STELLENBOSCH LOCAL MUNICIPALITY

REQUEST FOR PROPOSALS

For the appointment of Independent Power Producers to supply

Energy Output generated from one or more Solar PV Facilities

and/or

stored Energy Output delivered by one or more Battery Energy Storage Systems

TENDER NUMBER: B/SM 89/25

STELLENBOSCH MUNICIPALITY INDEPENDENT POWER PRODUCER PROCUREMENT PROGRAMME

Briefing Note No: 3

1. INTRODUCTION

1.1 This Briefing Note 3 is issued in terms of clause 7.6 of the Request for Proposals issued by the Stellenbosch Municipality in respect of the Stellenbosch Municipality Independent Power Producer Procurement Programme (Tender number: B/SM 89/25) ("**STMIPPPP RFP**" or **"RFP"**), dated 29 March 2025.

1.2 Unless otherwise expressly stated, or the context otherwise requires, words and expressions defined in the STMIPPPP RFP shall bear the same meaning in this Briefing Note as those ascribed to them in the STMIPPPP RFP.

2. PURPOSE OF THIS BRIEFING NOTE

2.1 The purpose of this Briefing Note is to:

2.1.1 Provide bidders with an update to some of the key milestones in the STMIPPPP procurement process.

2.1.2 provide Bidders with responses to clarification requests received by Stellenbosch Municipality between the period 30 April 2025 to 4 July 2025.

2.1.3 provide Bidders with 'Appendix 18 – Draft Distribution Agreement' as detailed in clause 3.60 of the RFP.

Bidders may submit clarifications on the Draft Distribution Agreement in accordance with the RFP requirements. The final form Distribution Agreement will be provided to Preferred Bidders after appointment as such.

2.1.4 Provide Bidders with responses on comments received on the Power Purchase Agreements together with marks-up made to 'Appendix 15: Solar PV PPA' and 'Appendix 16: BESS PPA'.

3. LIST OF DOCUMENTS ISSUED TOGETHER WITH THIS BRIEFING NOTE / AMENDMENTS TO THE STMIPPPP RFP

3.1 Please note the following amendment to clause 7.2.6 and 7.2.7 of the STMIPPPP RFP:

7.2.6	Last date for submission of Bidder clarification questions to the Stellenbosch Municipality	6 August 2025
7.2.7	Bid Registration Date	29 August 2025

3.2 Please refer to the Table in section 4. detailing Bidder clarification requests and responses.

3.3 Please refer to Appendix 18 – Draft Distribution Agreement appended to this Briefing Note.

3.4 Please refer to the Table in section 5. detailing the comments received on the PPA with responses.

3.5 Please refer to the marked-up Appendix 15: Solar PV PPA and Appendix 16: BESS PPA appended to this Briefing Note.

4. RESPONSES TO CLARIFICATION REQUESTS RECEIVED BY STELLENBOSCH MUNICIPALITY

No	Date Received	Category	RFP Reference	Query	Response
1.	12-Jun-25	RFP	Independent Engineer Agreement	Do you possibly know where I can get a list of the independent engineers, or do we have to come into the municipality to get a list ?	The Municipality does not have a list of Independent Engineers. Refer to Clause 10.10 (Qualifications, Experience and Conflicts) of the Independent Engineer Agreement, which provides a list of the minimum requirements for qualifications, experience and conflicts applicable to selection of an appropriate Independent Engineer. Also refer to Clauses 2.3, 2.4 and 2.5 of the Independent Engineer which sets out general requirements / process for appointment of the Independent Engineer. The Seller and Buyer will enter into the Independent Engineer Agreement with a mutually agreed independent engineer.
2.	27-Jun-25	General	General	Is this a continuation of the 20MW project, or is it a standalone (increased) initiative?	The STMIPPPP RFP (under Tender number: B/SM 89/25) is a stand-alone Project.
3.	27-Jun-25	RFP	Technology	Given our unique non-battery technology, would a submission from our consortium be considered non-compliant or discouraged, given the specific reference to BESS?	In respect of eligible technologies, this RFP is for the procurement of Solar PV and/or Battery Energy Storage Systems only.
4.	27-Jun-25	RFP	General	Is there any flexibility or openness in the RFP to alternative methods/design/technologies that may better meet the municipality's long-term cost, sustainability, and social inclusion objectives?	A Bidders Bid Response must meet all of the requirements stipulated in the RFP to be considered a Compliant Bid. A Compliant Bid is a complete Bid Response that complies with clause 8 (Instructions for Submission) of the RFP, and meets or exceeds all of the Functionality Criteria requirements in Stage 1 stipulated in the RFP.

No	Date Received	Category	RFP Reference	Query	Response
5.	01-Jul-25	RFP	CSD and Tax compliance	It is noted that bidders are required to be registered on the CSD and be tax compliant. Please advise what is expected of international companies to comply with the CSD and Tax Pin requirements.	International companies are eligible to register on the CSD. There are no restrictions or alternatives for international companies to register. The National Treasury has issued a CSD Registration User Guide to guide potential suppliers on how to register, available here: *http://ocpo.treasury.gov.za/Resource_Centre/CSD/CSD%20User%20Guide_Summary%20Master%202016-08-24.pdf.* International companies should seek local legal advice on what, if anything, is required in regard to tax compliance.
6.	01-Jul-25	RFP	Legal Opinion	It is noted that a legal practitioner is required to provide legal opinions on land acquisition / land use arrangements and Environmental Criterion. Our initial quotes to comply are coming in at excessively high amounts relative to the small scale of the projects putting onerous risk in submitting a bid. Please kindly advise if an alternative, more appropriate method can be used to achieve the objectives of this requirement	The requirement for a Legal Opinion cannot be amended or removed.
7.	01-Jul-25	RFP - IPP Experience	17.1.2.1	It is noted that the minimum project size for each of the reference projects is 3 MWp. This is onerous for the Bien Donne project. Please advise if a more appropriate requirement can apply for this site.	The minimum project size for each reference project was intentionally selected, and will not be revised.
8.	04-Jul-25	RFP	Bid Guarantee	Bid Guarantee value of R10 000.00 / MWp - Does the Bid Guarantee expire if the Bidder is not selected for or as Preferred Bidder ? At what point does the Guarantee terminate and will this be confirmed in writing by Stellenbosch that the requirement of the Bid Guarantee is released from the financial institute?	The Bid Guarantee is valid and effective from the date it is issued until the expiry of the relevant Bid Validity Period (being 270 days from the Bid Submission Date). If a Bidder is not selected as a Preferred Bidder, the guarantee remains valid only until the end of the Bid Validity Period. For Bidders selected as Preferred Bidders, it terminates upon the Municipality's receipt of the Preferred Bidder Guarantee. In either case, the Municipality is required to return the original guarantee

No	Date Received	Category	RFP Reference	Query	Response
					to the issuing financial institution within 15 Business Days of expiry or full payment, and this return constitutes formal confirmation that the guarantee requirement has been released, with written confirmation available upon request if needed.

5. COMMENTS RECEIVED ON THE PPA'S WITH RESPONSES

Note that the comments and responses are applicable to both the Solar PV and BESS PPAs

No	Ref	Comment raised by potential bidder	Response
1	Definitions	"**Effective Date**" means the first business day following fulfilment of all conditions precedent ~~items~~~~date of signature of this Agreement by the Party last signing it~~;	Acceptable if there are conditions precedent (which may ultimately be termed "suspensive conditions" rather than conditions precedent). This was contemplated in the draft PPA, through the definition of Financial Close read with footnote 1. [1] If the concept of "Financial Close" is required, provision will be made in the PPA for a condition precedent to this effect. the definition of "Financial Close" is included as a placeholder for this possibility.
2	Definitions	"**Financial Close**" means the date on which the Seller, as the borrower under the Financing Agreements, receives confirmation that all suspensive conditions to the Financing Agreements have either been met to the relevant Lenders' satisfaction or have been appropriately waived by the Lenders; Please make provision for the concept of Financial Close in the PPA with Condition Precedent. Refer to footnote 7 for additional comments on the proposed Condition Precent clause.	Acceptable and we can put a placeholder into the draft PPA, but the conditions precedent clause will likely have to be finalised, and customised per successful bidder, after award.
3	Definitions	"**Financial Model**" means the financial base case for the Project as reflected in the Excel-based financial model attached to this Agreement on an electronic storage device that can be used to store data, as provided for in Schedule 11 (*Financial Model*) of this Agreement, which model incorporates the forecast cash flow statements of the Seller including all expenditure, revenues, taxation and financing of the Construction, Operation and Maintenance of the Facility together with the income statements and balance sheets for ~~the Seller~~ this Project over the Term, and details of all assumptions, calculations and methodology used in the compilation thereof; Please update all definitions in this agreement that refers to the SPV so that it is specific to this project.	Not acceptable. The RFP requires that a single Project Company be established for a single Project, and that the Project Company is ring-fenced to that Project. The same Project Company is not entitled to 'house' several Projects or any other non-Project activities.

