



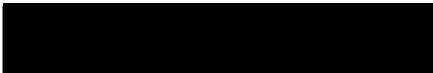
CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

ELECTRICITY SURPLUS 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")

Contract Number: DP7197E/2021/22

PREAMBLE

WHEREAS the City intends on raising the electricity generation capacity within the City of Cape Town Municipality through the Small-Scale Embedded Generators and Distributed Generators Programme ("SSEG");

AND WHEREAS pursuant to the Municipal Finance Management Act no.56 of 2003 ("MFMA") and applicable Laws the City is desirous of entering into Agreements with Consumers for the supply of Surplus Energy;

AND WHEREAS the City has invited Consumers to express an interest in respect of the SSEG;

AND WHEREAS on 15 May 2023, 26 February 2024 and 29 April 2024 the City's Supply Chain Management Bid Adjudication Committee in line with **SCMB 54/05/23, SCMB 51/02/24 and SCMB 78/04/24** respectively, resolved to award the Tender for the Expression of Interest DP7197E/2021/22: Purchase of Small Scale Embedded Generation and Wheeling Surpluses from electricity Customers to

conclusion of a Section 33 of the MFMA process;

AND WHEREAS the price adjustment will be as per the Tariff set annually by City;

AND WHEREAS the City and the Consumer is desirous of entering into a written Agreement recording and regulating the terms and conditions relating to the SSEG.

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

1. PARTIES

The Parties to this Agreement are:

- 1.1. **The City of Cape Town**, a metropolitan municipality, established in terms of the Local Government: Municipal Structures Act. 117 of 1998 read with the Province of the Western Cape: Provincial Gazette 5588 dated 22 September 2000, as amended (the "**City**"), herein represented by the **City Manager or his nominee** duly authorised hereto;
- 1.2. [REDACTED] a private company registered in terms of the laws of the Republic of South Africa with registration no: [REDACTED] with its principal place of business situated at **24 Fabriek Street, Kuilriver** (the "**Consumer**"), herein represented by its duly authorised representative, **G.A Meaker** in his/her capacity as **Director**;

hereinafter jointly referred to as "**Parties**" and in singular, a "**Party**".

2. DEFINITIONS

- 2.1 **"City"** shall mean The City of Cape Town, a 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"*.
- 2.2 **"Consumer"** means an entity/person who has an approved electricity Grid-tied SSEG installation connected to the City Electricity Grid and are able to supply the Electricity Grid with surplus generated energy.
- 2.3 **"NERSA"** means the National Energy Regulator of South Africa.
- 2.4 **"ERA"** means the Electricity Regulation Act 4 of 2006.
- 2.5 **"Agreement"** means the written agreement entered into between the City and the Consumer pertaining to the Electricity Surplus Supply, detailing the conditions the City intends to contract, connect and transact with a Consumer.
- 2.6 **"Consumed Energy"** means the electricity supplied by the City and used by the Consumer.
- 2.7 **"Electricity Grid"** means the electricity grid belonging to the City.
- 2.8 **"Eskom"** means South African electricity public utility.
- 2.9 **"Green Benefits"** means all the intangible benefits associated with the generation of renewable energy and are distinctly separate from the energy itself.
- 2.10 **"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.
- 2.11 **"Law"** shall mean the provisions of the Local Government: Municipal Systems Act (Act No. 32 of 2000), the ERA 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.
- 2.12 **"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.
- 2.13 **"Metering Period"** means the electricity used or supplied in a given period.
- 2.14 **"Point of Supply"** shall mean the point determined by the City at which electricity is supplied to any premises.
- 2.15 **"Surplus Energy"** means Consumer-generated energy which exceeds energy consumed by the Consumer during each half hour metering period.
- 2.16 **"Tariff"** means the tariff of charges for the supply of electricity and sundry fees, as approved by the City.

- 2.17 **“Time of Use Period(s)”** 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).
- 2.18 **“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.
- 2.19 **“Account”** means the invoice issued by the City in respect of *inter alia* Total Consumed Energy in relation to a Point of Supply and Metering Period.
- 2.20 **“Business Partner”** means Consumers which could have more than one property with more than one contract account.

3. INTERPRETATION

- 3.1 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.
- 3.2 The headings of the clauses of this Agreement shall not be deemed part of or affect the interpretation or construction thereof.
- 3.3 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.

