

AGREEMENT

Made and entered into between:

NELSON MANDELA BAY METROPOLITAN MUNICIPALITY

(herein represented by

Peter Neilson,

in his capacity as Municipal Manager,

he being duly authorized and warranting such authority)

(hereinafter referred to as "the NMBMM")

and

XXXXXXXXXX

(Registration Number: XXXXXXXXXXXX)

(herein represented by XXXXX,

in his capacity as XXXXXX,

he being duly authorised and warranting such authority)

(hereinafter referred to as "the Investor")

1. PREAMBLE:

WHEREAS the NMBMM wishes to implement a new sustainable program to allow Investors to approach citizens to finance, install and maintain PV Systems free of charge for the next twenty five (25) years, which Investors will be reimbursed dependant on electricity produced in the installation of PV Systems and wheeled through the Distribution System to previously identified single customers or related customers.

AND WHEREAS the NMBMM wishes to conclude Agreements with Investors to wheel and supply embedded power from Participating Customers to Customers of the NMBMM subject to such Customers being Participating Customers as defined herein.

AND WHEREAS the NMBMM has allocated 250 MW of the total electricity demand within its area of jurisdiction to be supplied by embedded generators from participating customers.

AND WHEREAS the Investor has represented itself to have the requisite skills to achieve the objectives of the NMBMM.

AND WHEREAS the parties wish to record their agreement in writing.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

2. DEFINITIONS AND INTERPRETATION:

2.1 In this Agreement, unless the context indicates a contrary intention, the following words and expressions shall bear the meanings assigned to them and cognate expressions bear corresponding meanings:-

2.1.1 "Agreement" means this Agreement and any annexures thereto;

- 2.1.2 "Annexure" means an annexure to this Agreement;
- 2.1.3 "Business Day" means a day excluding days falling on weekends or public holidays;
- 2.1.4 "Conditions Precedent" means the suspensive conditions set out in Clause 3;
- 2.1.5 "Consents" means all consents, permits, authorizations, approvals, rulings, exemptions, registrations, filings, decisions, all licenses required to be issued by or made with any Responsible Authority for the performance of the Investor's obligations under this Agreement;
- 2.1.6 "Customer" means a person who purchases electricity from the NMBMM who themselves are Participating Customers as defined herein;
- 2.1.7 "Day" means a calendar day;
- 2.1.8 "Designated Tariff" means the electricity tariff applicable to Participating Customers (as generators of electricity operating a SSEG) as Customers purchasing electricity from the NMBMM as adopted by the NMBMM and approved by Nersa from time to time, the initial Designated Tariff so adopted and approved as at the Effective Date being R1.60 per kWh;

- 2.1.9 "Distribution System" means the electricity distribution network system of the NMBMM;
- 2.1.10 "Effective Date" means the last day of the month following the month of the Signature Date;
- 2.1.11 "Investor" means the entity described on Page 1 of this Agreement;
- 2.1.12 "kWh" means kilowatt-hour;
- 2.1.13 "kWp" means kilowatt-peak being a measure of electrical output;
- 2.1.14 "MW" means one million watts;
- 2.1.15 "Nersa" means the National Energy Regulator of South Africa, a Regulatory Authority established in terms of Section 3 of the National Energy Regulator Act 40 of 2004;
- 2.1.16 "NMBMM" means the Nelson Mandela Bay Metropolitan Municipality, a category A Municipality established in terms of Section 12(1) of the Local Government: Municipal Structures Act 117 of 1998 and its successors in title from time to time;
- 2.1.17 "Participating Customer" means a Customer of the NMBMM that has concluded an agreement with the Investor for the installation and use of a PV System and SSEG

and whose electricity will be transported via Distribution System for purchase by a single identifiable Customer or Related Customer;

2.1.18 "Participating Customer Agreement"

means an agreement concluded between the Investor and a Participating Customer in terms of which the Investor will, subject to the terms and conditions of such agreement, install, maintain and repair a PV System and SSEG at the premises of the Participating Customer;

2.1.19 "Party and Parties"

means the NMBMM and the Investor or both the NMBMM and the Investor;

2.1.20 "Prevailing Legislation"

means the common law, Constitution and any applicable statute, proclamation, regulation, rule, notice, judgment, Consent or order and any interpretation of any of them by any Court or applicable tribunal. Without detracting from the generality of the foregoing, the definition includes but is not limited to:

The Local Government: Municipal Structures Act 117 of 1998 and all Regulations promulgated thereunder from time to time;

The Local Government: Municipal Systems Act 32 of 2000 and all Regulations promulgated thereunder from time to time;

The Local Government: Municipal Finance Management Act 56 of 2003 and all Regulations promulgated thereunder from time to time;

The National Energy Regulator Act 40 of 2004 and all Regulations promulgated thereunder from time to time;

The Electricity Regulation Act 4 of 2006 and all Regulations promulgated thereunder from time to time;

The Standards Act 8 of 2008 and all Regulations promulgated thereunder from time to time;

Any applicable National Rationalised Specifications (NRS);

The Occupational Health and Safety Act 85 of 1993 and all Regulations promulgated thereunder from time to time;

The Electricity Supply By-Law by the NMBMM;

The Tariff By-Law and Policy of the NMBMM;

The Customer Care and Revenue Management By-Law of the NMBMM;

Any standards imposed by the NMBMM in respect of SSEG's and PV Systems;

2.1.21 "PV System"

means a photovoltaic panel which converts the sun's radiation into electricity which is achieved through solar cells assembled into a solar panel;

2.1.22 "Related Customer"

means Customers which are related and inter-related to each other within the meaning contemplated in Section 2 of the Companies Act 71 of 2008;

2.1.23 "Responsible Authority"

means, in addition to the NMBMM, any ministry, any minister, any organ of state, any official in the public administration or other governmental or regulatory department, commission, institution, public entity, service utility, board, agency, professional body, instrumentality or authority (in each case, whether national, provincial or municipal) or any Court, each having jurisdiction over the matter in question;

- 2.1.24 "Resolutive Conditions" means the resolutive conditions set out in Clause 4;
- 2.1.25 "Signature Date" means the date of signature of this Agreement by the Party last signing;
- 2.1.26 "Single Customer" means one individual Customer or Related Customer;
- 2.1.27 "South Africa" means the Republic of South Africa as defined in the Constitution;
- 2.1.28 "SSEG" means a Small-Scale Embedded Generator operated by a customer that operates a PV generation facility of not more than 1 MW connected to the Distribution System

2.2 In this Agreement:-

- 2.2.1 Clause headings under heading of the Agreement are for convenience only and are not to be used in its interpretation;
- 2.2.2 Any expression which denotes:-
- 2.2.2.1 any gender includes the other gender;
 - 2.2.2.2 a natural person includes a juristic person and visa versa;
 - 2.2.2.3 the singular includes the plural and visa versa;
 - 2.2.2.4 a Party includes reference to that Party's successors in title and assigns allowed at law;

- 2.2.3 Any reference to Prevailing Legislation is to that Prevailing Legislation as at the Signature Date and as amended for re-enacted from time to time;
- 2.2.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 2.2.5 When any number of Business Days as prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 2.2.6 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 2.2.7 Expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not in themselves contain their own conflicting definitions;
- 2.2.8 The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;
- 2.2.9 Any reference in this Agreement to a Party shall, if such Party is liquidated, sequestrated, placed under Business Rescue or administration, be applicable also to and binding upon that Party's liquidator, trustee, business rescue practitioner or administrator as the case may be.

3. CONDITIONS PRECEDENT:

3.1 This Agreement is subject to the fulfillment of the following suspensive conditions by not later than the Effective Date or such later date as may be agreed to by the NMBMM in writing:

3.1.1 the payment by the Investor to the NMBMM of a R25 000.00 non-refundable application fee;

3.1.2 the payment of a refundable deposit by the Investor to the NMBMM of an amount equal to R0.02 per watt of capacity awarded to the Investor. Such deposit shall only be refundable per MW installed by the Investor in relation to the awarded capacity referred to in 5.1 below.

3.2 Unless all the Conditions Precedent have been fulfilled or waived by not later than the date for fulfillment thereof referred to in Clause 3.1, the provisions of this Agreement shall not become of any force or effect and neither Party shall have any claim against the other Party in terms hereof or arising from the failure of the Conditions Precedent.

4. RESOLUTIVE CONDITIONS:

4.1 This Agreement is subject to the Resolutive Condition that this Agreement shall terminate in the event of any Prevailing Legislation preventing the achievement of the objectives of this Agreement.

4.2 Termination of this Agreement for reasons set forth in Paragraph 4.1 shall not affect either Party's rights to claim such payment and/or performance which may be due by either Party to the other as at the date of termination.

