



CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

## **(DRAFT) WHEELING 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**”)

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

**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 energy to the Consumer;

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

## 1. DEFINITIONS

"Billing Period" means the duration of the period from one meter-reading date and time, of the Total Consumed Energy, to the next meter-reading date and time, (as determined in the current Main Supply Agreement)

"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.

"Consumer" shall mean.....(company name)  
Company/close corporation registration number.....

"Consumer Point of Supply" shall mean the actual supply point on the network as described in Schedule 1.

"Deficit Wheeled Energy" means energy consumed by the Consumer which exceeds Wheeled Energy during each half hour metering period.

"Electricity Grid" means the Electricity Grid belonging either to Eskom or to the City as the case may be.

'Force Majeure' means any act, event or circumstance or any combination of acts, events, conditions and/or circumstances (a 'Force Majeure Event') which is not within the reasonable control, directly or indirectly, of the party invoking Force Majeure, but only if and to the extent that:

- (a) it is without fault or negligence on the part of the party invoking Force Majeure;
- (b) it is not the direct or indirect result of a breach of any of the obligations of the party invoking force majeure or its contractors under this agreement;
- (c) it was not foreseeable or, if foreseeable, could not have been avoided (including by reasonable prevention) or the effects of which could not have been overcome or mitigated by the party invoking Force Majeure or the contractors concerned, acting reasonably and prudently;
- (d) it prevents, hinders or delays the Affected Party in its performance of all or a material part of its obligations under this Agreement;
- (e) the party invoking Force Majeure has complied with clause 15.

Without limiting the generality of the foregoing, a Force Majeure Event may include any of the following acts, events, conditions or circumstances, but only to the extent that it satisfies the requirements set out above:

- (a) 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, epidemic or plague. A reasonably

foreseeable natural event, such as a delay resulting from unfavourable weather conditions or unsuitable ground conditions or any similar reasonably foreseeable and regularly occurring conditions shall be excluded from and not constitute a Force Majeure Event;

- (b) any blockade or embargo;
- (c) any delay in obtaining any approvals, provided that the party invoking Force Majeure has complied with all of its obligations in respect of the obtaining of such approvals;
- (d) strikes, lock outs and other industrial action other than by employees of the party invoking Force Majeure or its contractors;
- (e) war, civil war, armed conflicts, terrorism, vandalism or extended non-access to critical infrastructure in each case occurring within or involving the Republic of South Africa;
- (f) nuclear contamination;

each such act, event, condition or circumstances or combination thereof being a 'Force Majeure Event'.

"Force Majeure Notice" has the meaning given to it in Clause 15.

"Generator" shall mean the person or *entity* licensed by NERSA to operate a Generation Facility and which has entered into the Generator Grid Connection and Use-of-System Agreement for the Generation Facility which generates energy a portion of which is wheeled to the Consumer under this agreement. Generators directly connected to the City's grid must be detailed in Schedule 1.

"Generator Grid Connection and Use-of-System Agreement" means the connection agreement entered into between the City or Eskom (as the case may be) and the Generator to physically connect the Generation Facility to the Electricity Grid and to allow the Generator access to and the usage of the Electricity Grid, to export electrical energy from the Generation Facility.

"Generator Point of Connection" means the electrical node on the Electricity Grid where the Generation Facility is physically connected to the Electricity Grid in terms of the Generator Grid Connection and Use-of-System Agreement

"Green Benefits" mean all the intangible benefits associated with the generation of renewable energy and are distinctly separate from the energy itself.

"Greening of Electricity Consumption" means associating the consumption of fossil fuel based electricity with the Green Benefits of renewable electricity which has already been generated.

"Intake point" is either a Generator Point of Connection to the City's Electricity Grid or the Eskom point of supply to the City specified by Eskom. (and as defined in Eskom wheeling agreement).

“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.

"Metering Installation" means metering equipment (including an electronic meter) used to measure the electrical energy consumed by the Consumer at the Consumer's Point of Supply.

“Parties” shall mean collectively, the City and the Consumer.

“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. These include wind, solar, bioenergy, hydropower and ocean and geothermal resources.

“Surplus Wheeled Energy” means Wheeled Energy which exceeds energy consumed by the Consumer during each half hour metering period.

“Third Party Supplier” is the person or entity detailed in Schedule 1, authorized by the City (as Service Authority) and contracted by the consumer to supply Wheeled Energy to the Consumer.

“Time of Use Periods” means the time periods as defined in the City's Tariff Policy (The City's Time of Use periods differ from that of Eskom's).

