

SUPPLEMENTAL CONTRACT FOR SMALL-SCALE EMBEDDED GENERATION

(Supplemental to the contract for the supply of electricity)

Made and entered into between –



THE MOSSEL BAY MUNICIPALITY

(hereinafter referred to as the “**Municipality**”)

and

(hereinafter referred to as the “**Consumer**”)

WHEREAS the consumer has applied to the Municipality for the connection of a small-scale embedded generator and the Municipality is prepared to approve the connection in accordance with the terms and conditions of this contract;

AND WHEREAS the Municipality and the consumers are desirous of entering into a written contract recording and regulating the terms and conditions relating to the connection of the small-scale embedded generator;

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

1 DEFINITIONS

In this contract the following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

- 1.1 "Anti-Islanding" shall mean the ability of an embedded generation system to instantly automatically disconnect the generator from connection to the utility grid whenever the local utility grid has lost the supply of power from the national electricity grid, thus preventing the export of electricity to the utility grid from the embedded generator. This is done primarily to protect utility workers who may be working on the utility grid and who may be unaware that the grid is still being energized by the embedded generator.
- 1.2 "MUNICIPALITY" shall mean the Mossel Bay Municipality, established in terms of the Local Government: Municipal Structures Act, 1998 read with the Western Cape Provincial Notice No. 479/2000 published in Province of the Western Cape: Provincial Gazette 5588 dated 22 September 2000.
- 1.3 "Consumer" shall mean: (individual/company name)

Company/close corporation registration number (if applicable) _____

- 1.4 "Contract" shall mean this contract together with the Schedules and Annexures hereto.
- 1.5 "Effective date" shall mean the first business day following the date of signature by the consumer, provided that connection to the electrical grid shall only be permitted as provided in terms of this contract.
- 1.6 "Electrical installation" shall mean any machinery, in or on any premises, used for the transmission of electricity from a point of control to a point of consumption anywhere on the premises, including any article forming part of such an electrical installation irrespective of whether or not it is part of the electrical circuit.

- 1.7 “Embedded generator” shall mean an electricity generating device, such as a photovoltaic panel or wind turbine that is connected to the consumer’s electrical installation beyond the point of control.
- 1.8 “Energy import” shall mean the energy flowing from the Municipality’s network into the consumer’s electrical installation.
- 1.9 “Energy export” shall mean the energy flowing from the consumer’s electrical installation back into the Municipality’s network.
- 1.10 “Kilowatt hour” shall mean the consumption or generation of electrical energy equivalent to one kilowatt of power sustained for one hour.
- 1.11 “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), the Mossel Bay Municipality’s Electricity By-law, as well as any applicable law, proclamation, ordinance, act of parliament or other enactment having force of law.
- 1.12 “Main supply contract” shall mean the existing contract in place between the Municipality and the consumer for the supply of electrical power at the premises, as contained in the documentation signed at the time of applying for an electrical connection, read together with the Mossel Bay Municipality’s Electricity By-law.
- 1.13 “Month” shall mean the period between successive monthly meter readings made in terms of this contract, irrespective of whether such readings are taken on the last day of the calendar month; provided that if, in terms of this contract, meter readings may be estimated should the actual reading of the meter not be possible in any particular month.
- 1.14 “Net consumer” shall mean a consumer who over a period of a year imports (purchases) more energy than he/she exports (puts back into the network).
- 1.15 “Point of control” shall mean the point at which an electrical installation on or in any premises can be switched off by a user or lessor from the electricity supplied from the point of supply.
- 1.16 “Parties” shall mean the Municipality and the Consumer.
- 1.17 “Point of supply” shall mean the actual supply point on the network as described in Schedule 1.

- 1.18 "Prescribed tariff" shall mean the approved Municipality's tariff of charges for electricity and services, as amended from time to time.
- 1.19 "Rated generator capacity" shall mean the maximum output of the embedded generator as advised by the Consumer to the Municipality, being the sum of the outputs, in kVA, of all invertors connected to embedded generators and the Consumer's installation.

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 contract 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 contract.