No	Ref	Comment raised by potential bidder	Response
4	Definitions	**"Force Majeure"**… (12) a Compensation Event, xi) an act or omission of the Distributor or a person appointed by the Distributor to undertake any Distribution Connection Works; and Should this not be a Force Majeure event? (xii) a force majeure event in terms of the Distribution Agreement or the Self-Build Agreement concluded with the Distributor; Should this not be a Force Majeure event?	The items highlighted are not treated as force majeure under the PPA. Matters relating to the Distribution Connection Works are separately regulated under the Distribution Agreement or the Self-build Agreement and that agreement will apply to these events. Also, certain events of force majeure under the Distribution Agreement are dealt with as System Events in terms of clause 16 of the PPA. The balance, if any, would be dealt with under the Distribution Agreement or the Self-build Agreement, as the case may be.
5	Definitions	**"SED Contract Year"** means each twelve (12) Month period, commencing at 00:00 hours on 1 July and ending at 24:00 hours on 30 June of the following year, provided that: (a) the first SED Contract Year shall commence at 00:00 hours on the Effective ~~Signature~~ Date, and shall end at 24:00 hours on the next 30 June occurrence; and	This change is acceptable.
6	Definitions	**"Seller Default"** means any of the following events or circumstances (in each case, other than where solely due to Force Majeure, a Compensation Event, a System Event, Expropriation Event, Change in Law or Unforeseeable Conduct: Please note that the Buyer Default events are very limited compared to the Seller which is unusual given that the Seller carries the larger financial risk. Unless this will be covered in the Direct Agreement more comprehensively. (a) an order being made for the winding-up, liquidation, business rescue or dissolution of the Seller (in any of these cases, where applicable, whether provisional or final and whether voluntary or compulsory); (b) the Seller has not Commenced Construction of the Facility within one hundred and twenty (120)~~sixty (60)~~ days of the Effective Date;	This is standard, for the Seller Defaults to be more extensive than the Buyer Defaults. The Buyer's main obligation is to pay for electricity delivered, and the Buyer Defaults are focussed on that. The timeline for Commencement of Construction can be amended to ninety (90) days.
7	2	**2. TERM** 2.1 This Agreement shall be effective from the Effective Date until the earlier of: Please note the revised definition for Effective Date.	It is acceptable to include a placeholder conditions precedent clause, with reference at least to Financial Close as a condition. Matters such as obtaining of Consents, notarial

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		2.2 its termination in accordance with clause 20 (*Termination*); or 2.3 the Expiry Date, Conditions Precedent Clause Please insert a Conditions Precedent clause. Please detail if MFMA approval or any other regulatory approval from the Buyer is required and how this will be managed. Please outline how the process of signature, CPs, obtaining of Consents, design approval and signed notarial lease will be managed. We recommend that each of the before mentioned become a condition precedent.	lease, will doubtless be required before Financial Close can be achieved. Proposed wording has been added to Clause 2 of the PPAs to address the comment.
8	3.2	3.2 **Risk and liability** 3.2.2.7 it indemnifies and shall hold harmless, upon demand, the Buyer against any claims, costs ~~(including Claims for indirect losses)~~, damages, losses, expenses ~~and any other consequences of or~~ arising out of the Seller's failure to comply with this clause 3.2 (*Risk and Liability*) and arising out of any circumstance, event or situation detailed in this clause 3.2 (*Risk and Liability*). Please remove liability for indirect or consequential losses.	Amendment not required. Liability for indirect losses is limited to certain specific provisions where the Seller gives an indemnity or warranty. The default is liability for direct losses only. See clause 30.1.3: 30.1.3 Notwithstanding anything to the contrary in this Agreement, neither Party sl the other Party for any Special Loss suffered by such other Party as a resu omission by the first Party (save in respect of any losses, liabilities, expen costs and claims (including Claims) raised by the Buyer in respect of the c indemnities provided under clause 3.2 (*Risk and liability*), clause 31 (*Third P* and clause 35.1 (*Seller warranties*), and the reimbursement of the Buyer's of clause 20.3.4 (*Buyer's Costs*).
9	4.2	4.2 **Independent Engineer** 4.2.1 It is recorded that an Independent Engineer as approved by the Buyer has been appointed by the Seller, at its sole cost and risk and on terms substantially similar to the terms contained in the agreement set out in Schedule 10 (*Independent Engineer Agreement*) of this Agreement. We do not advise a joint Independent Engineer. The Seller employs its own certified engineers, who can obtain PR Eng sign off and the Buyer may appoint its own Independent Engineer at its own cost to verify compliance.	Not acceptable. The role of the Independent Engineer is to provide an unbiased opinion.

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10	4.3	4.3 **Facility completion and commissioning** 4.3.1 The Seller shall use all reasonable endeavours to commission the Facility and to procure the issue of the Facility Completion Form by the Independent Engineer, at its own cost and in each case in accordance with this clause 4.3 (Facility completion and commissioning), The Seller's engineer to issue the Facility Completion Form.	Not acceptable. As per .9
11	4.5.2	4.5.2 If the Commercial Operation Date is not achieved by the Last COD, then the Seller shall be entitled to terminate this Agreement in accordance with clause 20.3 (*Termination for Seller Default*) for a Seller Default. The Seller's engineer to issue the Facility Completion Form.	Not acceptable. As per .9
12	9.1	9.1 **Operating Period invoices** 9.1.1 The Seller shall, within five (5)~~two (2)~~ Business Days of the end of a Billing Period, submit to the Buyer for that Billing Period an Invoice specifying 9.1.2 Subject to clause 12.8 (Readings and Inaccuracy), the Seller shall prepare the Invoice for the Billing Period based on the billing data report ~~issued by the Buyer to the Seller~~ (which report shall reflect metering data remotely accessed and retrieved by the ~~Buyer~~Seller, obtained by it from the Facility Metering Installation for that Billing Period). Clause 12.8.1 is contradictory to this clause 9.1.2. It is not acceptable for the Seller to prepare Billing Invoices on the Buyer's data report.	9.1.1 Acceptable. 9.1.2 The approach in clause 12.8.1 is recommended and the PPA clause 9.1.2 has been amended accordingly.
13	9.3.4	9.3 **General principles as regards invoicing** 9.3.4 Subject to clause 8.5.1, the Party who received the Invoice shall pay to the other Party (who issued the Invoice) the amount of each Invoice within thirty (30) Calendar~~Business~~ Days of the later of (a) the date of receipt of such Invoice; and (b) the date on which the Seller becomes compliant with the Buyer's vendor	First change (30 calendar days) is acceptable. The second proposed change of inserting "Effective" date is not acceptable as compliance with the invoicing requirements in the PPA needs to be tested on an invoice-by-invoice basis, and compliance with vendor registration requirements may change over the duration of the PPA.

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		registration requirements and the invoicing requirements provided for in this Agreement (in the case that the Seller is not compliant with such requirements at the Effective date ~~of invoicing~~) (the "Due Date"). [1]Any amendments to the Buyer's vendor registration requirements to be notified to the Seller and the Seller will use reasonable endeavours to comply.	Footnote 1 is accepted.
14	11.1	11.1 **Reports** 11.1.1 Subject to the terms and conditions of this Agreement, the Seller shall as soon as reasonably possible, and in any event within ~~two (2)~~ four (4) hours, notify the Buyer if the Facility or such number of Units comprising at least ten per cent (10%) of the Contracted Capacity, as the case may be, is incapable of generating Energy for any of the following reasons (and provided that its unavailability has not already been notified as part of a Scheduled Outage or pursuant to clause 7 (Generation Forecasts))	Not acceptable. Two (2) hours to be maintained.
15	11.2	11.2 **Data and records** 11.2.1 The Seller shall maintain complete and accurate data and records required to facilitate the proper administration of this Agreement and the Project. Such data and records ("Project Data") shall include an accurate and up-to-date log of Operations, updated daily (Business days), in a format reasonably acceptable to the Buyer. The Project Data should include, but not be limited to, the following information, with records of: 11.2.1.1 for each ~~ten (10)~~ thirty (30) minute period in each day, the Energy Output; For all data logging and records, please update the time interval to thirty (30) minute periods.	Not acceptable. Log of Operations must be updated daily. Note that the Seller is not required to issue the Project Data to the Buyer daily (see clause 11.4.1). Not acceptable. Ten (10) minutes shall be maintained. Note again that the Seller is not required to issue the Project Data to the Buyer daily (see clause 11.4.1).

