

ENERGY SYSTEMS SA PROPRIETARY LIMITED

AND

EPC CONTRACTOR

SUPPLY OF ENERGY AGREEMENT

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PURCHASE OF HEAT AGREEMENT

1. PARTIES

1.1 ENERGY SYSTEMS SA PROPRIETARY LIMITED

Registration number 2004/012337/07

(**“ENERGY”**)

1.2 EPC CONTRACTOR

Registration number XXXXXXXXXX

(**“XXX”**)

2. INTRODUCTION

2.1 XXX is a contractor contracted to construct and operate the CITY OF JOHANNESBURG BIOMETHANE PROJECT (“CBP”) by the City of Johannesburg and will procure electricity and heat on behalf of CBP.

2.2 The CBP is a municipal owned waste beneficiation project located in, Robinson Deep, Gauteng (“Robinson Deep”) (as depicted in the Site Diagram (defined below).

2.3 ENERGY is a leading power generation company that provides renewable energy in the form of electrical energy and recovered heat and supplies such energy to its clients.

2.4 ENERGY currently owns and operates the JOBURG LANDFILL GAS PROJECT (JLGP) at Robinson Deep, adjacent to the proposed site of the CBP. This operation generates excessive amounts of waste heat that can be utilised to further produce usable energies in the form of heat and electricity.

2.5 ENERGY wishes to supply CBP with “Electricity” and “Heat” (defined below) and XXX wishes to purchase such Electricity and Heat from ENERGY, on behalf of CBP.

2.6 The CBP will also seek to vent biogas from time to time to the JLGP for use in the existing landfill gas generators operated by ENERGY. This is to be allowed for in case the primary users of the biogas at the COJ BIOMETHANE PROJECT are unavailable.

2.7 The Parties are, accordingly, entering into this Agreement to, inter alia, record the terms of such arrangement.

3. DEFINITIONS AND INTERPRETATION

3.1 Unless otherwise provided or the context otherwise requires, any reference in this Agreement to any Law shall be construed as a reference to such Law as amended, or re-enacted, from time to time and to all instruments, orders or regulations, then in force and made under, or deriving from, such Law.

3.2 Any reference in this Agreement, save where the context otherwise requires, to the masculine, shall include the feminine and any reference to the singular shall include the plural and words denoting natural persons shall include companies, corporations, municipal councils and any other legal entities and vice versa.

- 3.3 The table of contents and the headings of the clauses, sub-clauses and Annexures of this Agreement are inserted for ease of reference only and shall be ignored in the construction and interpretation of this Agreement.
- 3.4 If any period is referred to in this Agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Working Day, in which case the last day shall be the immediately succeeding Working Day.
- 3.5 Unless otherwise indicated, words to which a meaning is ascribed in the body of this Agreement shall bear that meaning wherever such words appear thereafter.
- 3.6 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any person then, notwithstanding that such provision appears only in the definition clause, effect shall be given thereto as if it were a substantive provision contained in the body of this Agreement.
- 3.7 In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:
- (a) "Agreement" shall mean this agreement and any schedules or annexures attached hereto, as amended from time to time;
 - (b) "Authorisation" shall mean any consent, registration or recording, filing, agreement, notarisation, certificate, license, approval, permit, authority, authorisation or resolution or exemption from, by or with any Competent Authority, whether given (or to be given) by express action or deemed to be given by failure to act within any specified time period, and all corporate, creditor and shareholder approvals or consents;
 - (c) "Calendar Month" shall mean a calendar month in a calendar year starting at 00h00 hours on the 1st day of that month and ending at 24h00 on the last day of the same month;
 - (d) "Commencement Date" shall mean, unless otherwise agreed in writing, the first day of the Calendar Month immediately following the date upon which all of the Suspensive Conditions have been fulfilled and/or waived in terms of clause 5, which date shall be recorded in writing and signed by both Parties;
 - (e) "Robinson Deep Site" shall mean the Robinson Deep landfill site owned by Johannesburg Property Company and managed by Pikitup;
 - (f) "Clean Development Mechanism" shall mean the Clean Development Mechanism established under Article 12 of the Kyoto Protocol or any similar mechanism under any successor or supplementary international agreement, treaty or decision;
 - (g) "Competent Authority" shall mean any government (whether national, provincial or local), governmental, administrative, fiscal, judicial or government owned or controlled body, court department (whether national, provincial or local), commission, registry, authority, tribunal, agency (whether notarial, provincial or local) or any entity (whether state owned or controlled or privately owned or controlled) that performs governmental functions within the Republic of South Africa;
 - (h) "CPIX" shall mean the overall Consumer Price Index, being the weighted average of the Consumer Price Index as published by Statistics South Africa, which is referred to as "*Headline CPI – All Urban Areas (primary and secondary)*" in Statistical Release P0141 from time to time, or such index which may replace it.

