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: 6

1. INTRODUCTION

1.1 This Briefing Note 6 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 provide Bidders with responses on Bidder comments received on the Project Agreements on 6 August 2025 and responses as well as further responses to Items 33 and 35 of Briefing Note 5.

2.2 Bidders are also reminded of the compulsory Bid Registration Date of 29 August 2025.

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

3.1 Please refer to the Table in section 4 for Bidder comments on the Project Agreements, with the Stellenbosch Municipality's responses.

3.2 Please refer to the Table in section 5 for further information on Items 33 and 35 in Briefing Note 5, as well as the following Annexures:

Annexure 1 - Stellenbosch Municipality's Directive on Electricity Services (August 2017).

Annexure 2 - Eskom's Standard for MV/LV Self-Build Customer Projects in Distribution (October 2017).

4. COMMENTS ON PROJECT AGREEMENTS

No	Date Received	Category	RFP Reference	Query	Response
1.	6 August 2025	PPA	Definition: Buyer Default	"**Buyer 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, Change in Law or Unforeseeable Conduct): (a) the Seller makes a claim under the Liquidity Support in accordance with clause 17.8 (*Liquidity Support*), arising from a Compensation Event which involves 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*), and despite making such claim under the Liquidity Support, there is a balance outstanding which exceeds the Liquidity Support Amount actually received which balance is not settled by the Buyer within a further 20 (twenty) Business Days of the Buyer receiving a written notice from the Seller to do so; (b) the Liquidity Support lapses or becomes unenforceable, invalid or illegal and a replacement Liquidity Support from a substitute Liquidity Guarantor with equivalent or better credit standing as the original Liquidity Guarantor in substantially the same form as the Liquidity Support (and for the same amount), has not been provided to the Seller within 20 (twenty) Business Days after notice from the Seller to the Buyer stating that this breach has occurred; ~~or~~ (c) an order being made for the winding-up, liquidation, business rescue or dissolution of the Liquidity Guarantor (in any of these cases, where applicable, whether provisional or final and whether voluntary or compulsory) before the Buyer has procured a replacement Liquidity Support from a substitute Liquidity Guarantor with equivalent or better credit standing as the original Liquidity Guarantor in substantially the same form as the Liquidity Support (and for the same amount); (d) the Buyer admits to or is convicted of having committed any	These additional proposed Buyer Defaults are not accepted. The intention is for the PPA to be terminable for Buyer Default only in circumstances arising from failure to adhere to the Buyer's financial obligations. Other material breaches are covered through compensation.

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				Corrupt Act, or is non-compliant with applicable anti-corruption Laws; (e) the Buyer's credit rating, as issued by a recognised credit rating agency, is materially downgraded for a period exceeding 12 (twelve) months without receiving government support or the Buyer receives a negative audit report by the Auditor General; or (f) the breach by the Buyer of any of its material obligations under this Agreement which is not remedied (or if not remediable, overcome its consequences) within 30 (thirty) days after notice from the Seller to the Buyer stating that such breach has occurred, identifying the breach in question in reasonable detail, and demanding remedy of the breach; **Request:** We request the above Buyer Defaults to be included.	
2.	6 August 2025	PPA	2. Term 2.9	2.9. The Buyer shall be entitled to call up the Preferred Bidder Guarantee if the Agreement fails due to non-fulfilment of a suspensive condition for which the Seller was responsible, only if the Seller deliberately frustrated fulfilment and this shall be the Buyer's sole remedy. **Request:** Propose the above wording to be included in 2.9.	The Stellenbosch Municipality is willing to limit this remedy (of calling up the Preferred Bidder Guarantee) to non-fulfilment of suspensive conditions for which the Seller is fully responsible (which will be identified on a case by case basis with each preferred bidder), and for that to be its sole remedy in the circumstances. The wording of "deliberately frustrated" is not acceptable.
3.	6 August 2025	PPA	3.2 Risk and Liability	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*). **Request:** We require that no consequential or indirect losses be payable by the Seller. This is consistent with the Buyer's liability where no consequential or indirect losses are payable.	Not accepted. Liability for consequential losses is restricted to very limited circumstances, as per clause 30.1.3 of the PPA.

No	Date Received	Category	RFP Reference	Query	Response
4.	6 August 2025	PPA	17. Consequence of a Compensation Event	17.1 If, as a direct or indirect result of the occurrence of a Compensation Event: **Request:** If and to the extent that the Buyer is permitted to claim relief where the Seller's act or omission indirectly results in loss to the Buyer, the Seller should be entitled in terms of clause 17, where Seller is unable to achieve COD as an indirect result of a Compensation Event, to apply for relief.	Not accepted.
5.	6 August 2025	PPA	Clause 19	**19 UNFORESEEABLE CONDUCT AND CHANGE IN LAW** 19.1 **Unforeseeable Conduct** • 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. • 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 share this benefit with the Buyer on a 50/50 basis. **Request:** Given that the Seller takes all the financial risk on the project, it seems equitable to us that any unforeseen benefit be shared 50/50 between the Parties and not simply accrue fully to the Buyer.	Not accepted. The clause is fair as the Buyer is carrying the risk of an unforeseen event adversely affecting the Seller i.e. it keeps the Seller whole.
6.	6 August 2025	PPA	Clause 20.2 Termination	We propose one of the following two options be accepted:	Not accepted by the Municipality.

