consumer from a Generator directly connected to the City's network, the following information must be provided for each Generator:

Name of Generator:

Rated Generator output (MW):

Voltage level at Point of Generator Connection:

Primary energy source for generation:

Name of Supply Authority to which Generation Facility is connected:

Location of Generator Point of Grid Connection:

Address:.....
.....

GPS Coordinates:

Name of Generator Point of Connection Substation:

Generator NERSA Generation License or Registration Number:

- Approval date:

SCHEDULE 2

Part I - Initial Nomination

Initial Nomination of Wheeled Energy to be supplied to Consumer

The Nominated Percentage of Third-Party Supplied Energy measured at the following Point of Generator Connection which are to be Wheeled to the Consumer under this Agreement (Wheeled Energy) will, from the effective date of this Agreement, be as follows:

Generator / Point of Generator Connection	Nominated Percentage (%)

Consumer Pool Participation Yes/No

Name of Consumer Pool.

Part II - Dispatch Notice

Amendment to Nomination of Wheeled Energy to be supplied to Consumer

The Nominated Percentage of Third-Party Supplied Energy measured at the following Point of Generator Connection which is to be Wheeled to the Consumer under this Agreement (Wheeled Energy) is required to be amended as follows:

Generator / Point of Generator Connection	Nominated Percentage (%)

Consumer Pool Participation: Yes/No

Name of Consumer Pool

Signed: Third-Party Supplier

Date:

Signed: Consumer

Date:

SCHEDULE 3

CONDITIONS PRECEDENT

The provisions of this Agreement (other than the Operative Provisions to which the Parties shall nevertheless be bound), are conditional upon the fulfilment of the following Conditions Precedent by[insert date] (or such later date as the Parties may agree in writing) –

- the City's supplemental agreement with Eskom being entered into between the City and Eskom and becoming unconditional with its terms; and
- the City's supplemental agreement with Eskom being delivered to the Consumer in a form and in substance satisfactory to the Consumer.

The Parties shall use their reasonable endeavours to procure the timeous fulfilment of the Conditions Precedent, to the extent that the fulfilment of such conditions is within their power and control.

If any Condition Precedent is not fulfilled or waived on or prior to the date stipulated in the above clause then either Party may, on written notice to the other Party, terminate this Agreement and no Party shall have any claim against the other as a result of or in connection with any such non-fulfilment of the Conditions Precedent (other than a claim for a breach by a Party of any of its obligations under the Operative Provisions).