“Total Consumed Energy” means the total quantity of energy delivered over the City's Electricity Grid and consumed by the Consumer as measured by the City at the Consumer's Point of Supply on a Time of Use basis.

"Wheeled Energy" means the Third Party Supplier's electrical energy injected onto the City's Electricity Grid as measured by Eskom or the City (as the case may be) at the relevant intake points.

'Wheeling' means the transportation of electricity by a Third Party Supplier to a Consumer through an electricity grid not owned, controlled or leased by either party; Wheel and Wheeled shall have corresponding meanings.

## **2. INTERPRETATION**

2.1 Unless inconsistent with the context, an expression which denotes:

- any gender includes the other genders;
- a natural person includes a juristic person and vice versa;
- 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.

### **3. GENERAL AGREEMENT**

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. MEASUREMENT OF CONSUMED ENERGY AND WHEELED ENERGY**

- 4.1 The Consumed Energy shall be measured monthly by Eskom and/or by the City (as the case may be) at the Consumer's Point of Supply for each Billing Period on a half-hourly basis.
- 4.2 Where duplicate meters have been installed at the Consumer's Point of Supply 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.
- 4.3 The Wheeled Energy shall be measured monthly by Eskom and/or by the City (as the case may be) at the relevant intake points for each Billing Period on a half-hourly basis.
- 4.4 Measurement of the Wheeled Energy shall be in accordance with the relevant Generator Grid Connection and Use-of-System Agreement with the City or with Eskom as the case may be.
- 4.5 During any period when the meter readings at the Generator Point of Connection have not registered, or are unreliable due to the meters or any associated equipment being defective, a reasonable estimate may be made by the City or Eskom where applicable taking into account the evidence supplied by any meters belonging to the Generator contracted by the Third Party Supplier. The account(s) for such period shall be based on such estimate. The account will be adjusted at a later stage once verified meter readings have been received by the City.
- 4.6 Defective meters shall be tested and repaired by the responsible party.
- 4.7 For any period when the meter readings or estimates taken by Eskom have not been received by the City within the prescribed time or in the prescribed format, the relevant Wheeled Energy will be deemed to be zero for the corresponding billing cycle. The account will be adjusted at a later stage once the relevant meter readings and the prescribed adjustment fee have been received by the City.

## **5. ALLOCATION OF WHEELED ENERGY**

- 5.1 The City will allocate the nominated energy to be Wheeled to the Consumer as detailed in Schedule 3.
- 5.2 The Consumer indemnifies the City for any damages or losses that may arise from the City applying the nominated allocation, whether this results from a change in allocation or a modification to the agreement between the Consumer and Third Party Supplier whether communicated to the City or not.
- 5.3 If a percentage or ranking nomination is made, the same percentage or ranking will be applied for each Time of Use period.

## **6. CHARGES FOR ELECTRICITY**

- 6.1 The tariff applied under this wheeling agreement will be as detailed in Schedule 2.
- 6.2 The Consumer shall be liable for all charges as per the City's Prescribed Tariffs as amended from time to time. All charges, as applicable, will be billed on the monthly electricity account.
- 6.3 The City's Time of Use periods will be used in the calculation of all Time of Use related charges.
- 6.4 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 aforesaid tariffs are 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 tariff as stated and does not warrant the financial viability of the Consumer's wheeling arrangements.
- 6.6 The prescribed Tariffs shall be furnished to the Consumer upon written request to the City.

## **7. ENERGY BALANCING**

- 7.1 Energy at both the Consumer's Point of Supply and the Wheeled Energy at the applicable Intake points and Generator's Points of Connection will be metered over half hourly metering integration periods and energy balancing will be done over the same period. Deficit Wheeled Energy will be charged and Surplus Wheeled Energy will be credited at regulated tariffs. Unless the City has agreed in writing to compensate the Consumer for Surplus Wheeled



Energy to enable to Consumer to green their Consumed Energy, Surplus Wheeled Energy will be taken at zero price.

- 7.2 In the event of the Third Party Supplier not being able to inject power onto the electricity network for whatsoever reason, consumption which is not balanced 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 not balanced with consumed energy will be considered to be Surplus Wheeled Energy.