No	Date Received	Category	RFP Reference	Query	Response
			for Buyer Default	**OPTION 1**: 20.2.4 On termination of this Agreement for Buyer Default: 20.2.4.1 the Buyer shall reimburse the Seller with all costs incurred by the Seller in exercising any of its rights in terms of this clause 20.2 (Termination for Buyer Default). The Seller shall take reasonable steps to mitigate such costs; 20.2.4.2 the Seller shall be entitled to payment by the Buyer all amounts which became due and payable to the Seller in terms of this Agreement, up to the date of termination of this Agreement; and 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; or 20.2.4.4 the Seller shall, at its election, be entitled to require the Buyer to pay a Buyout Value for the entire System, calculated in accordance with Appendix [●] (Buyout Value). 20.2.5 The Buyer and the Seller agree that payment of the Buyer Default Amount, or the Buyout Value, as the case may be, is reasonable and proportionate to protect the legitimate interest of the Seller pursuant to the occurrence of (and constitute an adequate remedy for), a Buyer Default. 20.2.6 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, 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. **OR**	

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				OPTION 2: 20.2.4 On termination of this Agreement for Buyer Default: 20.2.4.1 the Buyer shall reimburse the Seller with all costs incurred by the Seller in exercising any of its rights in terms of this clause 20.2 (Termination for Buyer Default). The Seller shall take reasonable steps to mitigate such costs; 20.2.4.2 the Seller shall be entitled to payment by the Buyer all amounts which became due and payable to the Seller in terms of this Agreement, up to the date of termination of this Agreement; and 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, together with the full amount of the Liquidity Support Amount (equal to 3 months of expected revenue). 20.2.5 The Buyer and the Seller agree that payment of the Buyer Default Amount and the Liquidity Support 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. 20.2.6 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, 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. If the Facility is only connected to the Municipal Distribution System, the Buyer hereby undertakes to allow the Seller, in such a termination event, to wheel electricity onto the Eskom Grid, and shall do all things necessary to enable such access.	To the extent that any portion of the Liquidity Support amount remains undrawn, this proposal is acceptable. Not accepted. The Municipality cannot make a commitment on behalf of Eskom.

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				Request: The primary concern from our financiers is with the bankability of the proposed PPA with respect to the termination payment and the possibility of stranded assets following a termination by the Buyer. The view is that 9 months' worth of forecasted energy payments is on the low end for bankability purposes. We would expect at least 15 months, but in reality the financiers can most likely work with 12 months if the remainder of the PPA is balanced. However, accepting any termination payment that doesn't cover debt outstandings assumes that the asset can be redeployed and another buyer found. This is becoming increasingly difficult, and largely depends on a project being in a position to wheel to customers connected to the Eskom grid. If this facility is connected to a municipal grid, it means this project (along with a few others) will be limited to customers connected to the municipal grid should a replacement buyer need to be sourced. Our financiers don't believe this position has been banked in the SA market and have indicated that it will be very difficult to reach financial close without further mitigants. Ad minimum they require: 1. a buyout value for the whole System; or 2. if there is no buyout value, then – (a) The 3 months Liquidity Support needs to be available plus; (b) 15 months of revenue should be paid to allow Seller to find another off taker (essentially 18 months in total for a and b); and (c) If this System will only connect to the Municipal Grid, then Buyer needs to give an undertaking that in a Termination scenario, the Seller will be allowed to wheel from the municipal grid onto the Eskom Grid, thereby making it easier to find another offtaker within	

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				the time allowed.	
7.	6 August 2025	PPA	20.3 Termination for Seller Default	**Request**: See comment at 6 above.	See response above.
8.	6 August 2025	PPA	25. Set-Off	**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. Similarly, whenever any sum of money is agreed or determined to be due and payable by the Buyer to the Seller, such sum may at the Seller's discretion be deducted from or applied to reduce the amount then due, or which at any time afterwards may become due from the Seller to the Buyer; provided that the Seller gives five (5) Business Days' notice to the Buyer of its intention to apply such deduction. **Request:** We fail to understand why this cannot be reciprocal.	The proposed concept is accepted. Appropriate drafting will be incorporated in the final PPA.
9.	6 August 2025	PPA	26. Assignment	**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.	Not accepted. The Direct Agreement which was issued with the PPA provides the necessary consent on the part of the Buyer, for the Seller to cede specified rights to its Lenders. Therefore, there is no need to add the suggested wording into the PPA.