3 CONNECTION OF EMBEDDED GENERATOR

The Municipality undertakes to approve the connection of an embedded generator, as described in Schedule 1 to this agreement, by the consumer at the premises, subject to the terms and conditions of this contract. The consumer may only, other than for the purposes of carrying out tests and commissioning), connect his/her/its SSEG installation to the electricity grid upon receipt of a written letter from the Director: Technical Services giving consent for such connection.

4 PERIOD OF CONTRACT

This contract shall commence on the effective date and shall continue indefinitely unless terminated by either party, in terms of Clause 22 of this contract.

5 CESSION

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

6 CURTAILMENT OF GENERATION

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

7 DISCONTINUENCE OF GRID CONNECTION GENERATION

- 7.1 An embedded generator which has been de-commissioned must be physically disconnected from the grid by the removal of all wiring which connects the inverter/s with the grid.
- 7.2 Grid connected generation will only be considered by the Municipality as being disconnected from the electricity grid once the consumer has notified the Municipality in writing on the prescribed form and provided the Municipality with a copy of the Certificate of Compliance covering the removal of the wiring.

8 NOTIFIED MAXIMUM EMBEDDED GENERATOR OUTPUT

- 8.1 The notified maximum output of the embedded generator is as specified in Schedule 1.
- 8.2 If the consumer proposes increasing the maximum output of the embedded generator, he/she/it shall not implement such increase without the consent of the Municipality, which shall not be granted to the consumer until: -
- 8.2.1 the consumer has submitted an additional embedded generator application for an upgrade of an existing system to the Municipality; and
 - 8.2.2 the parties enter into a new contract; and
 - 8.2.3 any work required on the parties' electricity networks have been completed, to the satisfaction of the Municipality.

9 NET CONSUMER

- 9.1 Consent to the connection of an embedded generator is given subject to:
- 9.1.1 the condition that the consumer remain a net consumer of electricity over a rolling period of twelve months:
 - 9.1.2 the condition that the embedded generator shall not exceed the maximum generator output figure stipulated in Schedule 1.
- 9.2 Should the consumer not remain a net consumer he/she/it shall be deemed to be in breach of this Contract in terms of section 21.

10 RESIDENTIAL CONSUMERS

- 10.1 A residential consumer shall only be entitled to the benefit of being charged the small scale embedded generation tariff if he/she/it has a bona fide need to feed power back into the electricity grid each month. Should this not be the case the Director, Technical Services may require that the consumer either withdraw the embedded generator from service or alternatively have a prepayment meter and reverse power flow blocking protection installed, so as to place the consumer on the appropriate domestic consumption tariff.
- 10.2 All costs for metering changes will be for the consumer's account.

11 PRICES FOR ELECTRICITY

- 11.1 The consumer's municipal account shall be credited for energy generated by the embedded generator and exported to the network in the amount/s reflected in the Municipality's annual tariff relating to the import and export of electrical energy for embedded generation.
- 11.2 At the time that the consumer ceases to be on the small scale embedded generation tariff, any remaining credit balance will be refunded to the consumer on written request provided that the consumer has no other outstanding municipal debt.
- 11.3 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 embedded generators. The Municipality reserves the right to make amendments to the tariff as stated and does not warrant the financial viability of the consumer's embedded generation installation.
- 11.4 A schedule of the tariffs set by the Municipality shall be furnished to the consumer upon written request to the Municipality.
- 11.5 The Municipality shall not be obliged to grant credit to the consumer for power not received onto the electrical grid due to unavailability of the grid or for any other reason.

12 SUPPLY TO THIRD PARTY PROHIBITED

The consumer shall not supply any electricity generated on the premises under this contract to any third party on any other premises in any way.

13 TRANSFER OF SUPPLY TO ANOTHER SUPPLY AUTHORITY

The parties agree that, if the premises of the consumer in the future become located within the area of jurisdiction of another supply authority, this Supplemental Contract will be terminated and the consumer may negotiate with the new supply authority a new Contract for embedded generation.

