



# GENERAL TERMS AND CONDITIONS: CONTRACT FOR CONNECTION OF AN EMBEDDED GENERATOR

Entered into between Ephraim Mogale Local Municipality (hereinafter referred to as the "Municipality")

and

Municipal Electricity Customers installing Embedded Generators (hereinafter referred to as the "Customer")

## 1. INTRODUCTION

WHEREAS the Customer has applied to the Municipality for the connection of an Embedded Generator to the Distribution Network and the Municipality is prepared to approve the connection in accordance with the terms and conditions of this Contract.

AND WHEREAS the Parties wish to record their agreement in respect of the terms and conditions governing: (i) physical connection of the Embedded Generator to the Distribution Network; (ii) access to and use by the Customer of the Distribution Network in connection with its generation undertaking at the Embedded Generator; and (iii) the operational interface between the Embedded Generator and the Distribution Network.

## 2. 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"** means the ability of the Embedded Generator to instantly automatically disconnect the generator from connection to the Distribution Network whenever the Distribution Network has lost the supply of power from the national electricity grid, thus preventing the export of electricity to the Distribution Network from the Embedded Generator. This is done primarily to protect municipal workers who may be working on the municipal electrical grid and who may be unaware that the municipal electrical grid is still being energized by the Embedded Generator.
- 1.2. **"Application Form"** means the official municipal Application Form to apply for the connection of an embedded generator to be filled in by the Customer
- 1.3. **"Certificate of Compliance"** means a certificate of compliance issued in terms of the Electrical Installation Regulations, 2009, issued in terms of the Occupation Health and Safety Act (Act 85 of 1993).

- 1.4. **"Claims"** means with respect to any person, any and all suits, sanctions, legal proceedings, claims, assessments, judgments, damages, penalties, fines, liabilities, demands, reasonable out-of-pocket expenses of whatever kind (including reasonable attorneys' fees and expenses) and losses incurred or sustained by or against such person but excluding any lost profits or other special, incidental, indirect, punitive or consequential damages suffered by such person.
- 1.5. **"Codes"** means the Distribution Code, the South African Grid Code, the Grid Connection Code for Renewable Power Plants or any other code, published by NERSA, as applicable and as amended, modified, extended, replaced or re-enacted from time to time.
- 1.6. **"Commissioning"** means in relation to the Embedded Generator, the process of testing to demonstrate whether the plant and equipment meets the applicable requirements and specifications of the Code(s) and the Municipality's Technical Requirements for the commencement of commercial operation.
- 1.7. **"Competent Authority"** means the Government of the Republic of South Africa, or any local government, ministry, department, political subdivision or regulating entity and any person under the direct or indirect control of any such government exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any other governmental entity, instrumentality, agency, authority, corporation, committee or commission, or any independent regulatory authority, in each case within South Africa, and any successor to or any assignee of any of the foregoing.
- 1.8. **"Connection Charge"** means the charge(s) recouped or to be recouped by the Municipality from the Customer for the cost of connecting the Embedded Generator to the Distribution Network, as per the currently applicable official municipal tariffs.
- 1.9. **"Consents"** means all approvals, planning approvals, consents, authorisations, notifications, concessions, decrees, waivers, privileges, acknowledgements, agreements, licenses, permits, decisions, clearances or similar items issued by and obtained from any Competent Authority in favour of the Customer, including for the purposes of clarity the Codes.
- 1.10. **"Contract"** means this contract together with the requisite provision of the supplemental contract that have been incorporated and the Schedules attached hereto.
- 1.11. **"Distribution Network"** means the Municipality's network infrastructure consisting of assets operated at a nominal voltage below 132 kV.
- 1.12. **"Effective Date"** means the first business day following the date of signature this Contract by the Customer.
- 1.13. **"Electrical installation"** means 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.
- 1.14. **"Embedded Generator"** means the electricity generating device that is connected to the Customer's Electrical Installation beyond the Point of Control.
- 1.15. **"Law"** means the provisions of the Local Government: Municipal Systems Act (Act No. 32 of 2000), the Electricity Regulation Act, (Act No. 4 of 2006), the Municipality Electricity By-Law, as well as any applicable law, proclamation, ordinance, act of parliament, regulation, directive or other enactment having force of law.

