



**CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD**

ANNEXURE 40

CITY OF CAPE TOWN ELECTRICITY SURPLUS AGREEMENT



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

ELECTRICITY SURPLUS 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 City and the Consumer are desirous of entering into a written Agreement recording and regulating the terms and conditions relating to the consumer being compensated for small scale embedded generation surpluses;

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

1. DEFINITIONS

“**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 Electricity Supply By-Law 2010 (as amended by the Electricity Supply Amendment By-Law, 2017) , , interchangeably as the “*Service Authority*” and the “*Service Provider*”

“**Consumer**” means a person who has a valid existing electricity supply agreement with the City, and approved grid-tied SSEG installation and are able to supply the electricity grid with surplus generated energy.

“**Consumed Energy**” means the energy supplied by the City and used by the consumer.

“**Electricity Grid**” means the Electricity Grid belonging to the City.

“**Eskom**” means South African electricity public utility.

“**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.

“**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.

“**Main Supply Agreement**” means the electricity supply contract between the City and the consumer whereby the City provides electricity supply to the consumer.

“**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.

“**Metering Period**” means the electricity used or supplied in a given period.

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

“**Surplus Energy**” means consumer-generated Energy which exceeds energy consumed by the Consumer during each half hour metering period.

“**Tariff**” means the tariff of charges for the supply of electricity and sundry fees, as approved by the City.

“**Third Party Supplier**” is the person or entity authorized by the City (as the 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.

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.

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 Electricity Supply By-law, as amended, bear the same meaning as that defined in the Main Supply Agreement or By-law.

3. GENERAL AGREEMENT

The City agrees to pay the Consumer for any surplus generated energy not consumed by the Consumer but supplied to the City’s Electricity Grid, subject to the terms and conditions contained herein.

4. MEASUREMENT OF CONSUMED ENERGY AND SURPLUS ENERGY

4.1 The Consumed Energy shall be measured monthly by the City at the Consumer’s Point

of Supply for each Billing Period on a half-hourly basis.

- 4.2 The Surplus Energy shall be measured monthly by the City at the Consumer's Point of Supply for each Billing Period on a half- hourly basis.
- 4.3 During any period when the meter readings at the Consumer's Point of Supply 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 taking into account the evidence supplied by any meters belonging to the Consumer. 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.
- 4.4 Defective meters shall be tested and repaired as prescribed in the Electricity Supply By-law, as amended.

5. PAYMENT FOR SURPLUS ENERGY

- 5.1 The consumer will be credited and paid monthly by the City for surplus electricity.
- 5.2 The rates applied under this agreement will be as detailed in the annually approved City Prescribed Electricity Generation and Distribution Consumptive tariff schedule.
- 5.3 All payments due, as applicable, will be indicated in the Consumers monthly electricity account as issued by the City.
- 5.4 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 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 arrangements.
- 5.5 The prescribed Tariffs are available on the City's website and shall be furnished to the Consumer upon written request to the City.

6. GREENING MECHANISM / PURCHASE OF SURPLUS ENERGY

- 6.1 Consumers may choose to sell the surplus energy with or without the associated Green Benefits.
- 6.2 Choosing to retain the Green Benefits will allow consumers to green their consumption of deficit electrical energy purchased from the City.
- 6.3 The payment tariff rates distinguish between Green benefits retained or transferred.

7. EFFECTIVE DATE AND DURATION

- 7.1 This agreement will commence on the date of signature hereof by the last signatory and will end on the date of termination of the main supply agreement, unless terminated earlier in terms of section 9.

7.2 Should the main supply agreement be terminated for any reason, this agreement will be simultaneously terminated.

8. BREACH

8.1 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.

8.2 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.

8.3 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.

9. TERMINATION

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

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

9.2 If the Consumer commits any act of insolvency.

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

9.4 If any of the enabling agreements or authorisations rendering the implementation of this agreement possible fail or are terminated.

9.5 If the City gives 14 working notice in writing of its intention to terminate this agreement.

9.6 The Parties mutually agree to terminate this Agreement.

10. 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.

11. LIABILITY

- 11.1** 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.
- 11.2** If either party is liable for damages caused to the other party, 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.
- 11.3** 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.
- 11.4** 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.

12. CONFIDENTIALITY

The Parties agree that, except for matters of public record and in line with the Protection of Personal Information Act 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.

13. MISCELLANEOUS

13.1 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.

13.2 NOTICES / ADDRESSES

13.2.1 Subject to sub-clause 13.2.3, 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)*

- 13.2.2 All notices, notifications, requests, demands or other communications including Accounts, shall be deemed to have reached the other party –
- 13.2.3 if delivered by hand, on the date of delivery;
- 13.2.4 if posted by 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;
- 13.2.5 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.
- 13.2.6 Delivery via email will be an acceptable method of delivery provided receipt is confirmed or a read receipt is available.
- 13.2.7 For the purpose of this Agreement the Consumer's *domicilium citandi et executandi* is:

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

Executive Director: Energy
5th floor, Podium Block
12 Hertzog Boulevard
Cape Town
8001

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

13.3 ENTIRE AGREEMENT AND VARIATION

13.3.1 Save as provided for elsewhere 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.

13.4 WAIVER

13.4.1 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).

13.4.2 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.

13.5 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.

13.6 GOVERNING LAW

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

13.7 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.....

L J Rencontre
For the City

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

AS WITNESSES:

1.....

2.....

For the Consumer