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16	11.4	11.4 **Ownership, inspection, copy and use rights** 11.4.2 ~~The Seller shall ensure that any agreements entered into with the manufacturers of equipment (including Key Equipment) or with Equipment Suppliers in respect of the Facility include provisions which entitle the Buyer to use the Project Data as the Buyer deems appropriate.~~ Suppliers have their own standard SLAs, and the Seller cannot guarantee that the Suppliers will agree to their data being freely used by the end-user (Buyer in this case).	Not acceptable. The list of Project Data (see clause 11.2.1) is not extensive and should be the typical data which the Seller would collect in any event. Seller must be able to access, at least, this data from its suppliers.
17	14	**14. PROVISION FOR DECOMMISSIONING COSTS** 14.6 If the Seller fails to comply with its obligations in clause 14.4 and: The Buyer may, in its sole discretion: 14.6.3 exercise its right to terminate this Agreement in accordance with clause 20.3 (Termination for Seller Default); and/or This should not give rise to a termination right on the part of the Buyer, just a right to claim specific performance from the Seller.	Not acceptable. Stellenbosch Municipality has a duty to protect the environment. The PPA recognises that decommissioning may occur after expiry of the PPA, and does not purport to regulate decommissioning itself, only the obligation to have a decommissioning plan and to accumulate funds for that purpose during the term of the PPA, which is not considered onerous.
18	16	**16. CONSEQUENCES OF A SYSTEM EVENT** 16.2 Subject to clauses 16.1, if and to the extent that a System Event occurs: 16.2.1 that causes a delay in the achievement of the Commercial Operation Date beyond the Scheduled COD; and/or 16.2.2 after the Commercial Operation Date, that ~~materially~~ adversely affects the ability of the Seller to perform any of	The deletion of “materially” is accepted.

No	Ref	Comment raised by potential bidder	Response
		its obligations or exercise any of its rights under this Agreement, Any System Event should permit Deemed Energy to be charged or an extension, there should not be an additional requirement to prove the Event materially adversely affects the ability of the Seller to perform any of its obligations or exercise any of its rights under this Agreement. 16.3.1.1 as soon as practicable, and in any event within ten (10) ~~five (5)~~ days after it becomes aware, or ought reasonably to have become aware, that the System Event is likely to occur, or has occurred, give to the Buyer a notice thereof which includes details of whether and to what extent the System Event has caused or is likely to cause delay in the achievement of the Commercial Operation Date beyond the Scheduled COD; and 16.3.1.2 within fifteen (15) ~~ten (10)~~ days of the notice referred to in sub-clause 16.3.1.1, provide the Buyer with the full details of such System Event and any relief claimed, 16.4.1.1 as soon as practicable, and in any event within ten (10) ~~five (5)~~ days after it becomes aware, or ought reasonably to have become aware, that the System Event is likely to occur, or has occurred, give to the Buyer a notice thereof which includes details of whether and to what extent the System Event ~~materially~~ adversely affects the ability of the Seller to perform its obligations or exercise its rights; and – Refer comment under 16.2.2 16.4.1.2 within fifteen (15) ~~ten (10)~~ days of the notice referred to in sub-clause 16.4.1.1, provide the Buyer with the full details of such System Event and any relief claimed, stating full details of the nature of the System Event, the first date of occurrence, its likely duration (if known) and the relief claimed;	Proposed changes to the time-periods in this clause are acceptable.

No	Ref	Comment raised by potential bidder	Response
		16.4.1.4 demonstrate to the reasonable satisfaction of the Buyer that: 16.4.1.4.1 the System Event ~~materially~~ adversely affected the ability of the Seller to perform any of its obligations or exercise any of its rights under this Agreement; Refer comment under 16.2.2	
19	17	**17. CONSEQUENCES OF A COMPENSATION EVENT** 17.1 If, as a direct or indirect result of the occurrence of a Compensation Event: 17.1.1 the Seller is unable to achieve the Commercial Operation Date by the Scheduled COD; 17.1.2 the Seller is unable to comply with its obligations under this Agreement; and/or 17.1.3 the Seller incurs costs or loses revenue, then the Seller is entitled to apply for relief from its obligations under this Agreement, and from any rights of the Buyer arising under clause 20.3 (Termination for Seller Default), to claim compensation under this Agreement and/or, if the Compensation Event is the failure of the Buyer to make due payment as detailed in clause 8 (Tariff and other Charges) and subject to the provisions of clause 8.5 (Failure to make payments), to make a claim under the Liquidity Support. We suggest that this should also give rise to a Deemed Energy payment that persists for so long as the breach is unremedied. 17.2 To obtain relief and/or claim compensation and prior to making a claim under the Liquidity Support, the Seller must: 17.2.1 as soon as practicable, and in any event within ten (10) ~~five (5)~~ days after it became aware or ought reasonable to	Proposed amendments not acceptable.

No	Ref	Comment raised by potential bidder	Response
		have become aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this Agreement, the Seller to incur costs or lose revenue, give to the Buyer a notice of its claim for postponement of the Last COD, payment of compensation and/or relief from its obligations under this Agreement; 17.2.2 within fifteen (15) ~~ten (10)~~ days of receipt by the Buyer of the notice referred to in clause 17.2.1 above, give the Buyer full details of the Compensation Event and the extension of time and/or any estimated change in project costs claimed and/or the loss of revenue claimed; and 17.3.2 in the case of any additional costs being incurred by the Seller: 17.3.2.1 on or before the Commercial Operation Date; or 17.3.2.2 as a result of Capital Expenditure being incurred by the Seller at any time, the Buyer shall~~, after agreement between the Parties on the relevant amount,~~ have the option to compensate the Seller for the actual estimated change in project costs as adjusted to reflect the actual costs ~~reasonably~~ incurred either: This is a scenario where the Seller must incur additional costs (during construction phase) as a result of a breach. The Buyer should rather compensate for the actual costs incurred, and not first agree on an amount if the actuals costs and/or losses are known. 17.3.4 the Buyer shall give the Seller such relief from its obligations under this Agreement, ~~as is reasonable for such a Compensation Event~~ to the extent of the actual costs incurred and/or revenue lost by the Seller; Refer to above comment under 17.3.2.2	
20	19	**19. UNFORESEEABLE CONDUCT AND CHANGE IN LAW** 19.1 **Unforeseeable Conduct**	Not acceptable for the Seller to retain the whole benefit as it is compensated for the risk. Electricity charges are recovered from consumers in the Stellenbosch area and should not bear

No	Ref	Comment raised by potential bidder	Response
		19.1.1 Should any Unforeseeable Conduct occur which adversely affects the general economic position of the Seller, the Seller shall be entitled to such compensation and/or relief from the Buyer as shall place the Seller in the same overall economic position as the Seller would have been in but for such Unforeseeable Conduct. 19.1.2 Should any Unforeseeable Conduct occur which beneficially affects the general economic position of the Seller, ~~the Seller shall pay the value of such benefit to the Buyer so that the Seller remains in the same overall economic position it would have been in had the materially beneficial Unforeseeable Conduct not occurred~~ the Seller shall have the option to share this benefit with the Buyer. The Seller takes all the financial risk on the project, but if the Seller gets an economic benefit, it must pay it over to the Buyer. Now the Buyer gets the economic benefit without having any of the financial risk. This is very harsh. As a minimum, this benefit can be shared between Buyer and Seller, up to the discretion of the Seller.	the burden of an unanticipated windfall which accrues entirely to the Seller.
21	20.2	20.2 **Termination for Buyer Default** 20.2.2 On the occurrence of a Buyer Default, or within a reasonable time after the Seller becomes aware of the same, the Seller may serve notice of default on the Buyer requiring the Buyer to remedy the Buyer Default referred to in such notice of default (if the same is continuing) within ~~one hundred and twenty (120)~~forty five (45) days of such notice of default being delivered. 20.2.4.3 in lieu of any other termination compensation, the Seller shall be entitled to claim the full Buyer Default Amount from the Buyer, as liquidated damages for the Buyer Default.	Not acceptable. The Seller is able to do as soon as it wishes within 120 days. In respect of all comments received on Termination for Buyer Default, Liquidity Support Amount and Buyer Default Amount, the following response: i. The Municipality cannot offer more direct security in respect of the Liquidity Support Amount and Buyer Default Amount. The offered security provides sufficient time for the Seller to find an alternative off taker. ii. The following clause will be added to the PPA: Without prejudice to the Seller's other remedies, if this Agreement is terminated for Buyer Default, the Seller may elect, in its sole discretion, to continue operating the Facility and,

No	Ref	Comment raised by potential bidder	Response
		A termination payment or buyout value payment should be made available. 20.2.5 ~~The Buyer and the Seller agree that payment of the Buyer Default Amount is reasonable and proportionate to protect the legitimate interest of the Seller pursuant to the occurrence of (and constitutes an adequate remedy for), a Buyer Default~~. A termination payment or buyout value payment should be made available.	subject to compliance with the Buyer's requirements at the time in regard to the wheeling of energy through the Distribution System, to supply energy to one or more third party off-takers. The Buyer shall co-operate in good faith to facilitate any such wheeling arrangements, including any required amendments to the Distribution Agreement. iii. Other credit support mechanisms available from development funding institutions, are being investigated by the Municipality's advisors and will be communicated via a Briefing Note to Bidders once confirmed.
22	20.3	20.3 **Termination for Seller Default** 20.3.4 **Buyer's Costs** 20.3.4.2 The rights of the Buyer (to terminate or otherwise) under this clause 20.3 (Termination for Seller Default) are in addition (and without prejudice) to any other right which the Buyer may have in law to claim the amount in respect of any indemnities provided by the Seller under this Agreement and any Direct Loss or damages suffered by the Buyer on account of the acts or omissions of the Seller (or to take any action other than termination of this Agreement). The Seller has more to lose since it carries the Financial Risk (debt incurred). This should be a reciprocal Seller right under 20.2.	Not acceptable. The Buyer compensation on termination is an all-in amount, so there will not be separate compensation for costs other than that provided for.
23	23	**23. REFINANCING** 23.1 ~~The Seller is not entitled to undertake any refinancing or re-arrangement of its Debt or Equity at any time during the Term, unless it has obtained the prior written approval of the Buyer in respect of such refinancing or re-arrangement~~. 23.2 ~~The Buyer may refuse or grant approval of any refinancing or re-arrangement of its Debt or Equity in its discretion, and if it grants approval may make such approval subject to any conditions.~~ 23.3 ~~The Seller acknowledges and accepts that any approval by the Buyer of a refinancing or rearrangement of its Debt or Equity will be~~	Deletion accepted

