

(Municipal logo)

CONTRACT FOR EMBEDDED GENERATION¹

Entered into between (municipality) (hereinafter referred to as the "Municipality")

and

..... (hereinafter referred to as the "Customer")

WHEREAS the customer has applied to the Municipality for the connection of an 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 customers intend to enter into a written contract recording and regulating the terms and conditions relating to the connection of the embedded generator;

The above parties have agreed the following with each other:

1. Purpose

This contract clarifies the terms, conditions, rights and obligations of the above parties regarding the connection of the customer's Small-Scale Embedded Generation (SSEG) system to the Municipality electricity grid.

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" shall mean the ability of an embedded generation system to instantly automatically disconnect the generator from connection to the municipal electrical grid whenever the local municipal electrical grid has lost the supply of power from the national electricity grid, thus preventing the export of electricity to the municipal electrical grid 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. "Municipality" shall mean The Municipality of (municipality) established in terms of the Local Government: Municipal Structures Act 1998.

1.3. "Customer" shall mean: (individual/company name)

.....

¹ This document is substantially based on the equivalent contract of The City of Cape Town and generic contract of GreenCape for Western Cape municipalities, and draws on elements of contracts from other municipalities.

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 customer, provided that connection to the municipal 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 customer's electrical installation beyond the point of control.
- 1.8. "Energy import" shall mean the energy flowing from the municipal electrical grid into the customer's electrical installation.
- 1.9. "Energy export" shall mean the energy flowing from the customer's electrical installation back into the municipal electrical grid.
- 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 Municipality of (municipality) 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 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 of (municipality) 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 customer who over a period of a year imports (purchases) more energy than he/she exports (puts back into the municipal electrical grid).
- 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 customer.
- 1.17. "Point of supply" shall mean the actual supply point on the municipal electrical grid 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 customer to the Municipality, being the sum of the maximum outputs (in kVA) from all invertors connected to embedded generators, measured at the AC output of the inverters, that the system is capable of delivering in its current configuration.

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 the Embedded Generator

Once the customer has installed the embedded generator in compliance with the Municipality's conditions, including completion of specified Commissioning requirements, the Municipality undertakes to approve the connection in writing. Only on receipt of such written approval from (Director: Electricity Services) may the customer connect the system to the grid. The customer may however, connect the system to the grid temporarily prior to this for the purposes of carrying out tests and commissioning only.

4. Duration of Contract

This contract shall commence on the effective date and shall continue indefinitely unless terminated in terms of Clause 19 of this contract.

5. Notified Maximum Output of the Embedded Generator

The notified maximum output of the embedded generator is as specified in Schedule 1. This output may not be exceeded. If the customer proposes increasing the maximum output of the embedded generator, this requires the consent of the Municipality, which will only be granted when:

- 5.1. the customer has submitted an additional embedded generator application for an upgrade of an existing system which meets with the Municipality's requirements; and
- 5.2. the parties enter into a new contract; and
- 5.3. any work required on the parties' electricity networks has been completed, to the satisfaction of the Municipality.

6. Net Consumer and Reverse Feed into the Grid

Consent to the connection of an embedded generator is given subject to:

- 6.1. the condition that the customer remain a net consumer of electricity over a rolling period of twelve months;

Commented [MB1]: NOTE TO MUNICIPALITIES: This section may need updating when the NERSA / DoE regulatory framework is finalized.

- 6.2. the condition that the embedded generator shall not exceed the maximum generator output figure stipulated in Schedule 1;
- 6.3. Should the customer not remain a net consumer he/she/it shall be deemed to be in breach of this Contract in terms of Section 18.

7. Electricity Feed-in Compensation

- 7.1. The customer's electricity account shall be credited for energy generated by the embedded generator and exported to the network in the amount/s reflected in the appropriate tariff for embedded generation of the Municipality.
- 7.2. 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 account. Municipal tariffs applicable to small-scale embedded generators will be updated annually, and any changes regarding quantum and structure 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 customer's embedded generation installation.
- 7.3. The Municipality shall not grant credit to the customer for power not received onto the electrical grid due to unavailability of the grid.

8. Metering

- 8.1. In order to accept reverse feed onto the grid from the embedded generator, the metering shall be of the bi-directional type, in accordance with NRS097-2 and NRS 057, and be approved by the Municipality.
- 8.2. The metering will measure the imported and exported electricity at the point of common coupling. The meter will be supplied and installed by the Municipality.
- 8.3. Metering upgrading to be in accord with this contract, or future amendments to applicable metering requirements or the applicable standards, will be for the customer's account.