14 COMPLIANCE WITH THE CITY'S TECHNICAL REQUIREMENTS

- 14.1 It is an express condition of this contract that the consumer ensure that the SSEG equipment remains compliant with the Municipality's technical requirements and if it does not do so the consumer will be in breach of this contract.
- 14.2 The Municipality reserves the right to (not unreasonably) alter its requirements for whatsoever reason and the consumer will be obliged to ensure at the consumer's cost that the SSEG equipment complies with the additional requirements.

15 QUALITY OF SUPPLY

- 15.1 In accordance with the Electricity Regulation Act, as amended, the consumer shall be responsible for maintaining the quality of supply from the embedded generator within the limits set out in the NRS 048 Quality of Supply and NRS 097 Grid Interconnection of Embedded Generation specification, with which the consumer acknowledges himself/herself/itself to be acquainted.
- 15.2 The Municipality shall not be liable for any loss or damage, direct or consequential, suffered or sustained by a consumer as a result of or arising from the cessation, interruption or any other abnormality of the supply of electricity, unless caused by negligence on the part of the Municipality.

16 NETWORK STABILITY

The consumer shall ensure that the anti-islanding functionality of the generation equipment is in good operational order to ensure the safety of the Municipality's personnel.

17 MEASUREMENT OF IMPORT AND EXPORT OF ENERGY

Measurement of imported and exported energy shall be carried out monthly.

18 BILLING AND PAYMENT OF CHARGES

- 18.1 The consumer shall be liable for all charges as per the Municipality's Electricity Tariff as amended from time to time.
- 18.2 Consumers who have had a bidirectional credit meter installed and are on a small scale embedded generation tariff will be billed as follows:
- 18.2.1 The monthly fixed demand and network charges and all energy and maximum demand charges, as applicable, will be billed on the monthly electricity account.
 - 18.2.2 Compensation for export of energy will be carried out monthly against the normal monthly electricity account.
 - 18.2.3 Customers will not be paid out if the monthly bill goes into credit - the credit balance will be carried forward to the following month.
 - 18.2.4 VAT will only be payable by the Municipality on exported energy where the consumer is registered with the South African Revenue Service (SARS) as a VAT vendor.

19 GENERATION LICENCE

The Electricity Regulation Act stipulates that grid connected generators shall obtain a generating licence. "Generating for own use" is excluded from this requirement. It is recorded that clarification is still required from the National Energy Regulator of South Africa whether generators who are net consumers are considered to be "generating for own use". The consumer bears all the risk regarding any liability which might arise from any change or clarification made by NERSA in this regard, and specifically indemnifies the Municipality with regard to any such risk or liability.

20 THE PARTIES' OBSERVANCE OF APPLICABLE LEGISLATION

The parties shall in addition to complying with the terms and conditions of this contract also comply with the provision of any law which may have application to this contract.

21 BREACH

- 21.1 Should either party hereto breach or fail to comply with any term or condition of this contract then the party aggrieved thereby shall give the defaulting party written notice to rectify such a breach.
- 21.2 In the event of the defaulting party failing to rectify such a breach within fourteen (14) days of the receipt of such notice, the aggrieved party shall be entitled to give written notice of termination of this contract to the other party. Such termination shall take effect upon receipt of such notice by the defaulting party.
- 21.3 Should either party repeatedly breach any of the terms and conditions of this contract in such a manner as to justify the aggrieved party in holding that the defaulting party's conduct is inconsistent with the defaulting party's intention to carry out the terms and conditions of this contract, then and in such event the aggrieved party shall without prejudice to its legal rights and remedies, be entitled to terminate this contract.
- 21.4 Termination of this contract shall be without prejudice to any other rights or remedies of the aggrieved party under this contract or at law and will not affect any accrued rights or liabilities of the aggrieved party at the date of termination.

22 TERMINATION

- 22.1 This contract shall terminate with immediate effect upon the happening of any of the following events:
- 22.1.1 If either party fails to rectify a breach of this contract as provided for in terms of Clause 21.
- 22.1.2 If the consumer gives two working days' notice in writing of him/her de-commissioning and disconnecting the embedded generator.
- 22.1.3 If the main supply contract is terminated.
- 22.1.4 If the parties mutually agree to terminate this contract.