- (i) "Heat Delivery Points" shall mean the hot water piping connection points situated at the Waste Heat Recovery System;
- (j) "Electricity Delivery Point" shall mean the electrical termination points situated at the Waste Heat Recovery System where to XXX will connect;
- (k) "Biogas Delivery Point" shall mean the connection point of the biogas vent line from CBP to the inlet point for Landfill Gas for the Joburg Landfill Gas project ;
- (l) "Designated CoJ Biomethane Project Digesters" shall mean the two CoJ Biomethane Project Digesters located closest to Turfontein Road (as highlighted on the Site Diagram);
- (m) "Electricity and/or Heat Meter" means the meter to be installed by ENERGY at the Delivery Points for purposes of measuring Heat and/or Electricity supplied to the CBP;
- (n) "Electricity" means electrical energy generated from the Waste Heat Recovery System for beneficial use in CBP, Pikitup and City Power;
- (o) "Heat" means thermal energy in the form of hot water produced at 70-80°C from the Waste Heat Recovery System for beneficial use in CBP.
- (p) "Facility" shall mean the plant and equipment which produces Electricity and Heat for CBP, which shall be installed by ENERGY at the Joburg Landfill gas Site;
- (q) "Force Majeure" shall have the meaning ascribed thereto in clause 14.2;
- (r) "Force Majeure Event" shall have the meaning ascribed thereto in clause 14.2;
- (s) "Heat" means unused heat from the cooling water circuit of the gensets or an Organic Rankine Cycle implemented on the genset exhaust.
- (t) "Kyoto Protocol" means the international treaty known as the Kyoto Protocol, which extends the UNFCCC and which was entered into force on 16 February 2005;
- (u) "Landfill Gas" or "LFG" means landfill gas produced by the anaerobic microbial decomposition of landfilled waste;
- (v) "Biogas" gas produced by CBP in digesters filled with microbes that convert pure organic waste into gas and residues. Similar in composition to Landfill Gas;
- (w) "Law" or "law" means any law (including common or customary law), statute, constitution, decree, judgment, treaty, regulation, directive, bylaw, order or any other legislative measure of any Competent Authority, provided that, wherever "law" is used in this Agreement, it shall, in respect of any judgment, comprise a reference to any judgment binding upon the person or entity to whom, in the context in which "law" is used, that reference to "law" applies;
- (x) "Longstop Date" shall mean 31 December 2022 or such later date as may be agreed in writing by the Parties;
- (y) "Material Authorisations" means the Authorisations listed in Annexure D (*Material Authorisations*);
- (z) "Parties" shall mean XXX and ENERGY and "Party" shall mean either one of them as the context requires;

- (aa) "Prime Rate" shall mean the publicly quoted basic rate of interest per annum, compounded monthly in arrear and calculated on a 365-day year (irrespective of whether or not the year is a leap year) from time to time published by The Standard Bank of South Africa Limited as being its prime overdraft draft rate;
- (bb) "Production Year" shall mean twelve (12) consecutive Calendar Months following the Supply Date and every succeeding 12 consecutive Calendar Months thereafter for the duration of this Agreement;
- (cc) "Renewable Energy" shall mean Electrical Energy and Heat;
- (dd) "Signature Date" shall mean the day on which the last Party signs this Agreement;
- (ee) "Signature Date Clauses" shall mean clause 1 (*Parties*), clause 2 (*Introduction*), this clause 3 (*Definitions and Interpretation*), clause 4 (*Duration*), clause 5 (*Suspensive Conditions*), clause 12 (*Limitation of Liability*), clause 13 (*Indemnities*), clause 21 (*Confidentiality*), clause 22 (*Dispute Resolution*), clause 23 (*Governing Law and Jurisdiction*), clause **Error! Reference source not found.** (*Domicile and Notices*) and clause **Error! Reference source not found.** (*General Conditions*);
- (ff) "Site" shall mean the site depicted in the Site Diagram, which shall be allocated by ENERGY and the City of Johannesburg for the Waste Heat Recovery System and its exclusive use for purposes of this Agreement;
- (gg) "Site Diagram" means the diagram set out in Annexure B,
- (hh) "Supply Date" shall mean, unless otherwise agreed in writing, the first day on which the supply of Heat takes place (following the construction of the Facility) which date shall be recorded in writing and signed by both Parties;
- (ii) "SSEG" means Small Scale Embedded Generator as set out by the City Power regulations and bylaws.
- (jj) "Suspensive Conditions" shall have the meaning ascribed thereto in clause 5.1;
- (kk) "Termination Date" shall have the meaning ascribed thereto in clause 4;
- (ll) "Total Heat Price" shall have the meaning ascribed thereto in clause 8.1;
- (mm) "Total Electricity Price" shall have the meaning ascribed thereto in clause 8.1;
- (nn) "Total Metered Output" shall mean the total amount of Heat or Electricity (in kilowatt) generated per Calendar Month by the Facility and metered at the Delivery Points;
- (oo) "UNFCCC" shall mean the United Nations Framework Convention on Climate Change, an international treaty which came into force on 21 March 1994;
- (pp) "Joburg Landfill Gas" means the project site for the current Robinson Deep Landfill gas power generation;
- (qq) "Joburg Landfill Gas Agreement" shall mean the agreement already in place between CoJ and Energy for the production of electricity from the Robinson Deep landfill and selling it to a 3rd party;
- (rr) "Joburg Landfill Gas Site" shall have the meaning ascribed to that term in the Joburg Landfill Gas definition;

(ss) "Working Days" shall mean any day other than a Saturday, Sunday, or a public holiday as designated by legislation in the Republic of South Africa.

4. DURATION

Apart from the Signature Date Clauses, which shall come into effect on the Signature Date, this Agreement shall become effective on the Commencement Date and, unless terminated earlier in accordance with any other termination provisions set out herein, shall automatically terminate upon the expiry or termination of the Joburg Landfill Gas Agreement (as notified by ENERGY to COJ BIOMETHANE PROJECT in writing) or such later date as the Parties may agree in writing (the "Termination Date"), provided that such termination shall not affect any rights and/or obligations of the Parties that may have accrued prior to such termination.

5. SUSPENSIVE CONDITIONS

5.1 This Agreement is subject to the fulfilment (or waiver in writing by the Parties) of the following suspensive conditions (the "Suspensive Conditions") by the Longstop Date:

(a) COJ Biomethane Project constructing and cold commissioning the Digesters.

5.2 XXX shall use reasonable endeavours to ensure the fulfilment of the Suspensive Conditions by the Longstop Date and ENERGY shall use reasonable endeavours provide XXX with such support as may be required for purposes of fulfilling the Suspensive Condition set out in clause 5.1(a).

5.3 In the event that the Suspensive Conditions have not been fulfilled or waived by the Longstop Date then XXX shall give written notice of this fact to ENERGY and:

- (a) save for the Signature Date Clauses, this Agreement shall be deemed to be of no force and effect; and
- (b) neither Party shall have any claim against the other in terms of this Agreement, except for such claims, if any, which may arise from the breach of clause 21 (*Confidentiality*).