No	Ref	Comment raised by potential bidder	Response
		~~subject to the condition that the financial gains which result from the refinancing or re-arrangement of its Debt or Equity will be shared between the Seller and the Buyer, in the proportion of 50:50 unless agreed otherwise by the Buyer.~~ The seller is entitled to arrange its financial affairs freely so long it does not negatively affect its performance under this PPA agreement.	
24	25	**25. SET-OFF** Whenever any sum of money is agreed or determined to be due and payable by the Seller to the Buyer, such sum may at the Buyer's discretion be deducted from or applied to reduce the amount then due, or which at any time afterwards may become due from the Buyer to the Seller; provided that the Buyer gives five (5) Business Days' notice to the Seller of its intention to apply such deduction. This should be a reciprocal right for any sum of money due and payable by the Buyer to the Seller.	Not acceptable.
25	26	**26. ASSIGNMENT** 26.1 Prohibition on Assignment Save as provided in clause 26.2 (Restrictions on Assignment), neither Party may sell, cede, delegate, assign, transfer or otherwise dispose of (collectively, "Assign") all or any part of its rights and/or obligations hereunder to a third party without the prior written approval of the other Party. 26.2 Restrictions on Assignment Notwithstanding clause 26.1 (Prohibition on Assignment): 26.2.1 the Buyer may Assign all (and not less than all) of its rights and obligations under this Agreement to a creditworthy Affiliate of the Buyer: Lenders will not fund the project on this basis. Also, Lenders will require a right for the Seller to assign in terms of the Financing Agreements.	Assignment by the Seller – not acceptable as a matter of course, because the contract award was the result of a competitive bidding process. The Direct Agreement provides limited relief and a process for step-in in exceptional circumstances. Recommend an addition to 25.2.1.1: ", subject to Lenders' approval."

No	Ref	Comment raised by potential bidder	Response
26	28	**28. CHANGES IN CONTROL** From the Effective Date, the Seller shall procure that there is no Change in Control in the Seller (or in any company of which the Seller is a subsidiary), unless: 28.1 the Buyer has been provided with copies of any Consents which are required by the Seller to authorise such Change in Control; and 28.2 such Change in Control or Equity has been approved by the Buyer. This clause should be reciprocal for Buyer and Seller, along similar lines to the proposed Assignment clause, to be acceptable to Lenders.	The Buyer is a municipality. Change of control is not an option, constitutionally.
27	31	**31. LIABILITY** 31.1 **Direct losses** 31.1.3 Notwithstanding anything to the contrary in this Agreement, neither Party shall be liable to the other Party for any Special Loss suffered by such other Party as a result of any act or omission by the first Party ~~(save in respect of any losses, liabilities, expenses, damages, costs and claims (including Claims) raised by the Buyer in respect of the obligations and indemnities provided under clause 3.2 (Risk and liability), clause 32 (Third Party Indemnity) and clause 36.1 (Seller warranties), and the reimbursement of the Buyer's costs in terms of clause 20.3.4 (Buyer's Costs)~~. No indirect or consequential losses claimable.	Not acceptable. These are limited circumstances in which indirect losses are covered – i.e. third-party claims, indemnities and warranties.
28	36	**36. WARRANTIES** 36.1 **Seller Warranties** 36.1.2 it has the sole purpose, object and business of undertaking the Project and selling Energy Output as provided for in terms of this Agreement;	First two comments are not acceptable. Each Project Company must be established for and ring-fenced to a particular Project. Third comment – not clear what kind of legislative requirements or approvals are required for purposes of

No	Ref	Comment raised by potential bidder	Response
		This clause will have to be updated for a Project Company that holds more than one project. 36.1.11 it has not carried out any trading or business activities since its incorporation or incurred any liabilities other than in connection with the operations of the Project (including the entering into of this Agreement and the other Project Documents); This clause will have to be updated for a Project Company that holds more than one project. 36.2 **Buyer warranties** The Buyer represents and warrants to the Seller as on the Effective Date and on each day thereafter during the Term, as follows: 36.2.1 it is duly incorporated under the laws of South Africa and has the right, power and authority to enter into this Agreement and to perform its obligations hereunder; and 36.2.2 the execution and performance of this Agreement by it has been duly authorised by all necessary corporate action, and its obligations hereunder constitute valid, binding and enforceable obligations. 36.2.3 it will maintain any legislative requirements or approvals required for purposes of entering into this Agreement for the full term of this Agreement.	entering into the PPA, that would have to be maintained for the full term of the PPA. Can consider this in relation to something specific if necessary.
29	Sch6	**SCHEDULE 6 – DEEMED ENERGY PAYMENT** 1. **Facility Power Curve ("FPC")** 1.2 The following requirement shall apply to the measurement and recording of the FPC Data: 1.2.1 the FPC Data shall be recorded as average values taken over thirty (30) ~~ten (10)~~ minute intervals	Thirty (30) minute intervals not acceptable.

No	Ref	Comment raised by potential bidder	Response
		1.6 Within one (1) Month after the end of the first Contract Year following the Commercial Operation Date, the FPC as at that time shall be confirmed by the Independent Engineer and shall become the "**Approved FPC**" for that Contract Year. Along with the Approved FPC for that Contract Year, the Independent Engineer shall confirm an annual degradation value, based on degradation value specified on the module manufacturer's datasheet, which value will be applied to automatically update the Approved FPC for each subsequent Contract Year, unless the Buyer and Seller agree, at any time, to amend the FPC otherwise than in accordance with the confirmed degradation value, in which case such amended FPC shall be the Approved FPC. Degradation values should be deduced from the PV module's datasheet, as this is warranted by the Manufacturer. 1.9 If there has been insufficient data recorded during the first Contract Year following the Commercial Operation Date to develop a full and complete suite of Approved FPCs then the development of the FPC shall be extended by a further twelve (12) ~~six (6)~~ months. If a complete FPC has not been developed during the first contract year, data will need to be collected for another full year to account for the high seasonal variation in Solar Irradiance of the region. 1.10 Subject to clause 1.11 of this Schedule 6 (Deemed Energy Payment), if an Approved FPC is not completed within twenty four (24)~~eighteen (18)~~ months of the Commercial Operation Date, Deemed Energy for a period of sixty (60) days beyond that date shall be determined by the Independent	Proposed linkage of degradation to module manufacturer's datasheet is acceptable. PPA will be amended so that the FPC data shall be collected during the first 12 months following the Commercial Operation Date – as opposed to during the first Contract Year, which may be less than 12 months. However, the extension beyond the first 12 months, if there has been insufficient data recorded, will remain as "a further six (6) months". Not acceptable. Explanation as above.

No	Ref	Comment raised by potential bidder	Response
		Engineer, beyond which no Deemed Energy Payments shall be payable by the Buyer until an Approved FPC is completed (and there shall be no entitlement to retrospective claims for Deemed Energy, after the Approved FPC is completed). Refer to comment in 1.9 - updated to align to 1.9 3. **Deemed Energy Payment for System Events and Compensation Events occurring after the** **Commercial Operation Date** 3.4 Where the Compensation Event or System Event entitling the Seller to the Deemed Energy Payment commences after the Commercial Operation Date, the Deemed Energy Payment for the period in respect of which a Compensation Event or a System Event entitles the Seller to the Deemed Energy Payment (a "Deemed Energy Period") shall be calculated as follows: We suggest/request for the time intervals to be adjusted from ten (10) minute to thirty (30) minute intervals.	Not acceptable. As per previous comments on this matter.
30	Def	*"**Achieved Capacity**" means the Capacity of the Facility, as specified in the Facility Completion Form;* *[Comments:* *The achieved capacity at time of testing is influenced by seasonal changes in solar irradiance. If the plant is commissioned in winter, the output from the plant will be far lower than if the plant is commissioned in summer. How is this accounted for in this PPA? Need to ensure commissioning date doesn't impact on the ability of the Seller to commence the sale of Energy to the Buyer. Applies to multiple parts of PPA i.e. 4.4, 4.6 etc]*	Note the definition of Achieved Capacity: The Achieved Capacity of the Facility, being the net Capacity of the Facility **estimated** at the Delivery Point and expressed as AC power capacity, net of capacity attributable to self-consumption and electrical losses up to the Delivery Point… i.e. it is not necessarily an actual, instantaneous measurement – estimation (through reasonable extrapolation methods) is allowed. The Independent Engineer will be familiar with typically accepted methods of capacity testing, which take into consideration, where necessary, irradiance and temperature corrections.
31	Def	*"**Buyer Default Amount**" means, on any date during the Term of this Agreement, an amount that is equal to the Revenue that would be generated by the Seller in relation to the average annual P50 Forecast*	Refer to response provided on Item No. 21