5. AWARD:

- 5.1 The Investor is hereby awarded a capacity of _____ MW for the purposes of this Agreement.
- 5.2 The Investor shall accordingly procure Participating Customer Agreements from Participating Customers the aggregate of whose capacity does not exceed the capacity referred to in 5.1 and install PV Systems and SSEG's at the premises of such Participating Customers so as to generate electricity for the sale by such Participating Customer via the Distribution System to a pre-identified Single Customer or Related Customer (who in turn shall be Participating Customers as defined herein) subject to the terms and conditions of this Agreement.

6. DURATION & TERMINATION:

- 6.1 This agreement shall commence on the Effective Date and shall endure for a period of twenty five (25) years or until such time as this Agreement may be terminated as is provided for herein.
- 6.2 Termination shall not affect either party's rights to claim such payment and/or performance, which may be due by either Party to the other as at date of termination.
- 6.3 Notwithstanding anything to the contrary contained in this Agreement, the NMBMM shall be entitled to terminate this Agreement on written notice to the Investor in the event of the Investor making any false statements or representations relating to obligations arising out of this Agreement, building up a history of poor performance, falsifying any documents or records relating to obligations arising from this Agreement, utilizing sub-standard equipment in the PV Systems and SSEG's or failing to execute the reasonable instructions of the NMBMM timeously or at all.

7. **OBLIGATIONS AND DUTIES OF THE INVESTOR:**

7.1 The Investor shall ensure that no Participating Customer connects to the Distribution System without:

7.1.1 submitting an application via the Investor to the NMBMM for the registration of the Participating Customer with Nersa with the following minimum information:

7.1.1.1 the full name and identity/registration number of the Participating Customer;

7.1.1.2 the description of the proposed SSEG generation technology;

7.1.1.3 confirmation of the installation being a PV installation;

7.1.1.4 confirmation whether the SSEG is newly built or a capacity extension of an existing SSEG;

7.1.1.5 confirmation of the Participating Customer's licence exemption classification;

7.1.1.6 a copy of the applicable Participating Customer Agreement (which shall be subject to the approval of the NMBMM);

7.1.1.7 confirmation of the date of commissioning of the installation;

7.1.1.8 the tariff applicable to the installation;

7.1.1.9 the installed capacity: kW at grid connection point

7.1.1.10 the installed module capacity: (kWp)

- 7.1.1.11 the location of the SSEG (physical address and GPS co-ordination);
 - 7.1.1.12 whether the system includes storage and, if so, what capacity in kWh;
 - 7.1.1.13 evidence of the Participating Customer's continued ability to comply with all Prevailing Legislation;
 - 7.1.1.14 the duration of the connection; and
 - 7.1.1.15 certification by a competent authority/person and certificate of compliance in respect of the SSEG.
- 7.1.2 Concluding a connection and user-of-system agreement between the NMBMM and the Investor as Agent of the Participating Customer.
- 7.1.3 For the purposes of 7.1.1 and 7.1.2 above, the Investor shall act as an Agent for the Participating Customer and the Investor shall pay any required connection charge/fees and signing the required connection and use-of-system agreement; and
- 7.2 The Investor shall ensure that the connection and the equipment used are certified to comply with all required technical standards and in compliance with all Prevailing Legislation.
- 7.3 The Investor shall conclude a Participating Customer Agreement with each Participating Customer which shall entitle the Investor to act as an Agent on behalf of each Participating Customer in concluding a connection and user-of-system agreement with the NMBMM in respect of the Distribution System and such agreement:

- 7.3.1 shall record that the Investor shall act as an Agent of each Participating Customer in its dealings with the NMBMM in respect of the Participating Customer's use of the Distribution System;
- 7.3.2 shall record that the NMBMM shall act as an Agent of the Participating Customer (as the seller of the generated electricity) in collecting the purchase price of such electricity from the pre-identified Single Customer or Related Customer to whom the Participating Customer's electricity is to be sold; and
- 7.3.3 shall record that the sole benefit/consideration to be passed by the NMBMM (as agent of the Participating Customer) to the Participating Customer pursuant to the collection of the purchase price of the electricity sold by the Participating Customer to the Single Customer or Related Customer shall be limited to the NMBMM allowing the Participating Customer as a Customer to purchase electricity for his own consumption from the NMBMM at the Designated Tariff with due regard to Clause 9.1 below.
- 7.4 The following conditions shall apply and be adhered to by the Investor and Participating Customer in relation to each SSEG:
- 7.4.1 no SSEG shall have an installed capacity of more than 1 MW;
- 7.4.2 each SSEG shall be operated solely to supply a pre-identified Single Customer or Related Customer by wheeling electricity through the Distribution System;
- 7.4.3 the Investor as Agent of the Participating Customer shall have entered into a connection and user-of-system agreement with the NMBMM in respect of the Distribution System; and
- 7.4.4 as at the date on which the connection and user-of-system agreement is entered into, the Minister shall not have published a notice in the Government Gazette stating that the amount of MW