5.4 XXX shall, on a regular basis, provide ENERGY with a report setting out the status of the Suspensive Conditions, the relevant actions taken, or events occurring since the last such report and a reasonable statement of when any unfulfilled condition is expected to be fulfilled.

5.5 XXX shall, immediately upon the fulfilment of a condition, notify ENERGY of this fact in writing.

5.6 XXX shall, acting reasonably upon being so requested in writing by CoJ, furnish any documentation necessary to reasonably satisfy ENERGY that all or either of the Suspensive Conditions have been fulfilled.

6. ENERGY'S OBLIGATIONS

6.1 Energy shall at its cost and risk:

- (a) ensure that it complies with all Material Authorisations; and
- (b) subject to clause 7.5 and such reasonable operational limitations as the Facility and Waste Heat Recovery System may experience from time to time, ensure the supply of Waste Heat by the Facility and Electricity and Heat from the Waste Heat Recovery System to the Delivery Point from where XXX will reticulate heat to the Designated CoJ Biomethane Project Digesters.

6.2 Energy warrants and undertakes that:

- (a) it is aware of no fact or circumstances preventing it from entering into this Agreement with COJ;
- (b) it will exercise all reasonable skill, care and diligence in carrying out all of its obligations in terms of this Agreement and it will at all times exercise the degree of skill, diligence and foresight which is expected of a skilled and experienced operator of a facility that produces Renewable Energy;
- (c) all the equipment used to produce, supply and measure the Heat and Electricity produced by the Facility will be free from defects in design, will be made using first class materials and will comply with the highest standards of workmanship;
- (d) subject to clause 11, it will ensure that the Facility, Waste Heat Recovery System and related equipment are maintained in working condition; and
- (e) it will comply with the procedures (as amended from time to time) stipulated for the workings of the Waste Heat Recovery System.

6.3 The Parties agree that ENERGY will install and control access to the Waste Heat Recovery System and instrumentation and that any such access shall be in terms of COJ's procedures, as amended from time to time.

6.4 During all operations and maintenance periods of the Waste Heat Recovery System, ENERGY shall ensure that it, its employees and contractors comply with ENERGY'S safe work access system procedures.

7. XXX'S OBLIGATIONS

7.1 Subject to clause 7.5 and such reasonable operational limitations as XXX may experience from time to time, provided that sufficient Heat and Electricity is supplied by the Facility and the Waste Heat Recovery System for such purposes, XXX shall use its best endeavours to ensure that the Designated CoJ Biomethane Project Digesters are utilised responsibly and productively during the term of this Agreement and shall provide ENERGY with such information as it may reasonably request from time to time to evidence its utilisation. XXX can by no means guarantee maximum utilisation of the CoJ Biomethane Project Digesters as the project is a pilot project.

7.2 Subject to clauses 7.3 and 7.5, XXX undertakes to purchase the Total Metered Output of Heat at the Total Heat Price and the Total Metered Output of Electricity at the Total Electricity Price.

7.3 Subject to clause 7.1, should the COJ Biogas Project heat requirements drop below the amount of Heat being produced by the Facility, it will only be obliged to take that amount of Heat that meets such requirements.

7.4 Subject to clause 7.1, should the COJ Biogas Projects electricity requirements drop below the amount of Electricity being produced by the Facility, it will still be obliged to take all of the electricity produced. Excess power will then be used to offset other onsite loads from Pikitup and in some instances feed into the City Power network through the Small Scale Embedded Generator arrangement.

7.5 ENERGY shall not be obliged to supply, and XXX shall not be obliged to take, the Heat or Electricity in circumstances where:

- (a) either Party acts in terms of clause 11;
- (b) either Party issues a Force Majeure notice in terms of clause 14; or
- (c) either Party acts in terms of clause **Error! Reference source not found..**

8. CALCULATING AND PAYMENT OF TOTAL HEAT PRICE

8.1 The Total Heat Price to be paid by XXX to ENERGY during any Calendar Month and duly metered will be calculated as follows (the "Total Heat Price"):

Total Heat Price (in ZAR) = the sum of the metered Heat supplied at the Delivery Points and measured in Kw thermal and converted to GJ multiplied by the Heat Price (as defined in Annexure A), plus Value Added Tax.

8.2 The Total Heat Price will be based on the quantity of Heat supplied by ENERGY to XXX, measured by Heat Meter readings, recorded at 24:00 on the last day of each Calendar Month and calculated as set out in clause 8.1 above.

8.3 ENERGY shall email, (or send by way of such other form of communication as agreed to between the Parties) by 16:00 on or before the 4th (fourth) Working Day of the Calendar Month following after the date upon which the Heat Meter readings are recorded in terms of clause 8.2, an original invoice (the "Invoice") to XXX reflecting the Total Heat Price.

8.4 XXX shall effect payment to ENERGY of the Total Heat Price within 30 days from date of the Invoice (the "Payment Date") by way of electronic funds transfer to a bank account nominated by ENERGY and communicated by it to XXX in writing.

8.5 If payment of the Total Energy Price is not received by ENERGY by the Payment Date, the amount outstanding shall bear interest at a rate per annum equal to the Prime Rate, compounded monthly from the Payment Date to the date that ENERGY receives payment of such amount.

8.6 If XXX disputes an amount reflected on an Invoice, it may not defer payment of the amount beyond the Payment Date but shall settle the Invoice in full pending resolution of such dispute. If a manifest error is, however, evident in the Invoice, XXX may pay an amount equal to the average of the Total Heat Price as reflected on the preceding 3 (three) consecutive Calendar Months' Invoices.

8.7 If XXX is incorrectly invoiced for any amount(s) payable in terms of this Agreement, ENERGY shall inform XXX of the correct amount(s) payable and the reasons therefor in writing and, depending on whether it has overcharged or undercharged XXX, follow the procedures set out in clause 8.8 or 8.9 (as applicable).