No	Ref	Comment raised by potential bidder	Response
		Energy Output (as set out in Schedule 1 (Details of the Project and Facility)) in the Contract Year immediately preceding such date (or for the first Contract Year, if the date falls in that first Contract Year), for a nine (9) month period; *[To be increased to satisfy lenders. Final duration subject to negotiation]* [Comments: • The Buyer Default Amount (9 months of revenue) and the Liquidity Support Amount (3 months of revenue) are insufficient, and our lenders would need longer term support from the municipality. There is the risk that the municipality may default on the PPA and the Seller would only receive 9 months revenue and have a stranded plant. • We think it would be crucial to establish some form of long-term financial commitment / guarantee from the municipality or alternatively increasing the Buyer Default Amount to at least cover the lenders exposure through a forced acquisition of the asset. • The minimum guarantee would need to, at least, cover the lenders debt. In terms of the current PPA, this could be done by increasing the Buyers Default Amount to either "the NPV of Revenue for a 10-year period" or "the balance outstanding to the Lender at the time of the Buyers Default". • The other alternative option found in most C&I PPA's is where on Buyers Default, the Seller can sell the Facility to the Buyer at a Purchase Price as defined. The Purchase Price is effectively the amortised book value of the asset, plus a margin. The current Buyers Default Amount is not bankable and the revised wording can be provided depending on what alternative the municipality is willing to provide. • We still believe that it is a promising project but that the Buyer guarantee needs to be addressed. This will need to be negotiated with the Municipality and lenders to ensure that the project is bankable. Given multiple stakeholders in this process, there is insufficient time to agree the specifics before the 23 May 2025 response date for the PPA.]	

No	Ref	Comment raised by potential bidder	Response
32	Def	*"**Decommissioning Costs**" means the costs of decommissioning the Facility ~~upon the termination of this Agreement, whether prematurely or due to the effluxion of time, or~~ at the end of the life of the Project, ~~whichever shall be the latest,~~ which costs are detailed, in respect of each Contract Year, in the Financial Model and which costs must, at a minimum, include the costs of undertaking the following, in respect of or related to the Facility:* *(a) the rehabilitation of the adverse environmental impacts of the listed or specified activities detailed in the Environmental Consents;* *(b) engagement with all necessary stakeholders including but not limited to the Buyer, NERSA, WCG, the System Operator, the DFFE, the Department of Employment and Labour, the South African National Roads Agency Limited and the Project Site neighbours;* *(c) rehabilitation of the impacts of the generation and dispatch of Energy Output and/or Capacity, including polluted or extraneous water;* *(d) the responsible disposal of equipment, including solar PV panels, inverters and/or electronic waste;* *(e) securing, making safe, decommissioning, isolation and closure of the Facility and supporting infrastructure;* *(f) remediation of latent or residual environmental impacts which are presently identified in the Environmental Consents;* *(g) demolition and removal of buildings, structures, plant, equipment and other objects including subsurface foundations and services;* *(h) rehabilitation of the Project Site, including capping and covering if necessary and landscaping;* *(i) consideration and management of the heritage requirements of the Facility;* *(j) compliance with all Laws applicable to the decommissioning, demolition or rehabilitation process;*	No need for this change as the PPA explicitly states that the cost of the decommissioning obligation is measured <u>at the latest of</u> the expiry of the PPA and the end of the life of the Project. It is not the obligation to decommission that is owed to the Buyer, it is only the obligation to accumulate funds for Decommissioning and to have and maintain the Decommissioning Plan, which are obligations owed to the Buyer. And those are owed for the duration of the PPA, not beyond that. Proposed amendments are not acceptable.

No	Ref	Comment raised by potential bidder	Response
		(k) obtaining all necessary permits or approvals for decommissioning, demolition, remediation and rehabilitation; and; ~~*(l) remediation of any other negative environmental impacts;*~~ [Delete, this is already covered in a, and f] [Comments: Decommissioning on the termination of this PPA is not necessary, as the life of the Project may operate well beyond the PPA term. The decision to continue operation beyond the term of this PPA should be the sole decision of the Seller. Whilst we agree that the decommissioning of the plant must take place, it is likely that the plant will continue to operate beyond the 20 year PPA term, with solar plants often running for 30+ years. The buyer of the power is also likely to change over the lifetime of the plant (i.e after this PPA). Having a decommissioning obligation to the initial Buyer in a PPA of 20 years is therefore not applicable, and should not limit the ability of the project to continue to operate or repower after the initial 20 years PPA. This decision to continue operation is solely for the Seller/owner of the plant to make. Propose that this clause is either deleted in its entirety, or reworded to reflect a commitment to adhere to the Environmental Consents.]	
33	Def	***"Last COD"*** *means the date which falls six (6) months after the Scheduled COD;* [Comments: • OK for smaller projects, but too short for the larger or more complex projects where EPC/contractor delays may occur during construction, that are outside of the Seller's control. Propose that different time provisions are made depending on the project complexity to allow reasonable EPC/Contractor schedule-float provisions, and that these are agreed for each project/PPA. The provision can also be amended through mutual agreement. *Applies to multiple parts of PPA i.e. 4.5 etc]*	This can extend if motivated.

No	Ref	Comment raised by potential bidder	Response
		*"**Last COD**" means the date which falls six (6) months after the Scheduled COD [add: for standard projects under 5MWp, and twelve (12) months for larger or more complex projects. This provision can be extended by mutual agreement;*]	
34	Def	*"**Liquidity Support Amount**" means, on any date during the Term of this Agreement, an amount that is equal to the Revenue that would be generated by the Seller in relation to the average annual P50 Forecast Energy Output (as set out in Schedule 1 (Details of the Project and Facility)) in the Contract Year immediately preceding that date (or for the first Contract Year, if the date falls in that first Contract Year), for a three (3) month period; [To be increased to satisfy lenders. Final duration subject to negotiation]* [Comments: • The Buyer Default Amount (9 months of revenue) and the Liquidity Support Amount (3 months of revenue) are insufficient, and our lenders would need longer term support from the municipality. There is the risk that the municipality may default on the PPA and the Seller would only receive 9 months revenue and have a stranded plant. • We think it would be crucial to establish some form of long-term financial commitment / guarantee from the municipality or alternatively increasing the Buyer Default Amount to at least cover the lenders exposure through a forced acquisition of the asset. • This will need to be negotiated with the Municipality and lenders to ensure that the project is bankable. Given multiple stakeholders in this process, there is insufficient time to agree the specifics before the 23 May 2025 response date for the PPA.]	Refer to response provided on Item No. 21.
35	Def	*"**Minimum Acceptance Capacity**" means a Capacity of the Facility which is equal to ninety per cent (90%) of the Contracted Capacity of the Facility;* Minimum Acceptance Capacity: 90%, to be discussed. Provision should be made to supply power in the interim, even if the MAC has not been reached. This is especially important if the plant is commissioned in	Refer to response provided on Item No. 30 regarding definition of Achieved Capacity.

No	Ref	Comment raised by potential bidder	Response
		winter, when the power generation will be lower than the Capacity of the Facility.	
36	Def	***"Seller Default"*** *means any of the following events or circumstances (in each case, other than where solely due to Force Majeure, a Compensation Event, a System Event, Expropriation Event, Change in Law or Unforeseeable Conduct):* *(a) an order being made for the winding-up, liquidation, business rescue or dissolution of the Seller (in any of these cases, where applicable, whether provisional or final and whether voluntary or compulsory);* *(b) the Seller has not Commenced Construction of the Facility within sixty (60) days of the Effective Date;* [Comment: This period can be extended without triggering a Seller Default, if delays are caused by permitting delays outside of the Sellers control] *(c) the Seller fails to achieve the Commercial Operation Date on or before the Last COD;* [Comment: 6 months after COD. Doesn't give much leeway to the Contractor to complete the construction of the project if things go wrong on site. All the Contractor risk for time delays is passed back to the Seller, even though they may be outside of the Seller's control. Propose flexibility in Last COD date, through mutual agreement] *(d) NERSA lawfully withdraws, revokes or cancels any electricity generation licence or registration required to be held by the Seller in terms of applicable Laws, due to the Seller's act or omission;* *(e) the Seller abandons the Construction or Operation and Maintenance of the Facility;* *(f) the Seller fails to comply with any provision of clause 26 (Assignment) or clause 28 (Changes in Control); and* *(g) any other breach of any material provision of this Agreement has occurred more than once and:*	Not acceptable. The introductory wording already covers material events that may be outside the Seller's control. The timeline for Commencement of Construction can be amended to ninety (90) days. As per Item No 33, the time-period for measuring Last COD could be extended if motivated based on individual Project circumstances.