- 1.16. **"Main Supply Contract"** shall mean the existing contract in place between the Municipality and the Customer 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 Municipality Electricity By-Law.
- 1.17. **"Maximum Output Capacity"** means the maximum electrical power that can be transmitted by the Embedded Generator to the Distribution Network at the Point of Control, being the sum of the maximum electrical output (in kVA) from all equipment associated with the Embedded Generator, measured at the AC output of the Embedded Generator.
- 1.18. **"Municipality"** means Ephraim Mogale Local Municipality established in terms of the Local Government: Municipal Structures Act 1998.
- 1.19. **"Municipality Electricity By-Law"** means the Municipality by law governing the supply of electricity and connection of generation facilities, to the Distribution Network;
- 1.20. **"Municipality's Technical Requirements"** means the Municipality's technical requirements in relation to the connection of Embedded Generators as detailed in the document entitled "Requirements for Small-Scale Embedded Generation: Conditions and application process to become an embedded generator in the Municipality" to be made available by the Municipality.
- 1.21. **"NERSA"** means the National Energy Regulator of South Africa established in terms of the National Energy Regulator Act, (Act No. 4 of 2004), or its legal successor.
- 1.22. **"Parties"** shall mean the Municipality and the Customer and their successors in title.
- 1.23. **"Point of Control"** means the point at which the Customer's Electrical Installation on or in the Premises can be switched off from the electricity supplied from the Point of Supply.
- 1.24. **"Point of Supply"** means the actual supply point on the Distribution Network.
- 1.25. **"Premises"** means the premises of the Customer where the Embedded Generator is located.

## 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.
- 2.4. Any reference in this Contract to "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other

than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time.

- 2.5. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.

### **3. DURATION OF CONTRACT**

This Contract shall commence on the Effective Date and shall continue indefinitely unless terminated in terms of Clause 19.

### **4. CONNECTION OF EMBEDDED GENERATOR**

- 4.1. Subject to clause 4.2, the Customer shall not connect the Embedded Generator to the Distribution Network without the prior written consent of the Municipality. The permission by the Municipality shall not be unreasonably withheld or delayed, provided that such permission shall only be granted upon successful completion of the pre-commissioning tests and compliance with the Municipality's Technical Requirements.
- 4.2. The Customer is entitled to connect to the Distribution Network temporarily for the purpose of carrying out Commissioning.

### **5. MAXIMUM OUTPUT CAPACITY**

- 5.1. The Maximum Output Capacity of the Embedded Generator is as specified on the Application Form.
- 5.2. The Customer shall not exceed the Maximum Output Capacity without the prior written consent of the Municipality.
- 5.3. If the Maximum Output Capacity is exceeded without the prior written consent of the Municipality, the Municipality may give notice to the Customer setting out details and requesting the Customer to remedy the situation within twenty (20) business days of receipt of the notice, failing which the Municipality reserves the right to disconnect the Embedded Generator from the Distribution Network and shall not re-connect until such time as the Customer satisfies the Municipality that the Maximum Output Capacity will not be exceeded when the connection is renewed or arrangements have been made for an alteration or modification of this Contract.
- 5.4. If the Customer proposes increasing the Maximum Output Capacity of the Embedded Generator, the Customer must give prior written notice to the Municipality of such a request and any change shall be subject to the Municipality approving the change, which approval shall not be granted until such time as -
- 5.4.1. the Customer has submitted an additional Embedded Generator application (available on request from the Municipality) for an upgrade of an Embedded Generator and the connection to the Distribution Network to the Municipality;
  - 5.4.2. an amendment to this Contract to account for the increased Maximum Output Capacity; and
  - 5.4.3. any work required to the Parties electricity networks have been completed, to the satisfaction of the Municipality.