8.8 If XXX is overcharged any amount and made payment of such overcharged amount, it may, in its discretion, either:

- (a) request ENERGY to reflect such overcharged amount as a credit, including interest from the date that such overcharged amount was paid by XXX, in the Invoice of the Calendar Month immediately following the date upon which either Party became aware of such overcharged amount; or
- (b) request ENERGY to immediately reimburse XXX with such overcharged amount, including interest calculated from the date that such overcharged amount was paid by XXX,

and ENERGY shall comply with such request.

- 8.9 If XXX is undercharged an amount, ENERGY shall reflect such amount in the following Calendar Month's Invoice and such amount will be payable by XXX by the Payment Date applicable to such Invoice
- 8.10 For the purposes of clause 8.8, interest will be compounded monthly from the day of payment by XXX to the repayment date by ENERGY at a rate per annum equal to the Prime Rate.
- 8.11 ENERGY shall ensure that all Invoices reflect the following:
- (a) XXX's agreement number;
 - (b) the master number;
 - (c) the release order number;
 - (d) ENERGY's VAT registration number;
 - (e) XXX's VAT registration number; and
 - (f) such additional information/documentation as XXX may reasonably require.
- 8.12 Only one release order may be referenced in an Invoice and the Invoice must precisely match the purchase order.
- 8.13 In addition to the Invoice, ENERGY shall prepare and submit monthly statements to XXX, for review and reconciliation by XXX.

9. CALCULATING AND PAYMENT OF TOTAL ELECTRICITY PRICE

- 9.1 The Total Electricity Price to be paid by XXX to ENERGY during any Calendar Month and duly metered will be calculated as follows (the "Total Electricity Price"):
- Total Electricity Price (in ZAR) = the sum of the metered Electricity supplied at the Delivery Points and measured in kWh electrical multiplied by the Electricity Price (as defined in Annexure A), plus Value Added Tax.
- 9.2 The Total Electricity Price will be based on the quantity of electricity supplied by ENERGY to XXX, measured by Electricity Meter readings, recorded at 24:00 on the last day of each Calendar Month and calculated as set out in clause 8.1 above.
- 9.3 ENERGY shall email, (or send by way of such other form of communication as agreed to between the Parties) by 16:00 on or before the 4th (fourth) Working Day of the Calendar Month following after the date upon which the Electricity Meter readings are recorded in terms of clause 8.2, an original invoice (the "Invoice") to XXX reflecting the Total Electricity Price.
- 9.4 XXX shall effect payment to ENERGY of the Total Electricity Price within 30 days from date of the Invoice (the "Payment Date") by way of electronic funds transfer to a bank account nominated by ENERGY and communicated by it to XXX in writing.
- 9.5 If payment of the Total Electricity Price is not received by ENERGY by the Payment Date, the amount outstanding shall bear interest at a rate per annum equal to the Prime Rate, compounded monthly from the Payment Date to the date that ENERGY receives payment of such amount.
- 9.6 If XXX disputes an amount reflected on an Invoice, it may not defer payment of the amount beyond the Payment Date but shall settle the Invoice in full pending resolution of such dispute. If a manifest error is, however, evident in the Invoice, XXX may pay an amount

equal to the average of the Total Electricity Price as reflected on the preceding 3 (three) consecutive Calendar Months' Invoices.

- 9.7 If XXX is incorrectly invoiced for any amount(s) payable in terms of this Agreement, ENERGY shall inform XXX of the correct amount(s) payable and the reasons therefor in writing and, depending on whether it has overcharged or undercharged XXX, follow the procedures set out in clause 8.8 or 8.9 (as applicable).
- 9.8 If XXX is overcharged any amount and made payment of such overcharged amount, it may, in its discretion, either:
- (a) request ENERGY to reflect such overcharged amount as a credit, including interest from the date that such overcharged amount was paid by XXX, in the Invoice of the Calendar Month immediately following the date upon which either Party became aware of such overcharged amount; or
 - (b) request ENERGY to immediately reimburse XXX with such overcharged amount, including interest calculated from the date that such overcharged amount was paid by XXX,
- and ENERGY shall comply with such request.
- 9.9 If XXX is undercharged an amount, ENERGY shall reflect such amount in the following Calendar Month's Invoice and such amount will be payable by XXX by the Payment Date applicable to such Invoice.
- 9.10 For the purposes of clause 8.8, interest will be compounded monthly from the day of payment by XXX to the repayment date by ENERGY at a rate per annum equal to the Prime Rate.
- 9.11 ENERGY shall ensure that all Invoices reflect the following:
- (a) XXX's agreement number;
 - (b) the master number;
 - (c) the release order number;
 - (d) ENERGY's VAT registration number;
 - (e) XXX's VAT registration number; and
 - (f) such additional information/documentation as XXX may reasonably require.
- 9.12 Only one release order may be referenced in an Invoice and the Invoice must precisely match the purchase order.
- 9.13 In addition to the Invoice, ENERGY shall prepare and submit monthly statements to XXX, for review and reconciliation by XXX.

10. METERING OF BOTH HEAT AND ELECTRICITY

- 10.1 ENERGY shall be responsible for measuring Heat and Electricity produced by the Facility at the Electricity and/or Heat Meters and XXX shall be responsible for checking such measurements.
- 10.2 If during any period the Electricity and/or Heat Meter is not showing readings, or shows that its readings are unreliable due to it or any associated equipment being defective, a reasonable estimate will be made jointly by the Parties of the quantities of Electricity and/or

Heat supplied by the Facility for each of the Calendar Months where the Electricity or Heat Meter(s) or equipment was defective and the Invoices for such period will be adjusted and be based on such estimate; provided that such estimate will take account of the evidence provided by ENERGY's generator operations data. If the estimate indicates that XXX has been overcharged or undercharged for Electricity and/or Heat, the provisions of clauses 8.7 to 8.9 will apply.

Subject to clause 10.4, ENERGY shall be responsible for the Electricity and/or Heat Meter and any associated metering equipment and, if such meter or equipment is found to be defective, ENERGY shall immediately effect repairs thereto.