allocated in the integrated resource plan for embedded generation of this nature has been reached.

- 7.5 The installation of an SSEG shall be limited to PV Systems producing a minimum of 50% of the electricity consumption of a particular property and to a maximum of 200% of the electricity consumption of such property unless otherwise agreed to by the NMBMM in writing;
- 7.6 Each Participating Customer shall be connected to the Distribution System and shall sell electricity to a pre-identified Single Customer or Related Customer identified monthly in advance by the Investor which monthly sale of electricity by the Participating Customer to the Single Customer or Related Customer aforesaid shall be limited to the electricity requirement and purchase by the Single Customer or Related Customer in the month in question.
- 7.7 Any excess electricity (in excess to the electricity purchased by the identified Single Customer or Related Customer) generated by the Participating Customer and introduced into the Distribution System shall not be regarded as having been sold by the Participating Customer and the NMBMM shall be entitled to deal with such excess electricity at its sole discretion without any obligation to compensate the Participating Customer or Investor.
- 7.8 The Investor shall be entitled to wheel the electricity only between the Participating Customer and a pre-identified Single Customer or Related Customer (the Participating Customer being the generator and seller of the electricity and the Single Customer or Related Customer being the consumer and purchaser of such electricity).
- 7.9 The Investor shall not conclude any arrangements with licenced power traders to sell excess electricity.

- 7.10 The Investor acknowledges that neither it nor any Participating Customer shall be compensated by the NMBMM for any lost yield due to grid faults or maintenance.
- 7.11 The Participation Customer Agreements concluded between Participating Customers and the Investor shall regulate, inter alia, the implications of the change of ownership of property owned by a Participating Customer and/or pre-identified Single Customers or Related Customers.
- 7.12 The Investor shall supply, install and maintain the SSEG and PV System for Participating Customers free of charge subject to the Investor and each Participating Customer entering into a Participation Customer Agreement for a duration not exceeding the duration of this Agreement.
- 7.13 The Investor shall be responsible for any damage to a Participating Customers' property incidental to the installation, maintenance and removal of each SSEG.
- 7.14 The Investor shall be responsible for any costs regarding the connection of the SSEG to the Distribution System, including the required upgrades of supply cables or circuit breakers, if required.
- 7.15 The Investor shall be responsible for the performance of the SSEG and PV System and the NMBMM shall have no obligations in this regard.
- 7.16 The Investor shall be obliged to ensure that an appropriate metering device is installed in respect of each SSEG to measure a Participating Customer's electricity production and all such meters shall be appropriately calibrated and the Investor shall furnish the NMBMM with such calibration certificate at the time of initial installation and further calibration certificates in respect of any installations on request by the NMBMM.
- 7.17 The metering device aforesaid shall fulfill the following criteria:

- 7.17.1 100 days' data storage;
 - 7.17.2 data capturing intervals of 30 minutes;
 - 7.17.3 a real time clock
 - 7.17.4 an output signal to control the inverter and (for future purposes) battery backup.
 - 7.17.5 SANS 474 or any subsequent SANS.
 - 7.17.6 be on the list of approved NMBMM meters.
- 7.18 The Investor shall have the obligation to maintain the SSEG for the period of the Participation Customer Agreement and on the expiration thereof, the Investor shall be entitled to remove the PV System (free of charge to the Participating Customer) only on the written authority of the NMBMM so as to avoid duress to the Distribution System.
- 7.19 Prior to the first day of each month, the Investor shall furnish the NMBMM with a schedule of Participating Customers reflecting the Single Customer or Related Customer to whom such Participating Customer's electricity to be generated during the month is to be sold and on or before the last day of each month, the Investor shall forward a schedule to the NMBMM reflecting the electricity production of each such Participating Customer and the electricity consumption by such Participating Customers, Single Customer or Related Customer during the month. The data shall be captured in such format as is required by the NMBMM and show the daily production for each day of the month at each Participating Customer's premises. In addition to the foregoing, the Investor shall forward the raw data obtained from each meter of each Participating Customer to the NMBMM's server on or before the last day of each month in CSV format.
- 7.20 To ensure a high installation standard, the following shall be implemented by the Investor, the Investor shall:

- 7.20.1 retain detailed information of each PV System position including GPS co-ordinates and pictures.
 - 7.20.2 ensure that a PV GreenCard is completed in respect of each PV System if required by the NMBMM.
 - 7.20.3 ensure that the connection point of the PV System to the Distribution System is fixed.
 - 7.20.4 ensure that each PV System has a DC Isolator;
 - 7.20.5 ensure that functionality of the PV System (including the decoupling safety equipment) is tested every twelve (12) months;
 - 7.20.6 ensure that the operation and maintenance of the PV System is carried out according to the operative technical rules and regulations;
 - 7.20.7 provide a solution at its cost in the event of any PV System having a negative effect on the Distribution System.
 - 7.20.8 ensure that all captured data is available to the NMBMM at any given time.
 - 7.20.9 ensure that the data of the meter for the PV System is taken in periods of not longer than thirty (30) minutes.
- 7.21 The Investor shall not be entitled to conclude any Participating Customer Agreement for a period in excess of the remaining period of this Agreement.

7.22 The Investor shall:

- 7.22.1 At all times act in the best interests of the NMBMM and disclose any potential conflict between the NMBMM and the Investor.
- 7.22.2 Furnish the NMBMM with the Reports as and when required by the NMBMM and shall attend such meetings as may be reasonably required by the NMBMM.
- 7.22.3 Retain the risk of loss or damage to any of its property notwithstanding that such property may be situated at the premises of the NMBMM at the time of such loss or damage.
- 7.22.4 Bear the risk of loss or damage to any of the NMBMM's assets if any such assets are in the possession or under the control of the Investor during the term of this Agreement.
- 7.22.5 Exercise reasonable skill, care and diligence in the performance of its obligations in terms of this Agreement.
- 7.22.6 Report any envisaged delay and the reasons therefore in writing to the NMBMM immediately of it becoming aware of the likelihood of such delay.
- 7.22.7 Immediately notify the NMBMM should it lose the necessary capacity, resources, experience and expertise to perform in terms of this Agreement.

8. OBLIGATIONS OF THE NMBMM:

The NMBMM shall:

- 8.1 establish a designated team to oversee and administer all agreements concluded between the NMBMM and Investors.

- 8.2 on receipt of an application by a Participating Customer for registration with Nersa:
- 8.2.1 consider the application and determine whether to approve the application; and
 - 8.2.2 subject to the approval of the application by the NMBMM, the NMBMM will forward the application of the Participating Customer to Nersa for registration in prescribed form.
- 8.3 endeavour to approve any installation within three (3) Business Days of notification.
- 8.4 Provide such information in its possession, which may be reasonably required by the Investor for the provision of the Services, which information shall be provided within a reasonable time after the request therefore and at no cost to the Investor.
- 8.5 Furnish any decision on any matters properly referred to it in writing by the Investor within a reasonable period.
- 8.6 Appoint an authorised representative to receive all notices, correspondence and other communications issued pursuant to this agreement and officially communicate such appointment to the Investor.

9. FINANCIAL:

- 9.1 The NMBMM shall implement the Designated Tariff for electricity consumed by Participating Customers (who shall purchase their electricity requirements from the NMBMM in accordance with this Agreement) which shall be reviewed annually subject to the approval of Nersa.
- 9.2 Every Participating Customer shall continue to purchase his/her/its electricity requirements from the NMBMM in accordance with this Agreement.