9. Billing

The customer shall be liable for all charges as per the Municipality's electricity tariff applicable to the customer as amended from time to time.

Customers who have had a bi-directional meter installed and are on a small scale embedded generation tariff will be billed as follows:

- 9.1. The daily service charge and all energy and maximum demand charges, as applicable, will be billed on the monthly electricity account.
- 9.2. Compensation for export of energy will be carried out monthly against the normal monthly electricity account.
- 9.3. Customers will not be paid out if the monthly bill goes into credit - the credit balance will be carried forward to the following month.
- 9.4. 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.

Commented [MB2]: NOTE TO MUNICIPALITIES: Edit to be in accordance with your specific SSEG tariffs and billing procedures.

10. 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.

11. Compliance with Quality of Supply, Safety and other Technical Requirements

- 11.1. The customer is to ensure that the embedded generation equipment and system remains compliant with the Municipality's technical requirements as laid out in the Municipality's 'Requirements for Embedded Generation' document, otherwise the customer will be in breach of this contract.
- 11.2. The Municipality reserves the right to alter its requirements from time to time and the customer will be obliged to ensure that the SSEG equipment complies with the additional or amended requirements. This will be undertaken at the customer's cost. The Municipality will not make alterations to such requirements unreasonably.
- 11.3. In accordance with the Electricity Regulation Act, as amended, 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.
- 11.4. The customer shall ensure that the anti-islanding functionality of the generation equipment is in good operational order at all times to ensure the safety of the Municipality's personnel.

12. Interruption of Grid Supply

The Municipality shall not be liable for any loss or damage, direct or consequential, suffered or sustained by a customer 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.

13. Generation License

It is the obligation of the customer to ensure that they are compliant with the Department of Energy's (DoE) requirements regarding licensing of embedded generators, as well as with relevant regulations published by the National Energy Regulator of South Africa (NERSA). The customer bears all the risk regarding any liability which might arise from any change or clarification made by DoE or NERSA in this regard, and specifically indemnifies the Municipality with regard to any such risk or liability. 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.

14. Temporary Curtailment of Generation

Upon instruction from the Municipality, the customer shall reduce peak generation or disconnect the system entirely during abnormal system conditions or low load periods.

15. Cession

The customer 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.

16. Decommissioning of the Embedded Generator

An embedded generator which has been decommissioned must be physically disconnected from the grid by the removal of all wiring which connects the inverter/s with the grid. Customers are required to submit the prescribed Decommissioning Form as well as a Certificate of Compliance for the removal of the wiring for the Municipality to recognize such decommissioning.

17. 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.

18. Breach

- 18.1. Should either party 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.
- 18.2. 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.
- 18.3. 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.
- 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 the aggrieved party at the date of termination

19. Termination

The contract shall terminate with immediate effect should the following events take place:

- 19.1. Failure to rectify a breach as provided for in Section 18.
- 19.2. If the customer gives notice in writing of decommissioning and disconnecting the embedded generator
- 19.3. If the main electricity supply contract is terminated
- 19.4. If the customer is transferred to a different electricity supply authority
- 19.5. If the parties mutually agree 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.
- 20.3. This Contract constitutes the entire supplemental contract between the parties hereto in relation to the municipal electrical grid connected embedded generator and neither of the parties shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.
- 20.4. 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.
- 20.5. 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.

21. Domicilium Citandi et Executandi

21.1. 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 Customer:
The Municipality of _____	_____
_____	_____
_____	_____
_____	_____

21.2. 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:

21.2.1. 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

21.2.2. 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;

21.2.3. Any party shall be 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;

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

22. 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.

23. Costs

Each party shall her/his/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.

SIGNED AT.....THIS..... DAY OF.....20.....

The Customer :.....

As Witnesses: 1:

2:.....

SIGNED AT.....THIS.....DAY OF..... 20.....

The Municipality :.....

As Witnesses: 1:

2:.....

SCHEDULE 1: Property details and Embedded Generator Technical Information

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. Maximum AC output of inverter in current system configuration.....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 municipal electrical grid - Yes / No*
10. Special power quality requirements:
.....
.....

** Delete what is not applicable*