- 10.3 The records of Electricity and Heat Meter readings shall at all reasonable times be open for inspection by XXX and ENERGY shall allow XXX reasonable access to the Electricity and Heat Meters for purposes of XXX conducting its own readings.
- 10.4 XXX may at any time in writing request ENERGY to have the Electricity and/or Heat Meters or any associated metering equipment tested. XXX may either require ENERGY to appoint a suitable person to test such equipment or XXX may nominate such person.
- 10.5 If, as a result of the testing of the Electricity and/or Heat Meters in terms of clause 10.4, the Electricity and/or Heat Meter shows a meter reading inaccuracy exceeding 2% (two per cent) for the Calendar Month or an overall meter reading inaccuracy exceeding 5% (five per cent) for the year, then, in the absence of evidence to the contrary, it will be deemed that such inaccuracy existed since the date of the Invoice issued in the Calendar Month in which the testing commenced. All Invoice(s) applicable to the testing period must then immediately be adjusted and clauses 8.8 to 8.10 will apply with respect to any overcharged or undercharged amounts.
- 10.6 If, as a result of the testing of the Electricity and/or Heat Meter in terms of clause 10.4, the Electricity and/or Heat Meter shows an inaccuracy of less than 2% (two per centum) for the Calendar Month and/or less than 5% (five per centum) for the overall meter reading for the year, then the Invoices rendered in respect of the testing period will not be adjusted.

11. PLANNED AND UNPLANNED MAINTENANCE AND SHUTDOWNS

- 11.1 Both Parties shall notify each other by way of email (or such other electronic medium as may be agreed to between the Parties), in the case of ENERGY, of all maintenance and shutdowns of the Facility and/or Waste Heat Recovery System and, in the case of XXX, of all maintenance or shutdowns of the Designated CoJ Biomethane Project Digesters as follows:
- (a) for all planned maintenance or shutdowns: 2 Working Days prior to the start of the maintenance or shutdown;
 - (b) for all unplanned maintenance or shutdowns: no later than the first Working Day following the onset of the maintenance or shutdown.
- 11.2 Each notification issued in terms of clause 11.1 shall describe the date and duration of the maintenance or shutdown, the reason therefor and, in the case of ENERGY, the impact of the maintenance or shutdown on the quality or quantity of Electricity and/or Heat expected to be delivered to XXX.
- 11.3 For the sake of clarity, this clause does not apply in circumstances of Force Majeure.

12. LIMITATION OF LIABILITY

- 12.1 Neither Party nor its officers, employees, agents or assigns (each a **Relevant Party**) shall be liable to the other Party under this Agreement for indirect, special or consequential damages including, but not limited to, loss of profits, loss of time, loss of revenue, loss of goodwill or any business interruption of any kind except:

- (a) to the extent to which such claims, losses, damages and/or costs arise out of the unlawful conduct, wilful misconduct or the negligent act or omission of the Relevant Party;
 - (b) liability for personal injury or death, provided that such personal injury or death is caused by unlawful conduct, wilful misconduct or a negligent act or omission of the Relevant Party; and
 - (c) liability for property damage, provided that such property damage is caused by unlawful conduct, wilful misconduct or a negligent act or omission of the Relevant Party.
- 12.2 Notwithstanding any provision in this Agreement to the contrary, the aggregate liability of ENERGY, its officers, employees, agents and assigns in respect of all claims arising out of this Agreement (whether in respect of breach, indemnification or otherwise) shall not, at any time, exceed ZAR 2,000,000.00.

13. INDEMNITIES

- 13.1 Subject to the exceptions contained in clauses 12.1(a) to 12.1(c), ENERGY acknowledges that if it or any of its employees, agents or contractors enter XXX's premises, it or they do so at its or their own risk and ENERGY shall ensure that its personnel are made aware this fact. Conversely, XXX acknowledges that if it or any of its employees, agents or contractors enter ENERGY's premises, it or they do so at its or their own risk and XXX shall ensure that its personnel are made aware this fact
- 13.2 Subject to the limitations contained in clause 12:
- (a) the Parties will be liable for and indemnify each other and shall keep each other indemnified from and against liability and/or loss or damage arising from any breach of this Agreement by the relevant Party; and
 - (b) ENERGY shall be liable for and indemnifies XXX and shall keep XXX indemnified from and against any loss or damage to any plant, equipment, tools, appliances or other property owned, rented or hired by ENERGY and used in relation to this Agreement, except to the extent that such loss or damage is contributed to by XXX's unlawful or wilful misconduct or negligence or that of XXX's employees, agents, suppliers and sub-suppliers.
- 13.3 Each indemnity in this clause 13 is a continuing obligation separate and independent from each Party's other obligations, and survives termination of this Agreement.

14. FORCE MAJEURE

- 14.1 Notwithstanding any provision in this Agreement to the contrary but subject always to clauses 14.3 and 14.4 below, if either Party, despite all reasonable efforts, is prevented or hindered directly or indirectly by a Force Majeure Event from performing all or any of its obligations under this Agreement, the Party so affected (the "Affected Party") shall be relieved from performing its obligations hereunder during the period that such Force Majeure Event and the consequences thereof continue, but only to the extent that such Party is so prevented or hindered, and will not be liable for any delay or failure in the performance of any of its obligations in terms of this Agreement or loss or damage, whether direct, general, special, or consequential which the other Party (the "Unaffected Party") may suffer due to or resulting from such Force Majeure Event, provided that notice shall be given by the Affected Party to the Unaffected Party promptly upon the occurrence of the Force Majeure Event, together with details thereof and an estimate of the period of time for which it will endure.
- 14.2 The term "Force Majeure" includes fire, explosion, flood, riot, war, terrorist attack, accident, act of God, embargo, legislation, regulation or directive having the force of law, civil

commotion, unrest or disturbance, compliance with any law, order or instruction of any port, local or other Competent Authority, non-availability or rationing of raw material worldwide, non-availability, rationing or reduction of electricity, strikes, labour disputes, lock-out, a change in market or economic conditions or any other cause resulting in the impossibility of performance which is beyond the control of the Affected Party. The term "Force Majeure Event" means an event of Force Majeure.