- 9.3 As consideration for the generation of electricity by Participating Customers wheeled through the Distribution System, the Investor will be paid R1.16 per kWh generated by each Participating Customer and purchased by such Participating Customer's pre-identified Single Customer or Related Customer and the NMBMM shall receive R0.44 per kWh which amount shall be deemed to be inclusive of VAT. For the avoidance of doubt, the Investor shall not be paid for any excess electricity generated by a Participating Customer not consumed by such Participating Customer's pre-identified Single Customer or Related Customer, nor shall the Investor be paid any consideration in instances where the Participating Customer's Single Customer or Related Customer has not been pre-identified as stipulated herein.
- 9.4 During the period of this Agreement, any increases to the Designated Tariff shall be shared between the Investor and the NMBMM with the investor being entitled to 70% of any such increase and the NMBM being entitled to 30% of any such increase.
- 9.5 During the period of this Agreement, the yearly Tariff increase for the Investor is limited to a maximum of CPI, regardless to the increase of the Designated Tariff in that year.
- 9.6 The Investor shall render monthly invoices to the NMBMM in respect of monies due and payment by the NMBMM to the Investor shall be subject to the verification of the amount due by the Project Manager or a designated Official of the NMBMM and further subject to the payment terms of the NMBMM save that should any other mechanism be applied by the Chief Financial Officer of the NMBMM, such other mechanism shall be agreed upon by the parties in writing.

10. LIABILITY AND INDEMNITY:

- 10.1 The Investor shall be liable for all damages suffered by the NMBMM arising from the negligence of the Investor and its non-compliance with any Prevailing Legislation relating to this Agreement and indemnifies the

NMBMM against all or any claims of whatsoever nature which may be made against the NMBMM pursuant or incidental to any act or omission of the Investor, its agents, subcontractors, employees or assigns.

- 10.2 In particular, the Investor further indemnifies the NMBMM and holds it harmless from and against any and all actions, claims, demands, proceedings, liabilities or judgments (collectively referred to as “claims”) and all losses, damages, costs, charges and expenses (collectively referred to as “losses”), of whatsoever nature and in whatsoever jurisdiction, which may be instituted against, or which may be suffered or incurred, by the NMBMM which relate to or arise, directly or indirectly, as a result of any defect in the performance by the Investor of its obligations in terms of this Agreement or the accuracy in any information provided by the Investor under this Agreement, provided that such defect or inaccuracy does not arise from inaccuracy in and incompleteness of any information provided by the NMBMM.

11. PUBLICITY:

- 11.1 Subject to Clause 11.3, the Investor undertakes to keep confidential and not to disclose to any third party, save as may be required in law or permitted in terms of this Agreement, the nature, content or existence of this Agreement and any and all information given by the NMBMM to the Investor pursuant to this Agreement.
- 11.2 No announcement of any nature or whatsoever will be made by or on behalf of the Investor relating to this Agreement without the prior written consent of the NMBMM, save for any announcement or other statement required to be made in terms of a provision to any law, in which event the Investor shall first consult with the NMBMM in order to enable the Parties in good faith to attempt to agree the content of such announcement, which (unless agreed) must go no further than is required in terms of such law.
- 11.3 This Clause 11 shall not apply to any disclosure made by a Party to its professional advisors or consultants, provided that they have agreed to

the same confidentiality undertakings, or any judicial or arbitral tribunal or officer, in connection with any matter relating to this Agreement or arising out of it.

12. BREACH AND TERMINATION:

12.1 In the event of either Party ("defaulting Party") committing a breach of any of the terms of this Agreement and failing to remedy such breach within a period of fifteen (15) days after receipt of a written notice from the other party ("aggrieved Party") calling upon the defaulting Party to so remedy the breach, then the aggrieved Party shall be entitled, at its sole discretion without prejudice to any of its other rights in law, either to claim specific performance of the terms of this Agreement or to cancel this Agreement forthwith and on written notice, and in either case to claim and recover damages from the defaulting Party.

12.2 Notwithstanding the foregoing, the NMBMM shall be entitled to terminate this Agreement and/or disconnect the system in the event of:

12.2.1 the unauthorised utilization of the Distribution System;

12.2.2 technical or safety defects;

12.2.3 the connection of a third party without approval;

12.3 The foregoing shall be in addition to the rights of the NMBMM reflected in 6.3 above.

13. DISPUTE RESOLUTION:

13.1 In the event of there being any dispute or difference between the Parties arising out of this Agreement, the said dispute or difference shall on written demand by either Party be submitted to arbitration.