DETAILS OF CONSUMER

Consumer Number:

CSD Number

Please indicate with a X the type of registration selection box

MAAA0027155

Sole Proprietor
(complete section 1A)
Registered company
as per CIPC
(Complete section 1 B)

Section 1 A: General details of Sole Proprietor

Title (i.e... Prof/Dr/Mr/Me)

Name

Surname

Identification/Passport Number

Full name(s) as
per
ID/Passport

Section 1B: General Details for the Registered Company (As per CIPC document)

Registered/legal Name

Trading Name

Company Registration Number

As per Clearance
Certificate

As per CIPC
Document

Section 1 C: Tax Control

Income Tax Number

Vat Reg N

As per Clearance
Certificate

Section 2 : General Address & Contact Details

Street Name & No.

region (eg, East

Western Cape

City & Postal Code

Country

South Africa

Section 3: Contact Details

Telephone number

Alternative Telephone

Cell phone Number

Alternative Cell

Email Address

Alternative

TERMS AND CONDITIONS

4. GENERAL AGREEMENT

- 4.1 The City agrees to pay the Consumer for any Surplus Energy not consumed by the Consumer but supplied to the City's Electricity Grid, subject to the terms and conditions contained herein.
- 4.2 The City hereby appoints the Consumer in terms of the provisions of this Agreement.
- 4.3 The Parties represent and undertake to do all such things, perform all such acts and take all steps to procure the doing of all such things and the performance of all such acts, as may be necessary or incidental to give effect to the execution of this Agreement.
- 4.4 The Parties shall at all times during the continuance of this Agreement observe the principles of good faith towards one another in the performance of their obligations in terms of this Agreement.
- 4.5 The Consumer shall, ensure that its employees, agents, representatives, sub-contractors and suppliers comply with this Agreement and all applicable Laws in the execution of the Agreement.
- 4.6 The Consumer will not conduct any activity of whatsoever nature which may be detrimental to the City's reputation and goodwill.
- 4.7 The Consumer shall not be entitled to any other consideration for the rendering of the surplus energy other than as provided for in this Agreement.
- 4.8

5. MEASUREMENT OF CONSUMED ENERGY AND SURPLUS ENERGY

- 5.1 The Consumed Energy shall be measured monthly by the City at the Consumer's Point of Supply for each Metering Period on a half-hourly basis.
- 5.2 The Surplus Energy shall be measured monthly by the City at the Consumer's Point of Supply for each Metering Period on a half- hourly basis.
- 5.3 Where during any Metering Period when the Total Consumed Energy at the Consumer's Point of Supply have not registered, or are unreliable due to the Metering Installation being defective, a reasonable estimate may be made by the City taking into account the evidence supplied by any Metering Installation belonging to the Consumer:
 - 5.3.1 The Account(s) for such period shall be based on such estimate;
 - 5.3.2 The Account will be adjusted at a later stage once verified Total Consumed Energy have been received by the City; and
 - 5.3.3 Defective Metering Installation shall be tested and repaired as prescribed in the Electricity Supply By-law, as amended.

6. PAYMENT FOR SURPLUS ENERGY

- 6.1 Payment of credit will only be allowed if there is no arrears on any contract accounts in respect of the Business Partner.
- 6.2 Surplus Energy will be bought at the approved City SSEG feed-in Tariffs and the Consumer will be compensated as follows:
- 6.2.1 Monthly automatic off-setting and clearing on Account level (applicable only on consolidated Accounts);
- 6.2.2 Payment of credit or carry-over;
- 6.2.3 Minimum amount for payment of credit: R5000;
- 6.2.4 Frequency of payment: Monthly; and
- 6.2.5 Credit may be transferred to another contract account of the same Business Partner. This will be treated as an ad-hoc request and written request from the Consumer will be required.
- 6.3 The SSEG feed-in Tariffs applied under this Agreement will be as detailed in the annually approved City Prescribed Electricity Generation and Distribution Consumptive Tariff schedule.
- 6.4 All payments due, as applicable, will be indicated in the Consumers monthly electricity Account as issued by the City.
- 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 Consumers.
- 6.6 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.
- 6.7 The prescribed Tariffs are available on the City's website and shall be furnished to the Consumer upon written request to the City.

7. GREENING MECHANISM / PURCHASE OF SURPLUS ENERGY

- 7.1 Consumers may choose to sell the Surplus Energy with or without the associated Green Benefits.
- 7.2 Choosing to retain the Green Benefits will allow Consumers to green their consumption of deficit electrical energy purchased from the City.
- 7.3 As the SSEG feed-in Tariff rates distinguish between Green Benefits retained or transferred and the default selection is to transfer to the City, the Consumer is required to explicitly indicate below whether they wish to retain the Green Benefits by making an X in the space in the table provided below:

☐	Consumer wish to retain/claim the green attributes of the energy exported and sold to the City.
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8. TAXES PAYABLE TO SARS

- 8.1 The Consumer is liable for payment of any taxes due to SARS arising from this Agreement, including but not necessarily limited to income tax and value-added tax.

9. EFFECTIVE DATE AND DURATION

- 9.1 This Agreement will commence on the date of signature hereof by the last signatory and shall terminate no later the 60 months after commencement, unless terminated earlier in terms of the provisions of this Agreement.

10. BREACH

- 10.1 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.
- 10.2 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.
- 10.3 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.