14.3 If the Force Majeure Event is of such a nature that it will result in impossibility of performance of an obligation going to the root of this Agreement, the Unaffected Party shall be entitled, despite any provision to the contrary contained in this clause 14, to immediately terminate the Agreement but, notwithstanding any provision of this Agreement to the contrary, will not be entitled to recover any damages which it may suffer as a result of such termination.

14.4 If the Force Majeure Event is of such a nature that it will not result in impossibility of performance of the obligation in question but will delay the performance thereof, the Affected Party is entitled to such extension of time in which to perform that obligation as may be reasonable in the circumstances, taking into account the interests of both Parties, provided that if such Force Majeure Event persists for a period in excess of 30 days, the Unaffected Party shall be entitled to terminate this Agreement but, notwithstanding any provision of this Agreement to the contrary, will not be entitled to recover any damages which it may suffer as a result of such termination.

15. RIGHTS OF ACCESS

ENERGY shall ensure that any officers, employees, agents, contractors and other persons appointed and acting on behalf of XXX shall, upon giving reasonable notice to ENERGY, be entitled to enter the Site at times which are reasonably convenient to ENERGY. XXX shall procure that any individual to whom access is given complies with all reasonable directions given by ENERGY, and its appropriately authorised employees and agents, as to general safety and site-security requirements.

16. PARTIES' REPRESENTATIVES

16.1 The Parties' representatives are listed in annexure C (the "Parties' Representatives").

16.2 Either Party may, by written notice to the other, change its representatives.

16.3 Each Party must ensure that each person appointed as its representative, in terms of Annexure C, has the requisite authority to represent that Party in all matters and is, during normal business hours, available to liaise with the other Party's Representative(s).

17. MARKETING CAMPAIGNS

17.1 The Parties agree that before either Party launches a marketing or information campaign relating to the supply of Heat in terms of this Agreement, that Party shall advise the other Party of the details of its campaign and, if necessary, shall reasonably adapt its campaign to ensure that no conflict of interest arises between the Parties and that there is conformity between the Parties' respective campaigns.

17.2 The Parties agree that if either Party's brand name and/or logo is/are to be used in such campaigns, such Party's written approval shall be obtained prior to the launching of such campaigns.

17.3 The Parties agree that this clause is a material term of this Agreement.

18. CESSION AND ASSIGNMENT

- 18.1 Neither Party shall be entitled to cede, assign or delegate any of its rights, powers, duties and/or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

19. LEVIES AND TAXATION

Save as otherwise provided in this Agreement, all amounts payable by XXX in terms of this Agreement are exclusive of Value Added Tax, levies and any other taxes or levies that may, in future, be imposed by Law, the South African government or another Competent Authority from time to time, and such Value Added Tax, levies and taxes shall be charged by ENERGY to XXX, in addition to other amounts payable by XXX, to the extent that they apply to the purchase or supply of Electricity or Heat in terms of this Agreement.

20. COMPLIANCE WITH APPLICABLE LAWS AND POLICES

- 20.1 Both Parties agree to comply with all Laws, notices of any Competent Authority and Authorisations that are or may in the future be applicable to the supply of Heat on the terms set out in this Agreement.
- 20.2 If any of ENERGY's personnel enter XXX's premises, ENERGY shall ensure that such personnel comply with:
- (a) XXX's written policies on health, safety, security and environmental issues, as amended from time to time by XXX; and
 - (b) any additional guidelines and/or operating standards provided to ENERGY by the XXX's representative(s).

21. CONFIDENTIALITY

- 21.1 Each Party undertakes to the other that it will not disclose to any person any confidential information belonging to the other Party which has come into its possession as a result of this Agreement or the negotiations preceding this Agreement including, but not limited to, the terms of this Agreement, trade information, know-how, financial records, technical data, commercial information and/or any other information which is not readily available to the public ("Confidential Information").
- 21.2 Nothing in this agreement prohibits disclosure of information:
- (a) which is in the public domain;
 - (b) which, after disclosure to a Party, becomes part of the public domain otherwise than as a result of any wrongful act of that Party;
 - (c) which is received from a third party, provided that it was not acquired directly or indirectly by that third party from a Party;
 - (d) which is required to be disclosed by Law or any Competent Authority or agency having authority over a Party;
 - (e) to any legal, financial and other adviser of a Party;
 - (f) to the auditor of a Party; or
 - (g) to a bona fide prospective purchaser of a Party or the business of that Party, provided that such bona fide prospective purchaser agrees to keep the terms of such information confidential.

21.3 Subject to clause 21.2, the Parties agree that, for purposes of section 65 of the Promotion of Access to Information Act 2 of 2000, neither Party may disclose any information relating to this Agreement to any third party without the other Party's written consent.

21.4 The provision of this clause 21 shall survive the cancellation or termination of this Agreement for any reason whatsoever and remain binding on the Parties for a period of 5 years after the Termination Date.

22. DISPUTE RESOLUTION

22.1 If any dispute arises out of or in connection with this Agreement, its termination or cancellation or the subject matter thereof either Party may declare that a dispute exists by giving notice to the other Party's Representatives (the "Dispute").

22.2 Within 10 days of receipt of a notice declaring a Dispute, the Parties' Representatives must try to meet and resolve the Dispute.

22.3 Should the Parties' Representatives fail to resolve the Dispute within the 10-day period referred to above, the Parties shall refer the matter to arbitration in accordance with the provisions below.