No	Ref	Comment raised by potential bidder	Response
		(i) the Buyer has given an initial warning notice to the Seller describing that breach in reasonable detail and stating that if that breach persists or recurs then the Buyer may take further steps to terminate this Agreement; and *(ii) the Buyer has issued a second and final warning notice following the persistence or recurrence of that breach in the period of forty five (45) days after the initial warning notice, stating that if that breach persists or recurs within the period of forty five (45) days after the final warning notice then the Buyer may exercise its rights in terms of clause 20.3.3 on ten (10) days' notice to the Seller;* ~~*(h) the Seller fails to comply with any of its obligations under clause 14 (Provision for Decommissioning Costs);*~~ [Comment: Delete, shouldn't apply in a PPA that doesn't cover the full life of the plant] *(i) the Seller fails to comply with any of its Socio-Economic Development Obligations under clause 15.1 (Socio-Economic Development Obligations) in respect of any SED Contract Year, and during the immediately following SED Contract Year fails to rectify its non-compliance by delivering the variance between the Socio-Economic Development Performance in the prior SED Contract Year and the Socio-Economic Development Obligation for that prior SED Contract Year, in addition to delivering full compliance with the Socio-Economic Development Obligations for the SED Contract Year in which the rectification is due;* ~~*(j) the Seller, having Commenced Construction, thereafter materially reduces, suspends or ceases to carry on, for a period of forty five (45) consecutive days, the Construction, or any material part thereof, of the Facility;*~~ *(l) the Seller fails to maintain compliance with the requirements of the Codes* [Comment: Need to better define applicable codes when the initial PPA is agreed, and impacts of changes in Codes over the lifetime of the PPA] [add: a*pplicable at the time of design and construction. Should any changes in the applicable Codes post-construction require significant changes to the generating infrastructure or operating requirements, the*	As stated above, the obligations of the Seller in relation to Decommissioning do not extend to actual decommissioning of the Facility, only to having and maintaining the Decommissioning Plans and ensuring that the necessary funds are collected and available for the purpose of Decommissioning. Suggestion is not accepted. The deletion of item (j) is acceptable with the additional requirement that the Buyer be informed of this event to act as an early warning. This suggestion need not be incorporated in the PPA wording, as it is already covered by the Change in Law provisions.

No	Ref	Comment raised by potential bidder	Response
		resulting costs will be presented to and agreed with the Buyer, and may influence the tariff]; [Comments: • Please advise what the R200 000/MW is for and what it makes provision for? Is it calculated on AC or DC? • Clause to be reviewed and negotiated between the parties] *(m) the Seller fails to settle (whether by way of set-off or payment) any amount in excess of two hundred thousand Rand per MW (R200 000/MW)*[Comment: Subject to understanding intent and negotiation of final PPA] *Indexed of the Contracted Capacity that is due and payable by it to the Buyer pursuant to this Agreement and not disputed in good faith and the same remains unpaid, for a period of sixty (60) Business Days after written demand by the Buyer; or* [General Comments: • Comments above are provisional. • This will need to be negotiated with the Municipality and lenders to ensure that the project is bankable. Given multiple stakeholders in this process, there is insufficient time to agree the specifics before the 23 May 2025 response date for the PPA.]	Recommend (m) be deleted, as the PPA permits set-off of amounts owed by the Seller to the Buyer.
37	3	**3.Project Site & Construction :** [Comments:Generally this section seems to extend outside of the provisions of a PPA. Site and Construction for example, would typically be covered by the EPC/Contractor contracts.] 3.1 **Project Site** [Comments: Any management of or liability associated with pre-existing contamination on the site is a matter between the regulatory authorities, land owner and Seller. The Seller will not automatically assume this liability, and can not accept inference through the PPA that it will accept this liability.]	Not acceptable. This provision operates as between the Seller and Buyer, making it clear that site-related issues are the responsibility and risk of the Seller and not the Buyer. The Seller and its EPC contractor are free to agree appropriate provisions between themselves which may reflect / adjust the risk allocation reflected in the PPA, as between them. Again, this provision operates as between the Seller and Buyer, and not beyond that. The purpose of this clause is to make it clear that all site-related issues are Seller risks.

No	Ref	Comment raised by potential bidder	Response
		3.1.2 The Seller agrees and undertakes that, as between it and the Buyer: *3.1.2.1 it shall be solely responsible for, shall bear full responsibility for and shall discharge all obligations in relation to any contamination of the Project Site pursuant to and in accordance with the applicable Consents and Laws, ~~whether such contamination was existing at the time that the Seller obtained its rights in respect of the Project Site or~~ [provided that the contamination results from the Seller's activities and] arises during the term of this Agreement;* *3.1.2.2 it shall be solely responsible for, shall bear full responsibility for and shall discharge all obligations pursuant to any remediation order issued by any Responsible Authority pursuant to and in accordance with the applicable Consents and Environmental Laws in respect of any contamination of the Project Site, ~~whether such contamination was existing at the time that the Seller obtained its rights in respect of the Project Site or~~ [provided that the contamination results from the Seller's activities and] arises during the term of this Agreement;* [Comments: In the context of the socio-economic and historical legacies in the country, this clause introduces subjectiveness into the PPA as rebellion, riot, civil commotion, etc is likely to have some historic and wider political links. Whilst we agree to actively engage with communities and to comply with the socio-economic upliftment provisions within the PPA, we propose that this clause is deleted and the Force Majeure provision amended accordingly.] *~~3.1.2.3 it shall be solely responsible for, shall bear full responsibility for any disturbance to the Project and the Project Activities resulting from events including rebellion, riot, civil commotion, act or campaign of terrorism, or sabotage, protest, blockade or intimidation of the workforce by the surrounding communities, resulting solely from its failure to diligently investigate and engage with the surrounding community in respect of the Project in accordance with the standards of a Reasonable and Prudent Operator;~~* [Comments: delete clause, outside of Sellers control. Should rather be negotiated in good faith]	It is market standard in South African IPP and infrastructure projects for the project company (Seller) to assume all site-related risks, including pre-existing contamination, as between itself and the public sector buyer.

No	Ref	Comment raised by potential bidder	Response
		~~*3.2.2.2 if applicable, it shall be solely responsible for, shall bear full responsibility for, shall discharge all obligations and shall bear all consequences (including the possibility that any of the following could lead, directly or indirectly, to a Seller Default) that arise as a direct or indirect result of any appeal or review being lodged against any amendment to any of the Consents issued in terms of any Environmental Laws;*~~	
38	3.3	**3.3 Independent Engineer's and Buyer's inspection rights** ~~*3.3.2 In addition to the access rights provided for in clause 3.3.1, the Seller shall enable the Buyer to have reasonable rights of access to Project Documents, and meeting minutes of the Seller and the Contractor.*~~ [Comments: delete clause, or limit to technical documents that do not include any commercial, contractual, confidential or Seller sensitive information]	Change is not accepted. The Project Documents are defined and not unreasonable for the Buyer to receive these documents.
39	3.4	**3.4.No improvements**: *3.4.1 The Seller shall not be entitled to Construct or procure the Construction of any addition to or any expansion of the Facility that is intended to or may or will result in increasing the installed Capacity of the Facility beyond that specified in Part 1 of Schedule 1 (Details of Project and Facility). [add: This only applies to the Facility supplying dedicated Energy to the Buyer. An independent addition to the generating plant on the site is permissible, provided that it does not adversely impact on the supply to the Buyer, is independent from the Facility dedicated to the Buyer, and supplies customers outside of the Buyer's supply area.]*	Not acceptable. The Project Company is established solely for the purpose of undertaking the Project and selling Energy Output in terms of the PPA. It may only carry on the Project, which is limited to the capacity provided for in the PPA. It is not permitted to undertake any other business or activities outside of what is expressly allowed in the PPA. Other revenue streams / activities and their associated risks are excluded from the ambit of what the Project Company can do. The PPA is not intended to provide a platform for the Seller to pursue other commercial opportunities or revenue streams. The financial model, risk allocation, and all legal and operational arrangements are based on the assumption that the Project Company will only carry out the project as described in the PPA.

No	Ref	Comment raised by potential bidder	Response
40	3.6	**3.6.General Construction Obligations** [Comments: delete clause, the onus is on the Seller/EPC to meet the COD, and there is already provision for this section 3.7] ~~*3.6.1 The Seller shall Commence Construction of the Project and procure the issue of the Commencement of Construction Confirmation Form all within sixty (60) days of the Effective Date. Should the Seller fail to Commence Construction of the Project within such period or thereafter materially reduce, suspend or cease to carry on, for a period of forty five (45) consecutive days, the Construction, or any material part thereof, the Buyer shall be entitled to terminate this Agreement in accordance with clause 20.3 (Termination for Seller Default) for a Seller Default.*~~ ~~*3.6.2 The Seller shall procure the Construction of the Facility and undertake the Project Activities in accordance with:*~~ ~~*3.6.2.1 all applicable Laws, including the Consents; and*~~ ~~*3.6.2.2 the standards of a Reasonable and Prudent Operator.*~~ ~~*3.6.3 The Seller shall provide or procure all plant, equipment (including all Key Equipment), machinery consumables, parts, materials and services whatsoever required for the Construction and safe, reliable and economic Operation of the Facility in accordance with the standards set out in this clause 3.6 (General Construction Obligations).*~~ ~~*3.6.4 Any dispute arising from or relating to the Commencement of Construction as confirmed by the Independent Engineer shall be referred to and determined by an Independent Expert in accordance with the provisions of clause 30 (Fast Track Dispute Resolution).*~~	Proposed deletion of clause not accepted. Changes to be made: sixty days to be amended to 90 days as per Item No 6. Delete the following in line with Item 36 (j): “or thereafter materially reduce, suspend or cease to carry on, for a period of forty five (45) consecutive days the Construction, or any material part thereof,” as this is recommended to be removed as an event of default.
41	3.8	**3.8 Monthly Construction Progress Reports** [Comments: delete clause, the onus is on the Seller/EPC to meet the COD, and there is already provision for this section 3.7] ~~*3.8.1 The Seller shall provide the Buyer with monthly progress reports, in the form of updated versions of the Project Schedule Gantt Chart provided in Schedule 2 (Completion Milestones and Forms of Notices: Completion*~~	The proposed deletion is not acceptable. The Municipality requires the information for planning purposes. The information requested is not onerous.