### **6. Electricity Feed-in Compensation**

- 6.1. If the Customer is permitted to feed electricity back into the Distribution Network, the Customer's electricity account with the Municipality shall be credited for electricity generated by the Embedded Generator and exported to the Distribution Network in the amounts reflected in the Municipality's annual tariff relating to the import and export of electricity for small scale embedded generation.
- 6.2. At the time that the Customer ceases to be on the small scale embedded generation tariff, any remaining credit balance will be reflected on the Customer's municipal electricity account. Municipal tariffs applicable to small-scale embedded generation will be updated annually, and any changes regarding quantum and structure are applicable to all existing and new small-scale embedded generation. The Municipality reserves the right to make amendments to the tariff as stated and does not warrant the financial viability of the Customer's embedded generation installation.
- 6.3. The Municipality shall not grant credit to the Customer for any energy not exported onto the Distribution Network due to unavailability of the Distribution Network for any reason.
- 6.4. A schedule of the tariffs relating to the import and export of electricity for small scale embedded generation set by the Municipality shall be furnished to the Customer upon written request to the Municipality.

## **7. Metering**

- 7.1. In order to accept reverse feed onto the Distribution Network from the Embedded Generator, the metering installation shall be of the bi-directional type, in accordance with NRS097-2 and NRS 057, and be approved by the Municipality.
- 7.2. The metering installation will measure the imported and exported electricity at the point of common coupling. The metering installation will be specified by the Municipality.
- 7.3. Any upgrade to the meter, or future amendments to applicable metering requirements or the applicable standards, will be for the Customer's account.
- 7.4. In the event that either Party has grounds for believing that the meter is operating outside the relevant accuracy class in [NRS 057], the Municipality may test the metering installation at any time or the Customer shall be entitled to request such a test to be conducted. The Customer shall be entitled to nominate representatives to attend such test. The Municipality shall be liable for its costs undertaking such test, only to the extent that the metering is operating within the relevant accuracy class.

## **8. BILLING**

- 8.1. The Customer shall pay the Connection Charge (plus VAT), if applicable, to the Municipality for the connection of the Facility to the Distribution Network in terms of this Contract. To the extent that a Connection Charge is payable according to the applicable municipal tariff, the Customer shall not be entitled to connect to the Distribution Network without paying the Connection Charge.
- 8.2. The Customer shall be liable for all charges as per the Municipality's schedule of electricity tariffs applicable to the Customer and the performance under this Contract, as amended from time to time. All charges shall be due and payable by no later than 7 days after date of invoice.

- 8.3. Customers who have had a bi-directional meter installed and are on a NERSA approved small scale embedded generation tariff for the import and export of electricity will be billed as follows:
- 8.3.1. The daily service charge and all energy and maximum demand charges, as applicable, will be billed on the Customer's monthly electricity account.
  - 8.3.2. Compensation for the export of electricity will be carried out monthly against the Customer's normal monthly electricity account.
  - 8.3.3. The Customer will not be paid out if the relevant monthly bill goes into credit and the credit balance will be carried forward to the following month.
- 8.4. VAT will only be payable by the Municipality on exported energy where the Customer is registered with the South African Revenue Service (SARS) as a VAT vendor.

## **9. NO SUPPLY TO THIRD PARTY**

The Customer shall not supply any electricity generated on the Premises under this Contract to any third party on any other Premises.<sup>1</sup>

## **10. COMPLIANCE WITH QUALITY OF SUPPLY, SAFETY AND OTHER TECHNICAL REQUIREMENTS**

- 10.1. The Customer shall comply with the requirements of the Codes and the Municipality's Technical Requirements with respect to the connection of the Embedded Generator to the Distribution Network.
- 10.2. The Municipality reserves the right, acting reasonably, to alter the Municipality's Technical Requirements from time to time. The Municipality will provide written notification to the Customer of any such change required of existing approved Embedded Generators. Such changes will be justified by the Municipality. The Customer will be obliged to ensure, at its cost, that the Customer's connection equipment complies with any such additional or amended requirements.
- 10.3. The Customer shall, at its own expense, provide, install, maintain and operate a protection system on the Embedded Generator side of the Point of Control which:
- 10.3.1. shall be compatible with the Distribution Network protection system; and
  - 10.3.2. shall safeguard the Customer's connection equipment from any fault condition on the Distribution Network, including but not limited to (i) phase faults, (ii) earth faults, (iii) under or over voltage, (iv) under or over frequency and (v) open-phase conditions.
- 10.4. The Customer shall ensure that the protection settings of the Embedded Generator are coordinated with the Municipality's protection settings from time to time.
- 10.5. Subject to the Codes, the Municipality may disconnect the whole or part of the Embedded Generator from the Distribution Network, or may operate circuit-breakers upstream of the Embedded Generator. If the Customer is in breach of any provision of this Contract, the Municipality shall be entitled to disconnect the Embedded Generator from the Distribution Network. The Customer shall ensure that the Embedded Generator is disconnected from