22.4 The arbitration shall be held in accordance with the following provisions:

- (a) it shall be held in Johannesburg;
- (b) the cost of it shall be shared equally by both Parties;
- (c) it shall be conducted in English;
- (d) the arbitration proceedings shall be mechanically recorded by an external and independent service;
- (e) the rules regulating the conduct of the proceedings of the several provincial and local divisions of the High Court of South Africa (the Uniform Rules of Court), as amended from time to time, shall apply *mutatis mutandis* to the arbitration proceedings;
- (f) the arbitrator shall have the power to make an appropriate cost order, which order may include the cost of the arbitration proceedings.

22.5 The Parties shall hold a pre-arbitration conference within 20 (twenty) days of the declaration of the Dispute. In this regard, the attorneys of the Party declaring the Dispute shall draw up a minute of the pre-arbitration conference, which minute shall be signed by the Parties' attorneys and be handed to the arbitrator at the commencement of the arbitration hearing.

22.6 The arbitrator shall be appointed by agreement between the Parties, provided that such arbitrator shall, in all circumstances, be a practising Senior Counsel with no less than 10 (ten) years standing.

22.7 Should the arbitrator deem the Dispute to be primarily of an accounting or technical nature the arbitrator shall have the right to appoint an appropriate, independent, assessor.

22.8 If the Parties cannot agree upon a particular arbitrator in terms of clause 22.6 above within 20 (twenty) Business Days after the pre-arbitration conference, the nomination shall be made by the Chairman of the Johannesburg Bar Council within 10 (ten) days after the Parties have so failed to agree.

22.9 The Parties irrevocably agree that the decision in the arbitration proceedings:

- (a) shall be binding on them;
 - (b) shall be carried into effect; and
 - (c) shall be made an order of any court of a competent jurisdiction.
- 22.10 Either Party may appeal the decision of the arbitrator to a panel of 3 (three) arbitrators, chosen *mutatis mutandis* as set out above.
- 22.11 Nothing in this clause 22 will in any way preclude a Party from seeking urgent interim relief from any court having jurisdiction, in terms of clause 23, to protect or enforce its rights.

23. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed, interpreted and construed in accordance with the Law of the Republic of South Africa and, subject to clause 22, the Parties hereby agree to the jurisdiction of the High Court of South Africa.

24. BREACH AND TERMINATION

24.1 Early Termination

- (a) If ENERGY is not successful in ensuring Energy Use Reduction by the expiry of the Adjustment Period, XXX shall be entitled (but not obliged) to terminate this Agreement with immediate effect by providing ENERGY with written notice to this effect by no later than [10 (ten)] Working Days following the expiry of the Adjustment Period. **(Applicability TBC)**
- (b) Notwithstanding any provision in this Agreement to the contrary, the Parties agree that ENERGY's failure to ensure Energy Use Reduction by the expiry of the Adjustment Period shall not constitute a breach of this Agreement for purposes of clause 24.2 and that the only remedy available to XXX in the event of such failure shall be termination of this Agreement in the manner set out in clause 24.1(a). **(Applicability TBC)**

24.2 In addition to all its other rights under this Agreement or in terms of Law, either Party may cancel this Agreement on 30 days' written notice to the other Party or uphold this Agreement and demand specific performance (to the extent that such performance is possible) and, in either event, claim such damages as it may have suffered in the event that:

- (a) a Party commits a breach of this Agreement which is not capable of being remedied; or
- (b) a Party breaches any provision of this Agreement which is capable of being remedied and fails to remedy such breach within 20 days after receipt of a notice from the other Party calling upon it to remedy the breach; or
- (c) a Party breaches this Agreement on three or more occasions in a 365-day period and the aggrieved Party has provided the breaching Party with notice of each breach; or
- (d) a Party places the other Party in a position that materially adversely affects its ability to comply with its obligations under any Authorisation or a Party fails to take reasonable steps to enable the other Party to comply with such Authorisation; or
- (e) a Party takes steps to enter into a compromise with any of its creditors or takes steps or has steps taken against it for liquidation, winding up, de-registration or judicial management or commits an act of insolvency in terms of the Insolvency Act 24, 1936, or

(f) a Party fails to satisfy any final judgment entered against it (after all of its appeal rights have been exhausted) and fails, within 10 days of the date on which such final judgement is granted, to take such steps and to continue to take such steps as may be necessary to have the judgment stayed or otherwise set aside, if either such remedy remains available through due process of law; or

(g) ENERGY ceases, or abandons, the operation of the Facility,

24.3 Termination of this Agreement in accordance with this clause **Error! Reference source not found.** shall not affect any rights and obligations of the Parties that accrue prior to such termination.

25. DOMICILE AND NOTICES

25.1 Each of the Parties chooses its 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 Agreement at their respective addresses set out below:

ENERGY

205 Northway

Durban North, Durban, KZN, 4051.

Fax: 031-546 3802

Email: dcornish@gessa.co.za

EPC CONTRACTOR:

XXX

XXX

- 25.2 **Email: [•]** Any notice to any party shall be addressed to it at its domicilium aforesaid and be sent either by hand, fax or email. In the case of any notice:
- (a) delivered by hand during business hours to the person apparently in charge of the premises selected by the addressee for the delivery of notices, such notice shall be deemed to have been received on the date of delivery;
 - (b) emailed to the selected email address, such notice shall be deemed to have been received upon receipt by the sender of a return email from the recipient in which the sender's communication is acknowledged (it being the responsibility of the sender to obtain such acknowledgment); and
 - (c) if faxed to the selected fax number, be deemed to have been received on the first Working Day following the date of transmission.
- 25.3 Either Party shall be entitled, by notice in writing to the other, to change its domicilium, fax number and/or email address to any other physical address, fax number and/or email address, provided that the change shall become effective only fourteen (14) days after the service of the notice in question.
- 25.4 Notwithstanding any provision in this clause **Error! Reference source not found.** to the contrary, any written notice or communication, which has actually been received by a Party, will be regarded as sufficient notice even if it has not been sent in the manner or to the address, email address or fax number provided for above.