No	Ref	Comment raised by potential bidder	Response
		~~*Milestones) Part 1 (Completion Milestones), in respect of Construction of the Facility from the time of the commencement of the Construction up to, and including, Commercial Operation Date or Last COD, as the case may be, as detailed in Schedule 9 (Reporting) Part 1 (Monthly Construction Reports).*~~ ~~*3.8.2 The Seller shall ensure that these monthly progress reports:*~~ ~~*3.8.2.1 are prepared in such manner as to clearly indicate the extent of progress towards the completion of the relevant construction milestones in terms of this Agreement;*~~ ~~*3.8.2.2 include a level three (3) project schedule Gantt chart updated against the baseline Project Schedule, in pdf and native format in respect of the Facility; and*~~ ~~*3.8.2.3 are supplemented by such further information that the Buyer may request from time to time.*~~	
42	5.3	***5.3 No Third Party Sales*** *The Seller shall not sell or deliver Energy to any third party [add: from the Facility dedicated to the Buyer] without the Buyer's prior written consent.*	Proposed change not accepted.
43	7.1	**7.1. Daily forecast** [Comments: delete clause, seems unnecessary for small plants, and in addition to weekly forecasts]	Not acceptable. Small PV plants in networks with small loads still require careful planning, particularly around charging/discharging strategy of BESS.
44	8.5	**8.5. Failure to make Payments** : [comments: It's not clear what happens if the Buyer does not pay for the electricity. The reference to article 17 is unclear. Should make reference to 17.8 regarding the Liquidity Support in event of Buyer non-compliance. And at some point, termination of the contract with Buyer Default Amount that should be clarified and sufficient to the Seller (article 20.2). Needs clarification.]	Suggestions not accepted. The applicable provisions do not seem to need clarification. Clause 8.5 cross-refers to clause 17. Clause 17.1 makes it clear that the Seller can claim under the Liquidity Support, but first it must comply with the 17.2 information requirements. Then 17.3, read with 17.3.5, refers the Seller to clause 17.8 – Liquidity Support. Clause 20.2 regulates the circumstances in which termination for Buyer Default may be permissible.

No	Ref	Comment raised by potential bidder	Response
45	9.2	**9.2. Buyer's vendor registration requirements** [Comments; this is not very clear to what its make reference here. Needs clarification.]	The successful service provider must register on the Central Supplier Database (CSD). The municipality will assist with the registration.
46	9.4	**9.4 Billing disputes** *The following provisions shall apply in respect of all Invoices prepared and issued pursuant to this Agreement:……* *9.4.3 If it is agreed or determined (including as a result of a test of the Facility Metering Installation pursuant to clause 12.7 (Testing and inspection) that all or part of a disputed amount which was paid should not have been paid, then the amount of such overpayment shall be refunded within five (5) Business Days of such agreement or determination, together with interest at the Agreed Interest Rate from the date of such overpayment to, but excluding, the date of repayment. [add: The same will apply for underpayment, where payments were delayed beyond the Due Date due to a disputed invoice. If the disputed amount becomes payable, the total due will include interest at the Agreed Interest Rate.]*	This is provided for as a general rule in clause 8.5.1 – therefore strictly speaking an additional sub-clause in clause 9.4 is not necessary.
47	11.4	**11.4. Ownership, inspection, copy and use rights** [Comments: most of the obligations under this section are not standard, and need further discussion to understand relevance to the PPA. The Buyer is not the owner of the facility.] 11.5 **Buyer's Request for Information** ~~*11.5.1 At the Buyer's request, the Seller shall provide the Buyer with copies of the relevant contracts (including amendments) concluded by the Seller with the Contractor.*~~ ~~*11.5.2 The Buyer is also entitled to request the Seller to provide a copy of the Construction Schedule the Contractor submits to the Seller under the respective contract with the Seller that identifies the sequencing and progress in relation to the Construction works (the "Construction Schedule").*~~	The clause has been amended requiring that the Seller retain copies of all related documents, and that the Buyer retains the right to Request Information in the event of a claim arising, for example under Force Majeure, or a Compensation Event.

No	Ref	Comment raised by potential bidder	Response
		[Comments: delete clause. Not relevant to a PPA] 12.10 **Compliance with the Buyer's metering telecommunications protocols** *12.10.2 The Seller shall, at its sole cost and risk, ensure that the telecommunication systems and associated infrastructure required to fulfil its metering obligations in terms of this Agreement [add: at the time of Commissioning].* *….* *12.10.2.2 able to interface,* *with the Buyer's metering communication protocols and/or standards. [Reword and add: Should the protocols and/or standards be changed and/or updated from time to time by the Buyer, these upgrades to the Facility and metering system required as a result of changes to protocols and standards implemented by the Buyer, will be paid for by the Buyer.]* [Comments: most of the obligations under this section are not standard, and need further discussion to understand relevance to the PPA. The Buyer is not the owner of the facility.]	
48	14	**14. Provision for Decommissioning Costs** [Comments: not relevant in a PPA and not applicable where we will continue to operate or repower after the 20 years PPA. Whilst we support the concept of provision for decommissioning, this whole section needs to be discussed and either deleted, or revised to reflect that the lifespan of the plant and the term of the PPA are not the same].	Comment not accepted. Stellenbosch Municipality has a duty to protect the environment. The PPA recognises that decommissioning may occur after expiry of the PPA, and does not purport to regulate decommissioning itself, only the obligation to have a decommissioning plan and to accumulate funds for that purpose during the term of the PPA.
49	15	**15. Socio-Economic Development** [Comments: The comment did not include a specific recommendation or change].	No response

No	Ref	Comment raised by potential bidder	Response
50	16	**16. Consequences of a System Event + 17. Consequences of a Compensation Event**: [Comments: The comment did not include a specific recommendation or change].	No response
51	17.8	**17.8 Liquidity Support** : [Comments: The comment did not include a specific recommendation or change].	No response
52	19	**19. Unforeseeable Conduct and Change In Law**: [Comments: The comment did not include a specific recommendation or change].	No response
53	20.2	**20.2 Termination for Buyer Default** : [Comments: The comment did not include a specific recommendation or change].	No response
54	20.3	**20.3 Termination for Seller Default**: [Comments: The comment did not include a specific recommendation or change].	No response

No	Ref	Comment raised by potential bidder	Response
55	23	**23. Refinancing** ~~*23.1 The Seller is not entitled to undertake any refinancing or re-arrangement of its Debt or Equity at any time during the Term, unless it has obtained the prior written approval of the Buyer in respect of such refinancing or re-arrangement.*~~ ~~*23.2 The Buyer may refuse or grant approval of any refinancing or re-arrangement of its Debt or Equity in its discretion, and if it grants approval may make such approval subject to any conditions.*~~ ~~*23.3 The Seller acknowledges and accepts that any approval by the Buyer of a refinancing or re-arrangement of its Debt or Equity will be subject to the condition that the financial gains which result from the refinancing or re-arrangement of its Debt or Equity will be shared between the Seller and the Buyer, in the proportion of 50:50 unless agreed otherwise by the Buyer.*~~ [Comments: the clause is unnecessarily restrictive and not sure why the Buyer would wish to overreach into the Seller's business. It does not appear to align with the overall intention of the PPA, which is to provide reliable renewable energy from the Seller to the Buyer. Propose it is deleted.]	Deletion accepted.
56	26	**26. Assignment**: [Comments: Seller should be able to assign rights under the PPA to the financing bank, and it's not written here. The assignment of the PPA by the Buyer as proposed in the contract could be ok, but under the condition that the assignee also put in place the Liquidity Support guarantee, and that the Sellers business is not adversely affected without compensation or remedy.] *…provided that, in each case:* *26.2.2.2.1 such dissolution, restructuring, amalgamation, reorganisation, analogous event or transfer is at the instruction of the Government and/or NERSA and/or any other Responsible Authority, or is required to give effect to any mandatory requirement of Law; and*	Matters relating to security provided to the lender, lender step-in and assignment to a substitute seller are regulated in the Direct Agreement. Clause 26.2.2.2.3 already provides for substitute liquidity support in the event of assignment by the Buyer.