23 GENERAL CONDITIONS

- 23.1 No alteration, cancellation, variation of or addition to this contract shall be of any force or effect unless reduced to writing and signed by the Municipality and the consumer or their duly authorised representatives.
- 23.2 The schedules to this contract may be amended by an exchange of letters between the parties.
- 23.3 This Contract constitutes the entire supplemental contract between the parties hereto in relation to the grid connected embedded generator and neither of the parties shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.
- 23.4 No extension of time or other indulgence granted by either party to the other in respect of either of the parties' obligations will constitute a waiver of either of the parties' right to enforce compliance with the terms of this contract; neither shall it constitute a novation of this contract.
- 23.5 The customer acknowledges that he/she/it is entering into this contract voluntarily and at his/her/its risk. Accordingly he/she/it grants a full and sufficient indemnity in favour of the Municipality against all risk or liability which may arise from the contract. This shall include any losses suffered by the customer arising from negligence relating to the design, construction, installation, commissioning, operation and maintenance of the embedded generator.

24 DOMICILIUM CITANDI ET EXECUTANDI

- 24.1 Each of the parties chooses domicilium citandi et executandi for the purposes of the giving of any notice, the serving of any legal process and for any purposes arising from this Contract at their respective addresses set forth hereunder:

The Municipality:

The Mossel Bay Municipality
Civic Centre
101 Marsh Street
MOSEL BAY
6500

The Consumer:

24.2 Any notice to any party shall be addressed to it at its domicilium aforesaid and be sent either by pre-paid registered post or be delivered by hand. In the case of any notice:

24.2.1 Sent by pre-paid registered post, it shall be deemed to have been received, unless the contrary is proved, on the seventh day after posting; and

24.2.2 Delivered by hand, it shall be deemed to have been received, unless the contrary is proved, on the date of delivery, provided such date is a business day or otherwise on the next following business day;

24.2.3 Any party shall be entitled by notice in writing to the other, to change its domicilium to any other address within the Republic of South Africa, provided that the change shall become effective only fourteen (14) days after the service of the notice in question;

24.2.4 Any notice addressed to the Municipality shall be required to be addressed to the Municipal Manager (for the Attention of the Director: Technical Services) to be deemed to have been effectively delivered or served.

25 JURISDICTION

The parties hereby consent in terms of Section 45 of the Magistrate's Court Act No 32 of 1944 as amended to the jurisdiction of the Magistrate's Court of any district having jurisdiction in terms of Section 28 of the said Act, to adjudicate any dispute arising from this contract, provided that such consent shall not derogate from the right of either party to institute proceedings in the High Court.

26 COSTS

Each party shall bear his/her/its own costs incurred in the negotiation, preparation and settling of the terms of this contract.

27 WARRANTY OF AUTHORITY

Each party warrants to the other party that it has the power, authority and legal right to enter into, sign and perform in terms of this contract, and that this contract has been duly authorised by all necessary actions of its directors or person/s on whose behalf the signatory acts herein.

SIGNED AT _____ THIS _____ DAY OF _____ 20____

The Consumer: _____

As Witnesses: 1: _____

2: _____

SIGNED AT _____ THIS _____ DAY OF _____ 20____

The Municipality: _____

As Witnesses: 1: _____

2: _____

SUPPLEMENTAL CONTRACT FOR EMBEDDED GENERATION

SCHEDULE 1

1. Details of premises:

a. Erf no. Suburb

b. Address

c. Name of building

d. Meter position

2. Customer category: Residential / Commercial / Industrial *

3. Supply voltageV($\pm 10\%$) Single / Three phase *

4. Type of meter

5. Rated generator capacity (AC side)kVA

6. Notified maximum demand of the property kVA

7. Authorized capacity of the property kVA

8. The tariff rate applicable to this supply as per the schedule of tariffs of the Municipality is:

Tariff description/s.....

9. Allow export of excess power onto grid - Yes / No*

10. Special power quality requirements:

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** Delete what is not applicable*

Contract Version date: 2015-11-27