26. GENERAL CONDITIONS

- 26.1 No alteration, cancellation, variation of or addition to this Agreement shall be of any force or effect unless reduced to writing and signed by both Parties' authorised representatives.
- 26.2 This Agreement constitutes the entire agreement between the Parties and, except as provided for in this Agreement, neither Party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.
- 26.3 The terms and conditions contained in any documentation of ENERGY will not apply to, supplement or supersede any provision of this Agreement and will be of no force and effect, unless otherwise agreed by the Parties in writing.
- 26.4 No extension of time or other indulgence granted by either Party to the other in respect of either Party's obligations will prejudice or constitute a waiver of either of Party's right to enforce compliance with the terms of this Agreement, nor shall it constitute a novation of this Agreement.
- 26.5 This Agreement may be signed by the Parties in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute one and the same Agreement.
- 26.6 Since the provisions of this Agreement have been settled by negotiation, the rule of construction that clauses must be interpreted against the party principally responsible for drafting will not apply.
- 26.7 Each Party shall bear their own costs incurred in the negotiation, preparation and settling of the terms of this Agreement.

SIGNED AT _____ THIS _____ DAY OF _____ 2019

For and on behalf of **ENERGY SYSTEMS SA PROPRIETARY LIMITED**

Who hereby warrants that he/she is
authorised to sign on its behalf

Name: _____

Designation: _____

SIGNED AT _____ THIS _____ DAY OF _____ 2021

For and on behalf of **EPC CONTRACTOR**

Who hereby warrants that he/she is
authorised to sign on its behalf

Name: _____

Designation: _____

ANNEXURE A TOTAL HEAT PRICE

1. TOTAL HEAT PRICE

- 1.1 “Heat Price” means the heat price payable per unit (kW thermal converted to GJ), by COJ, which shall be a rate of R9.50 exclusive of VAT per GJ, subject to an annual escalation in 1.2 below.
- 1.2 The Total Heat Price shall be adjusted by CPIX at the beginning of each Production Year commencing on the anniversary of the Supply Date.

2. TOTAL ELECTRICITY PRICE

- 2.1 “Electricity Price” means the electricity price payable per unit (kWhe) by COJ, which shall be a rate of R1.50 exclusive of VAT per kWhe, subject to an annual escalation in 2.2 below.
- 2.2 The Total Electricity Price shall be adjusted by CPIX at the beginning of each Production Year commencing on the anniversary of the Supply Date.

ANNEXURE B LOCATION

1. DESCRIPTION OF THE SITE AND OPERATED BY ENERGY

1.1 Site:

CoJ Biomethane Project Site and adjacent Joburg Landfill Gas Project Site.

Insert drawing

1.2 Description of the Facility:

The primary Waste Heat Recovery System consists of:

- An Organic Rankine Cycle (ORC) unit for converting high temperature waste heat from the exhaust to lower temperature waste heat that can be used by the biogas plant. Electricity is to be supplied to a termination point in the Pikitup Mini Substation on site. Heat is to be supplied at a flanged pipe location next to the ORC. The CoJ Biomethane project will supply piping and the required pumping infrastructure to that point for take off and return water.

The primary biogas venting section consists of:

- Biogas diversion piping from after biogas production and cleaning but before the biogas upgrading section at the CoJ Biomethane Project Digesters.
- The piping ties into the inlet of the landfill gas to the Gensets at JLGP. Specific control interlocks and valving will be allowed for to ensure that biogas is only diverted as the JLGP can use it effectively and safely.

1.3 Operational performance period (life expectancy of the Facility and its plant): 10-15 years, depending on the Landfill Gas availability.

1.4 Location plan of biogas reticulation to the landfill gas project in respect to the Excess Biogas Utilisation system: to be approved by both Parties. (Please sign plan as per approved location)

1.5 Location plan in respect of the Energy Delivery System: to be approved by both Parties. (Please sign plan as per approved location)

ANNEXURE C

PARTIES REPRESENTATIVES

XXX's representative for purposes of this Agreement and his/her contact particulars are as follows:

NAME:	_____
DESIGNATION	_____
OFFICE TEL	_____
CELL	_____
E-MAIL	_____

Energy's representative for purposes of this Agreement and his/her contact particulars are as follows:

NAME:	David Cornish
DESIGNATION	General Manager
OFFICE TEL	_____
CELL	_____
E-MAIL	_____

ANNEXURE D
MATERIAL AUTHORISATIONS

Wayleaves and or Servitudes for the Waste Heat Recovery System.

DRAFT

ANNEXURE E

HEAT SPECIFICATIONS

The Heat will be available from the Waste Heat Recovery System in the following conditions:

- Heat transfer medium: Water (treated by XXX to heat exchanger supplier specifications)
- Supply temperature: 70-80°C
- Return temperature: 45-57°C
- Maximum heat available: 700 kW
- Water pressure: <10 barg
- Water flow rate:
- The diagram below indicates the termination points for the heat offtake.

ANNEXURE F

ELECTRICAL CONNECTION AND QUALITY SPECIFICATIONS

Electricity produced from the Waste Heat Recovery System will have the following properties and specification:

- Frequency 50 Hz +- 5%
- Voltage: 400 V
- XXX should allow for all the power to be exported from the system to CBP, Pikitup and finally the City Power Grid connection (in the case of excess generation).
- The termination point is given in the diagram below.

ANNEXURE G

BIOGAS CONNECTION SPECIFICATIONS

The biogas should have the following properties:

- Relative humidity of <70%
- H₂S concentration lower than 100 ppm
- Minimum methane concentration of 45%
- Maximum methane concentration of 75%
- Temperature should be between 5°C and 40°C
- Pressure should be 1- 5 kPAg
- Maximum flow rate allowed is 200 Nm³/hr

No air should be allowed into the biogas supply pipe.

Interlocks should be in place so that biogas cannot be supplied to the landfill gas system if the site, operations and equipment is not ready.

Biogas flow will be measured and recorded by XXX. A totalised gas flow for a 12-month period should be made available with biogas composition data upon request by CoJ and/or ENERGY

The termination point is shown below.