11. TERMINATION

- 11.1 This Agreement shall terminate with immediate effect upon the happening of any of the following events:
- 11.1.1 If the Consumer gives two working days' notice in writing of him/her no longer requiring a supply of electricity.
- 11.1.2 If the Consumer commits any act of insolvency.
- 11.1.3 If the Consumer contravenes the provisions of any Law relevant to the implementation of this Agreement.
- 11.1.4 If any of the enabling agreements or authorisations rendering the implementation of this Agreement possible fail or are terminated.
- 11.1.5 If the City gives 14 working notice in writing of its intention to terminate this Agreement.
- 11.1.6 The Parties mutually agree to terminate this Agreement.

12. CESSION

- 12.1 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.

12.2

13. LIABILITY

- 13.1 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 in the implementation of this Agreement unless the said action or omission is due to the negligence of the defaulting Party.
- 13.2 If in the implementation of this Agreement 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.
- 13.3 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.
- 13.4 In the implementation of this Agreement, 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:
- 13.4.1 death of or injury to a person; or
- 13.4.2 loss of or damage to property; or
- 13.4.3 loss suffered by any third party; or
- 13.4.4 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.

14. CONFIDENTIALITY

- 14.1 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.

15. PROTECTION OF PERSONAL INFORMATION

- 15.1 The Consumer acknowledges that, for the purposes of this Agreement, they may come into contact with or have access to personal information and other information that may be classified or deemed as private or confidential and for which the City is responsible in terms of Protection of Personal Information Act ("POPIA"). Such personal information may also be deemed or considered as private and confidential as it relates to POPIA.

- 15.2 The Consumer agrees that they will at all times comply with POPIA and City's Privacy Notice, and that it shall only collect, use and process personal information it comes into contact with pursuant to this Agreement in a lawful manner, and only to the extent required to execute the services, or to provide the goods and to perform their obligations in terms of the Agreement.
- 15.3 The Consumer agrees that it shall put in place, and at all times maintain, appropriate physical, technological and contractual security measures to ensure the protection and confidentiality of the personal information that it, or its employees, its contractors or other authorised individuals comes into contact in relation to the Agreement.
- 15.4 The Consumer agrees that it shall notify the City immediately where there are reasonable grounds to believe that the personal information of a data subject has been accessed or acquired by any unauthorised person.
- 15.5 Unless so required by law, the Consumer agrees that it shall treat the personal information as confidential and further not disclose any personal information as defined in POPIA to any third party without the prior written consent of the City.
- 15.6 The Consumer hereby indemnifies and holds the City harmless against all claims, losses, damages and costs of whatsoever nature suffered by the Consumer arising from or in relation to the Consumer's (and/or its employees', agents' and sub-contractors') non-compliance with applicable data protection Laws and/or other legislation.
- 15.7 The Consumer agrees that the City may conduct regular data protection audits on the Consumer and undertakes to give its full co-operation in this regard.

16. MISCELLANEOUS

16.1 SEVERABILITY

- 16.1.1 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. NOTICES / ADDRESSES

- 17.1 The Parties choose as their respective *domicilium citandi et executandi* their respective addresses set out in this clause for the giving any notice, notification, request, demand, serving of any process or other communication or for any purpose arising out of or in connection with this Agreement shall be in writing to the Parties' respective addresses - :

17.1.1 DEKRO PAINTS (PTY) LTD

Marked for attention

17.1.2 City of Cape Town

Executive Director: Energy

5th floor, Podium Block

12 Hertzog Boulevard

Cape Town

8001

Email: [REDACTED]

marked for attention [REDACTED]

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

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

17.2.2 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;

17.2.3 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.

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

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

18. ENTIRE AGREEMENT AND VARIATION

18.1 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.

19. WAIVER

19.1 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).

19.2 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.

20. FURTHER ASSURANCE

20.1 Each Party will do and execute, or arrange for the doing and executing of, each necessary act, document and thing reasonably within its power to implement and give effect to this Agreement.

21. SURVIVAL OF TERMS

21.1 All terms that by their nature are intended to survive termination or expiry of this Agreement, will survive the termination or expiry of this Agreement.

22. REMEDIES

22.1 The rights and remedies of the City contained or referred to in this Agreement are cumulative and not exclusive of any other rights or remedies provided by applicable Law.

23. NO PARTNERSHIP OR AGENCY

23.1 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.

24. GOVERNING LAW

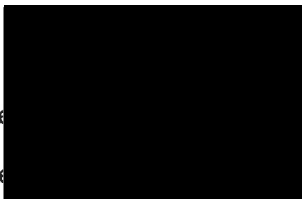
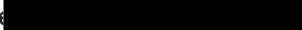
24.1 This Agreement will be governed by and construed in accordance with the Laws of South Africa and the Parties submit to the exclusive jurisdiction of the Western Cape High Court, Cape Town.

25. COUNTERPARTS

25.1 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 04 day of MARCH 2015

AS WITNESSES:

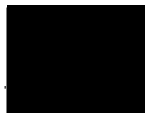
1. Name  Signature 
2. Name  Signature 



For the City

SIGNED at CAPE TOWN on the 14 day of FEBRUARY 2015

AS WITNESSES:

1. Name  Signature 

2. Name ...

[Redacted]

Signature...

[Redacted]

.....

[Redacted]

For the Consumer