No	Ref	Comment raised by potential bidder	Response
		26.2.2.2.2 the Buyer assigns its corresponding rights and obligations under the Direct Agreement to its assignee simultaneously with its Assignment of this Agreement. [Add 26.2.2.2.3 & 4:] 26.2.2.2.3 the Buyer makes provisions in the dissolution, restructuring, amalgamation, reorganisation, analogous event or transfer to ensure that the Seller's revenue from the project is not adversely impacted, the operational activities of the Seller are not disrupted and that the Base IRR of the project over the 20 year PPA is not reduced. 26.2.2.2.3 the assignee puts in place all necessary facilities to meet the requirements for the Liquidity Support Guarantee and Buyer Default Amount simultaneously with the Assignment of this Agreement. [Add 26.3 New clause to allow Seller to be able to assign rights under the PPA to the financing bank. Final wording to be provided by the lender.]	
57	28	**28. Change in Control**: [Comments: to be discussed, this is always a difficult clause... especially as company shareholding will often change over a 20 year PPA, and this clause should not prevent or restrict the Seller from conducting its business.] ~~*From the Effective Date, the Seller shall procure that there is no Change in Control in the Seller (or in any company of which the Seller is a subsidiary), unless:*~~ [Comment: he Seller may have no ability to influence the shareholding and Change in Control in a parent company, so it is unreasonable that the Buyer can attempt to exercise influence over a larger larger parent company through this PPA] ~~*28.1 the Buyer has been provided with copies of any Consents which are required by the Seller to authorise such Change in Control; and*~~ ~~*28.2 such Change in Control or Equity has been approved by the Buyer.*~~ [Delete and Replace: From the Effective Date, the Seller shall procure that the Buyer is notified of any Change in Control in the Seller, for information	Requested change is not acceptable. However, see proposed change at item 65 below – change in control would be subject to Buyer approval which will not be unreasonably withheld. Bidders rely on the credentials of their shareholders (members of the Project Company / consortium members at bid stage) to pass the functionality criteria. If the Project Company is "sold" then the basis on which the bidder was selected may be undermined. Indirect changes in control might be more acceptable.

No	Ref	Comment raised by potential bidder	Response
		purposes only. Any Change in Control is done at the sole discretion of the Seller. The Seller must ensure that any Change in Control do not impact on the ability of the Seller to fulfil its obligations under this PPA.]	
58	29	29.4 **Litigation and 30. FAST TRACK DISPUTE RESOLUTION** [Add arbitration provision if Independent expert fails, draft wording for discussion.: The parties may agree on the arbitration procedure and on the arbitrator and, failing agreement within 5 (five) days of the exhaustion of the previous routes to remedy, the arbitration shall take place in accordance with the Arbitration Foundation of Southern Africa (AFSA) Arbitration Rules in force at the time of the dispute. The appointing authority in terms of the AFSA Arbitration Rules shall be the Association of Arbitrators (Southern Africa). Unless agreed otherwise the mediation and the arbitration shall be administered by the parties. The number of arbitrators shall be one. The arbitration shall be Cape Town, South Africa. Nothing in this clause shall preclude any Party from seeking interim and/or urgent relief from a Court of competent jurisdiction provided that all previous options outlined in this PPA to reaching a resolution have been exhausted and have failed. To this end the Parties hereby consent to the jurisdiction of the High Court of South Africa.]	Not clear what it would mean for Independent Expert (fast-track dispute resolution) to "fail". Independent Expert decision is final and binding in the same way an arbitrator's decision would be (clause 30.12.3).
59		**A few general comments on the PPA :** this PPA is not a "stand alone" PPA. It's a PPA that implement a lot of obligations for the Seller during the construction phase and the pre-commissioning. Those obligations are usually in an EPC contract and are not relevant in a PPA. This need clarification.	Noted. The Seller is free to contract with the EPC on a back-to-back basis. The PPA only operates as between the Buyer and the Seller. The Municipality self-evidently has an interest in the milestones towards COD, for its own planning and budgeting purposes.

No	Ref	Comment raised by potential bidder	Response
		• the contract should also be reviewed in detail from a technical point of view before the final PPA is agreed, to make sure this is feasible, and also to see how the technical obligations are also including "back to back" in the O&M contract.	
60		SCHEDULE 2 - COMPLETION MILESTONES AND FORMS OF NOTICES : should not be applicable as this is not an EPC SCHEDULE 3 - SCHEDULED AND UNSCHEDULED OUTAGES : to be reviewed and discussed SCHEDULE 6 – DEEMED ENERGY PAYMENT : to be reviewed and discussed See previous comments that affect the other schedules.	Not acceptable (Schedule 2 suggestion). The Municipality has an interest both in the timing towards COD, and compliance, for its own planning and budgeting purposes.
61	23	**Clause 23 – Refinancing** "23.1 ~~The Seller is not entitled to undertake any refinancing or re-arrangement of its Debt or Equity at any time during the Term, unless it has obtained the prior written approval of the Buyer in respect of such refinancing or re-arrangement.~~ 23.2 ~~The Buyer may refuse or grant approval of any refinancing or re-arrangement of its Debt or Equity in its discretion, and if it grants approval may make such approval subject to any conditions.~~ 23.3 ~~The Seller acknowledges and accepts that any approval by the Buyer of a refinancing or re-arrangement of its Debt or Equity will be subject to the condition that the financial gains which result from the refinancing or re-arrangement of its Debt or Equity will be shared between the Seller and the Buyer, in the proportion of 50:50 unless agreed otherwise by the Buyer."~~ [Comment: We propose removing the entire refinancing clause, because a Buyer veto over any refinancing and a compulsory 50:50 profit-share would undermine the project's bankability, and it departs from South African IPP precedents where offtakers have no such rights.]	Deletion accepted.

No	Ref	Comment raised by potential bidder	Response
62	Def	**Definition – Buyer Default Amount** "1.2.3 Buyer Default Amount" means, on any date during the Term of this Agreement, an amount that is equal to the Revenue that would be generated by the Seller in relation to the average annual P50 Forecast Energy Output in the Contract Year immediately preceding such date (or for the first Contract Year, if the date falls in that first Contract Year), for a ~~nine (9)~~ twelve (12) month period;" [Comment: Liquidated damage quantum aligned with market standard 12-month revenue.]	Refer to response provided on Item No. 21
63	20.2.4	**Clause 20.2.4 – Termination for Buyer Default** "20.2.4.3 in lieu of any other termination compensation, the Seller shall be entitled to claim ~~the full Buyer Default Amount~~ either (a) its direct and documented Losses if termination occurs within five (5) years of the Commercial Operation Date, or (b) the Buyer Default Amount if termination occurs thereafter." [Comment: This structure lets the Seller recover its full losses during the critical debt-repayment period (first five years), satisfying bankability requirements, and then shifts to a predictable, tariff-based liquidated-damages cap for the remainder of the term.]	Refer to response provided on Item No. 21
64	20.2	**New Clause 20.2.8 – Post-Termination Wheeling Option** "20.2.8 Without prejudice to the Seller's other remedies, if this Agreement is terminated for Buyer Default, the Seller may elect, in its sole discretion, to continue operating the Facility and to wheel energy through the Municipality's distribution network to one or more third-party off-takers. The Buyer shall grant all consents required for such wheeling, shall not levy distribution or wheeling charges in respect thereof for the remaining Term had this Agreement not been terminated, and shall co-operate in good faith to facilitate all required amendments to the Distribution Agreement."	Refer to response provided on Item No. 21

No	Ref	Comment raised by potential bidder	Response
		[Comment: Preserves project value and mitigates lender exposure by allowing continued revenue generation.]	
65	28	**Clause 28 – Changes in Control** "From the Effective Date, the Seller shall procure that there is no Change in Control in the Seller (or in any company of which the Seller is a subsidiary), unless: 28.1 the Buyer has been provided with copies of any Consents which are required by the Seller to authorise such Change in Control; and 28.2 such Change in Control has been approved by the Buyer, which approval shall not be unreasonably withheld or delayed or conditioned." [Comment: Replaces the Buyer's unfettered approval right with a "not unreasonably withheld, delayed or conditioned" standard, aligning the clause with market precedent and preserving shareholder exit flexibility while still giving the Buyer oversight.]	Acceptable.
66	9.3.4	**Clause 9.3.4 – Payment Term** "9.3.4 the Party who received the Invoice shall pay to the other Party … within thirty (30) ~~Business~~ calendar days of the later of (a) the date of receipt of such Invoice; and (b)…" [Comment: Aligns payment term with BESS PPA and improves cash flow predictability.]	Acceptable.

6. Schedule of Briefing Notes

Briefing Note No.	Issue Date	Details of Briefing Notes
1	11 April 2025	This Briefing Note addresses Bidders' queries and clarification requests received between 29 March 2025 and 9 April 2025.
2	14 May 2025	This Briefing Note addresses Bidders' queries and clarification requests received between 10 April 2025 and 29 April 2025.
3	15 July 2025	This Briefing Note addresses Bidders' queries and clarification requests received between 30 April 2025 and 4 July 2025 and contains Appendix 18: Draft Distribution Agreement as well as comments received on the PPA together with responses and mark-ups to Appendix 15: Solar PV PPA and Appendix 16: BESS PPA.