## **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 Surplus Wheeled Energy wheeled to the Consumer 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 Energy purchased.
- 8.2 The Consumer shall be liable to verify the Green attributes of the Wheeled Energy. If such verification is not provided to the satisfaction of the City, the City reserves the right to cease Surplus Wheeled Energy purchases under the greening mechanism.
- 8.3 As the total green energy wheeled by the Third Party Supplier should balance the Total Energy consumed by the Consumer, the Surplus Wheeled Energy purchased by the City should not exceed the Deficit Wheeled Energy supplied. Should the Surplus Wheeled Energy materially exceed the Deficit Wheeled Energy over a 12-month period, the City reserves the right to limit the Surplus Wheeled Energy it will purchase under the greening mechanism.
- 8.2 The Consumer will be responsible to manage the supply of Surplus Energy.

## **9. OWNERSHIP OF GREEN BENEFITS**

The City will not be responsible for the verification or certification of Green Benefits of Wheeled Energy (Ownership of the Green Benefits should be addressed in the Power Purchase Agreement between the Generator/Third Party Supplier and the Consumer of the Wheeled Energy. Where the Consumer enters into greening mechanism with the City, the Consumer will need to certify that they have ownership of green benefits of the wheeled energy).

## **10. EFFECTIVE DATE AND DURATION**

10.1 This agreement will commence on the date of signature hereof by the last signatory and will endure indefinitely, subject to any cancellation which may occur in terms hereof.

## **11. BREACH**

11.1. 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.

11.2. 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 further notice to the other party.

11.3. 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.

## **12. TERMINATION**

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

12.1 If either party fails to rectify a breach of this Agreement as provided for in terms of Clause 11.

12.2 If the Consumer gives two working days' notice in writing of him/her no longer requiring a supply of electricity.

12.3. If the Consumer commits any act of insolvency.

12.4. If the Consumer contravenes the provisions of any Law relevant to the implementation of this Agreement.

12.5 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, termination of the Grid Connection and Use of System Agreement between the 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.

12.6 The Parties mutually agree to terminate this Agreement.

### **13. CESSION**

13.1 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.

### **14. LIABILITY**

14.1 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.

14.2 If either party is liable for damages caused to the other party in terms of 14.1 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.

14.3 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.

14.4 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:

- death of or injury to a person; or
- loss of or damage to property; or
- 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.

### **15. FORCE MAJEURE**

15.1 If either party desires to invoke a Force Majeure Event as a cause for delay in the performance of any obligation hereunder, it must notify the other party in writing setting out:

15.1.1 the date of commencement of the Force Majeure Event;

15.1.2 full particulars of the Force Majeure Event;

15.1.3 the impact of the Force Majeure Event on performance of its obligations under this Agreement:

15.1.4 its reasonable estimate of the length of time which its performance has been and will be affected by the Force Majeure Event; and

15.1.5 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;

provided that such notice (the 'Force Majeure Notice') must be sent not later than 3 (three) days after the date on which the relevant party first had knowledge of the effect of such Force Majeure Event. If the affected party does not deliver a Force Majeure Notice in respect of a Force Majeure Event within this timeframe, such party shall not be entitled to invoke the benefits of this Clause 15 in relation to such Force Majeure Event.

15.2 The party invoking force majeure 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.

15.3 The party invoking Force Majeure must:

15.3.1 use reasonable endeavours to mitigate, rectify and overcome the effects of the Force Majeure Event on the performance of its obligations under this Agreement (including by recourse to alternate sources of services, equipment and materials and construction equipment);

15.3.2 use reasonable endeavours to ensure resumption of normal performance of this Agreement promptly following the cessation of the Force Majeure Event; and

15.3.3 give the other party (i) regular reports on the progress of the mitigation measures and (ii) notice promptly on the cessation of the Force Majeure Event.

15.4 If it is agreed or determined that a Force Majeure Event has occurred, the party invoking force majeure will, provided that it has complied with the requirements of this Clause 15, not be liable for any failure to perform an obligation under this Agreement as a consequence of the Force Majeure Event but only to the extent that:

15.4.1 such performance is prevented, hindered or delayed by a Force Majeure Event; and

15.4.2 such failure could not have been removed, mitigated, rectified or overcome by the party invoking force majeure acting reasonably and prudently.

15.5 If the party invoking Force Majeure 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 party invoking Force Majeure has complied with the requirements of this Clause 15, 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.

15.6 If the Force Majeure Event subsists for more than 24 (twenty-four) months, the recipient of the Force Majeure Notice 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.

## **16. CONFIDENTIALITY**

16.1 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:

16.1.1 such party notifies the recipient in advance of such disclosure that the information is subject to the non-disclosure restrictions contained in this Clause 16; and

16.1.2 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.

16.2 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.