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<sup>1</sup> Note: No provision is made for wheeling in terms of this Contract and use of system charges. To the extent that a Customer intended to wheel electricity, amendments will be required to this Contract.

the Distribution Network in accordance with the Codes and its failure to do so shall constitute a breach of this Contract.

10.6. In accordance with the Electricity Regulation Act (No 4 of 2006), the Customer 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 Customer acknowledges himself/herself/itself to be acquainted.

10.7. The Customer shall ensure that the Anti-Islanding functionality of the Embedded Generator is in good operational order at all times to ensure the safety of the Municipality's personnel.

## **11. INTERRUPTION OF SUPPLY**

The Customer acknowledges and agrees that nothing in this Contract shall be construed so as to impose on the Municipality any guarantee, commitment or undertaking of or as to the availability, reliability or any other condition of the Distribution Network at any time. The Municipality shall not be liable to the Customer for any Claims incurred by the Customer as a result of any constraint or congestion on, or any unavailability, interruption, disruption, curtailment, breakdown, inoperability or failure of, any part of the Distribution Network.

## **12. GENERATION LICENCE**

12.1. The Customer must ensure that it complies with the requirements of the Law, including the relevant regulations published by NERSA from time to time, in respect of any Consent required in relation to the generation of electricity and the connection of the Embedded Generator to the Distribution Network.

12.2. The Customer is liable for any Claims which might arise from any change or clarification made by Minister of Energy or NERSA. The Customer hereby indemnifies, defends and holds harmless the Municipality from and against all Claims made against or suffered by the Municipality under any Law arising out of the failure by the Customer to comply with any requirement to obtain a Consent in relation to the generation of electricity and the connection to the Distribution Network.

12.3. Should the Municipality become aware of a breach of such requirements by the Customer, it will constitute a breach of this Contract and will be handled according to Clause 18.

## **13. TEMPORARY CURTAILMENT OF GENERATION**

The Municipality has the right to instruct the Customer, and the Customer shall respond to such an instruction, to reduce peak generation or disconnect the Embedded Generator entirely during abnormal system conditions or low load periods.

## **14. TRANSFER**

The Parties agree that, if the Premises of the Customer in the future become located within the area of jurisdiction of another electricity supply authority, this Contract will be terminated and the Customer may negotiate with the new electricity supply authority a new contract for small scale embedded generation.

## **15. NO ASSIGNMENT**

Neither this Contract nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by the Customer without the prior signed written consent of the Municipality.

## **16. DECOMMISSIONING OR DISCONNECTION**

Any Embedded Generator which has been decommissioned must be physically disconnected from the Distribution Network by the removal of all wiring which connects the embedded generator with the Distribution Network. Customers are required to notify the Municipality and submit a Certificate of Compliance to evidence that the wiring has been disconnected for the Municipality to recognize such decommissioning.

## **17. COMPLIANCE WITH LAW**

The Parties shall obtain and maintain all Consents as may be required under any applicable Law and perform its obligations in a manner that complies with all applicable Law, its Consents and the Codes.