- 13.2 The arbitration shall be held in Port Elizabeth with only the Parties and their representatives (including experts and/or representatives) present thereat;
- 13.3 It is the intention that the arbitration shall, where possible, be held and conducted within thirty (30) days of same having been demanded.
- 13.4 The Parties shall use their best endeavours to procure the expeditious completion of the arbitration.
- 13.5 The arbitrator, whose identity shall be agreed by both Parties' designated representative, shall be, if the matter in dispute is principally:-
- 13.5.1 A legal matter, an Advocate or Attorney practicing in South Africa of not less than ten (10) yeas standing.
 - 13.5.2 An accounting matter, a Chartered Accountant of not less than ten (10) yeas standing; and
 - 13.5.3 A technical engineering matter, an independent suitably qualified person.
- 13.6 If the Parties fail to agree on an arbitrator within ten (10) days after the arbitration has been demanded, or failed to agree whether the dispute is of a legal, accounting, technical or other nature within ten (10) days after the arbitration has been demanded, the nomination or determination, as the case may be, shall be of the President for the time being of the Law Society of the Cape of Good Hope (or the successor body thereof) at the request of either Party.
- 13.7 The Parties shall keep the evidence in the arbitration proceedings and any order made by the arbitrator confidential unless otherwise contemplated herein.

- 13.8 The arbitrator shall be obliged to give his award in writing fully supported by reasons.
- 13.9 The provisions of this Clause are severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 13.10 The arbitrator shall have the power to make an award if any Party fails to make submissions on due date and/or fails to appear at the arbitration.
- 13.11 All disbursements reasonably incurred by either Party including, without limitation, the costs of air travel, accommodation and subsistence in respect of each Party, its employees, witnesses, expert witnesses, and any fees associated with such witnesses and expert witnesses, save for costs that are incurred in the award made by the arbitrator, shall be borne by the respective Parties to the arbitration provided that all fees (including disbursements and expenses) payable by each Party to its legal representatives shall not be included in such disbursements but shall follow the award of the arbitrator who shall be empowered to order the payment of such costs as part of its award.
- 13.12 Should either of the Parties institute arbitration proceedings, such arbitration proceedings shall not relieve either Party to perform its obligations in terms of this Agreement.
- 13.13 Nothing herein contained shall be deemed to prevent or prohibit a Party to the arbitration from applying to an appropriate Court for urgent relief or for Judgment in relation to a liquidated claim.

14. NOTICES AND DOMICILIA:

- 14.1 The Parties select as their respective domicilia citandi et executandi the following physical and e-mail addresses, for the purposes of giving or sending any notice provided for or required under this Agreement:

14.1.1 the NMBMM:

Physical Address	The Municipal Manager City Hall Vuyisile Mini Square Govan Mbeki Avenue Port Elizabeth 6001
E-mail Address	cm@mandelametro.gov.za

14.1.2 the Investor:

Physical Address	_____

E-mail Address	_____

14.2 Notwithstanding 14.1 a Party may change its domicilium citandi et executandi by written notice to the other Party to that effect. Such change of address will be effective five (5) business days after receipt of the notice of the change.

14.3 All notices to be given in terms of this Agreement will be given in writing and will:

14.3.1 be delivered by hand or sent via e-mail;

14.3.2 if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a business day will be presumed to have been received on the following business day; and

14.3.3 if sent via e-mail during business hours, be presumed to have been received on the date of successful transmission of

the e-mail. Any e-mail sent after business hours or on a day which is not a business day will be presumed to have been received on the following business day.

14.4 Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding such notice has not been given in accordance with this Clause 14.

15. APPLICABLE LAW:

This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.

16. WHOLE AGREEMENT:

16.1 This Agreement 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 Agreement not incorporated in this Agreement shall be binding on either of the Parties.

16.2 This Agreement 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.

17. VARIATIONS TO BE IN WRITING:

No addition to or variation, deletion or agreed cancellation of all or any Clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.

18. NO INDULGENCES:

No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. Failure or delay on the part of any Party in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

19. NO WAIVER OR SUSPENSION OF RIGHTS:

No waiver, suspension or postponement by any Party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by such Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

20. CESSION, DELEGATION AND ASSIGNMENT:

The Investor shall not be entitled to cede, delegate or assign its rights or obligations hereunder without the prior written consent of the NMBMM.

21. COUNTERPARTS:

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.

DATED at PORT ELIZABETH this _____ day of AUGUST 2018.

AS WITNESSES:

1. _____

2. _____

_____ for and on behalf of the
NMBMM

DATED at PORT ELIZABETH this _____ day of AUGUST 2018.

AS WITNESSES:

1. _____

2. _____

_____ for and on behalf of the
INVESTOR