16.3 These provisions do not apply to information which is:

16.3.1 publicly known or becomes publicly known through no unauthorised act of the recipient party;

16.3.2 rightfully received by the recipient party from a third party;

16.3.3 independently developed by the recipient party without use of the other party's information;

16.3.4 disclosed by the other party to a third party without similar restrictions;

16.3.5 required to be disclosed pursuant to a requirement of a Governmental Authority or any applicable Law, so long as the party required to disclose the information gives the other party prior notice of such disclosure;

- 16.3.6 publicly disclosed with the other party's written consent;
- 16.3.7 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.
- 16.4 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.
- 16.5 The provisions of this Clause 16 shall survive the expiry or termination of this Agreement for a period of 5 (five) years.
- 16.6 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.
- 16.7 Subject to this Clause 16, 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).

## 17. MISCELLANEOUS

### 17.1 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.

### 17.2 NOTICES / ADDRESSES

17.2.1 Subject to sub-clause 17.2.3, 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:

*(Insert Address)*

Email: \_\_\_\_\_

marked for attention \_\_\_\_\_ *(insert name)*

in the case of the City to the following address:

*(Insert Address)*

Email: \_\_\_\_\_

marked for attention \_\_\_\_\_ *(insert name)*

17.2.2 All notices, notifications, requests, demands or other communications including Accounts, shall be deemed to have reached the other party –

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

17.2.2.2 if posted by ordinary mail or registered post, on the 5<sup>th</sup> (fifth) day following the date of such posting, and in the case of an Account on the 5<sup>th</sup> (fifth) day following the date of the Account;

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

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

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

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

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

**17.3 ENTIRE AGREEMENT AND VARIATION**

17.3.1 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.

17.3.2 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.



## **17.4 WAIVER**

- 17.4.1 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).
- 17.4.2 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.

## **17.5 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.

## **17.6 GOVERNING LAW**

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

## **17.7 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.....

2.....

For the City

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

AS WITNESSES:

1.....

2.....

For the Consumer

**SCHEDULE 1**

Details of Third Party Supplier

- Name: .....
- Address: .....
- Contact details: .....

Third Party Supplier NERSA Trading License (if applicable)

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

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

Name of Generation License holder: .....

Rated Generator output (MW): .....

Voltage level at Generator Point of 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

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

**SCHEDULE 2**

**Charges for Wheeling of Electricity**

Description of the City of Cape Town Electricity Tariff which will apply to wheeling under this Supplemental Agreement:

.....  
.....

The charges relating to the Total Consumed Energy and Deficit Energy and credit for surplus Wheeled Energy shall be determined in accordance with the rates set out in the Prescribed Tariffs as follows:

Wheeling Use of System Charges

- The Service Charge (R/day) times number of days since previous billing period.
- The seasonal ToU based Energy Charge (R/kWh) times Total Consumed Energy (kWh) for each Time of Use period
- The Demand Charge (R/kVA) times the monthly maximum demand (kVA)
- The Network Access Charge (R/kVA NMD) times the Notified Maximum Demand (kVA NMD)

Deficit Wheeled Energy charges

- The seasonal ToU based energy charge(R/kWh) times Deficit Wheeled Energy (kWh) for each Time of Use period

Surplus Wheeled Energy Credit (new tariff name/TBA)

Is the energy source of the wheeled energy renewable? (Yes/No) .....

(Note: Credits for Surplus Wheeled Energy will only be applicable where the Consumer has substantiated to the City's satisfaction that the primary energy resource is renewable. Alternatively, Surplus Wheeled Energy will be received by the City at no cost)

- The seasonal ToU based *Surplus Wheeled Energy Rate* (R/kWh) times Total Surplus Wheeled Energy (kWh) for each Time of Use period

**SCHEDULE 3**

**Nomination of Wheeled Energy to be supplied to Consumer**

This may be a nominated percentage of Wheeled Energy provided by the Third Party Supplier to the Consumer and may include a ranking of Consumers in which case Wheeled Energy will only be allocated to the Consumer after it has first been allocated to 100% of the Total Consumed Energy of higher ranked Consumers.

(These mechanisms can only be confirmed once the system is tested)

The amount of Wheeled Energy measured at the following Generator Points of Connection or Intake Points which is to be wheeled to the Consumer under this is agreement will be as follows:

Generator Points of Connection / Intake Points applicable to Consumer	Percentage (%)

Ranking	Consumers
1	
2	
3	

Signed: Third Party Provider .....

Date: .....

Signed: Consumer .....

Date: .....

Signed: City of Cape Town .....

Date: .....