## **18. BREACH**

- 18.1. If a Party commits a breach of this Contract then the aggrieved Party shall give the defaulting Party written notice to rectify such a breach.
- 18.2. If the defaulting Party fails to remedy the breach within fourteen (14) days of the receipt of such written notice, the aggrieved Party shall be entitled to claim immediate specific performance under this Contract or to cancel this Contract by written notice to the defaulting Party. Such termination shall take effect upon receipt of such notice by the defaulting Party.
- 18.3. Neither Party shall be entitled to cancel this Contract unless the breach is a material breach. A breach will be deemed to be a material breach if —
  - 18.3.1. it is capable of being remedied, but is not so remedied within the cure period; or
  - 18.3.2. it is incapable of being remedied or is not remedied within the cure period, and payment in money will compensate for such breach but such payment is not made within the cure period.
- 18.4. 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 either Party at the date of termination

## **19. TERMINATION**

- 19.1. The Contract shall terminate with immediate effect should any of the following events take place:
  - 19.1.1. the Customer gives five (5) days written notice in writing of the Customer having decommissioned and/or disconnected the Embedded Generator;
  - 19.1.2. the Main Supply Contract is terminated;
  - 19.1.3. the Customer is transferred to a different electricity supply authority; and
  - 19.1.4. the Parties mutually agree in writing to terminate this Contract.



## **20. GENERAL CONDITIONS**

- 20.1. 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 Customer or their duly authorised representatives.
- 20.2. The schedules to this Contract may be amended by an exchange of letters between the Parties, duly signed by both Parties.
- 20.3. This Contract constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Contract not incorporated in this Contract shall be binding on either of the Parties. This Contract supersedes and replaces any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.
- 20.4. No waiver, suspension or postponement by either Party of any right arising out of or in connection with this Contract shall be of any force or effect unless in writing and signed by that Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.
- 20.5. All provisions and the various clauses of this Contract are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Contract which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Contract shall remain of full force and effect. The Parties declare that it is their intention that this Contract would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
- 20.6. The expiration or termination of this Contract shall not affect such of the provisions of this Contract as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this

## **21. DAMAGES AND INDEMNIFICATION**

- 21.1. The Customer acknowledges that it is entering into this Contract voluntarily and at its sole risk. The Municipality shall not be liable for any losses, damages, Claims, liabilities, costs or expenses which are incurred by the Customer (whether directly or indirectly) arising from negligence relating to the design, construction, installation, Commissioning, operation and maintenance of the Embedded Generator. The Customer hereby indemnifies and holds the Municipality harmless against any Claims which may arise from the Contract.
- 21.2. Neither Party shall be liable to the other Party under this Contract or in delict for any losses or damages 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.

- 21.3. Nothing in this Contract shall exclude or limit the liability of either Party for death or personal injury to the other Party resulting directly from the negligence of the first-mentioned Party or any of its officers, directors, employees, contractors and agents and that Party shall indemnify and keep indemnified the other Party from and against any damages or losses which the other Party may suffer or incur by reason of any Claim on account of death or personal injury to the extent resulting from the negligence of the first-mentioned Party or the negligence of any of its officers, directors, employees, contractors or agents.
- 21.4. The rights and remedies provided by this Contract to the Parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies expressed or implied and provided by common law or statute in respect of the subject matter of this Contract, including without limitation any rights either Party may possess in delict which shall include without limitation actions brought in negligence and/or nuisance. Accordingly, each of the Parties hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute, and releases the other Party, its officers, directors, employees, contractors and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this Contract and undertakes not to enforce any of the same except as expressly provided herein. For the avoidance of doubt, the rights and remedies provided in this Contract shall not be construed so as to limit the rights and/or remedies that the Customer may have under any other agreement between them.

## **22. DOMICILIUM CITANDI ET EXECUTANDI**

- 22.1. Each of the Parties chooses the *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 in the Application Form.
- 22.2. 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:
- 22.2.1. 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
- 22.2.2. 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;
- 22.3. Either Party shall, 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.
- 22.4. Any notice addressed to the Municipality shall be required to be addressed to the Municipal Manager and marked for the Attention of the Director: Electrical Services to be deemed to have been effectively delivered or served.

## **22. APPLICABLE LAW AND JURISDICTION**

- 22.5. This Contract will in all respects be governed by and construed under the Laws of the Republic of South Africa
- 22.6. 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.

### **23. COSTS**

Each Party shall bear its own costs incurred in the negotiation, preparation and settling of this Contract.

### **24. 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.