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				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; and 26.2.2 the Seller shall be entitled, without the prior approval of the Buyer, to cede or assign its rights under this Agreement by way of security in favour of any Lender or Financing Party, or any agent acting on behalf of such Lender or Financing Party, in connection with the financing of the Facility or any part thereof. **Request**: For purposes of reaching financial close, the Seller must have the right to cede the Agreement as security to the financiers.	
10.	6 August 2025	PPA	31. Liability	**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).~~ **Request** : See item 8. We require that no consequential or indirect losses be payable at all.	Not accepted by the Municipality.

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11.	6 August 2025	PPA	36. Warranties	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 Municipal Finance Management Act approvals (or the equivalent) required for purposes of entering into this Agreement for the full term of this Agreement. **Request :** We assume that MFMA approval will be a suspensive condition and, consequently, the Buyer will be responsible for maintaining the approvals for the duration of the term.	Not accepted. The Municipality will have to obtain approval in terms of section 33 of the MFMA, as stated in the RFP. That section 33 approval will be for the full duration of the PPA. However, section 33 is a once-off approval and does not need to be 'maintained' for the duration of the PPA.
12.	6 August 2025	PPA	Definition: Buer Default Amount	*"**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 (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~~ fifteen (~~9~~15) month period;* **Footnote**: Change due to item 21.	Not accepted

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13.	6 August 2025	PPA	**27.** Change in Control	**28. Change 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:" **Footnote**: Indirect changes in control are acceptable, therefore the above amendment should be acceptable.	Not accepted. The Municipality is relying on the credentials and experience of the Shareholders. The Buyer consent requirement is already qualified such that consent may not be unreasonably withheld.
14.	6 August 2025	PPA		Are changes in shareholding post-award allowed without prior approval?	The Municipality will apply the same approach to changes in Shareholding, as to Changes in Control. Clause 27 of the PPA will therefore be amended to read as follows: **27. CHANGES IN CONTROL AND SHAREHOLDING** From the Signature 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) nor any change in the ownership interests in the Seller of any Shareholder, unless: 27.1 the Buyer has been provided with copies of any Consents which are required by the Seller to authorise such Change in Control or change in Shareholding; and 27.2 such Change in Control or change in Shareholding has been approved by the Buyer, which approval shall not be unreasonably withheld, delayed or conditioned.

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15.	6 August 2025	Distribution Agreement	Clause 7.3	7.3. ~~The MUNICIPALITY will use its reasonable endeavours to furnish the CUSTOMER with reliable and continuous network availability. However, the MUNICIPALITY does not guarantee that the continuity and voltage quality of the connection will always be maintained under all contingencies. The CUSTOMER shall take adequate measures to protect the Facility against any damage and/or losses that could arise from voltage interactions, voltage dips, or any other variations in the voltage quality, and, if necessary, ascertain the protection requirements from the MUNICIPALITY~~ The MUNICIPALITY guarantees to the CUSTOMER that the MUNICIPALITY network shall maintain an availability rate of 99% on a rolling annual basis. In the event that availability falls below this threshold, the MUNICIPALITY shall promptly notify the CUSTOMER and shall undertake immediate corrective actions to restore availability to the required threshold. Any failure by the MUNICIPALITY to meet the required availability threshold shall result in Deemed Energy being charged to the MUNICIPALITY in accordance with the provisions of the Power Purchase Agreement. Request: Customer requires a network availability rate guarantee from Municipality.	Not accepted. The Municipality will not provide such a guarantee. Deemed Energy and Deemed Energy Payments mechanisms are included in the Solar PV PPA, and this covers the Seller for System Events.
16.	6 August 2025	Distribution Agreement	Clause 14.2	14.2 Following the successful completion of all outstanding commissioning tests and the MUNICIPALITY's receipt of all associated test certificates, the MUNICIPALITY will provide the CUSTOMER in writing with permission to begin Commercial Operation ('Operational Notification for Commercial Operation'), subject to the provisions of any other agreements, including the Power Purchase Agreement, which govern the Commercial Operation. If the MUNICIPALITY does not issue the Operational Notification for Commercial Operation to the CUSTOMER within five (5) calendar days following the completion of all outstanding commissioning tests and the receipt of all associated test certificates in accordance with this clause, then the MUNICIPALITY shall pay Deemed Energy in accordance with the	The following principle can be included in the Distribution Agreement: The Municipality will provide the Operational Notification for Commercial Operation to the Customer within fourteen (14) calendar days following the completion of all outstanding commissioning tests and the receipt of all associated test certificates in accordance with this clause, and confirmation thereof from the CUSTOMER.

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				Power Purchase Agreement for all energy which the CUSTOMER was not able to deliver on account of the Operational Notification for Commercial Operation not being issued and the CUSTOMER shall be entitled to declare a dispute in terms of clause 23.1. If such dispute is determined in favour of the CUSTOMER then the MUNICIPALITY shall be deemed to have issued the Operational Notification for Commercial Operation to the CUSTOMER with effect from the date following such determination. Request: Customer should be entitled to recourse if the Operational Notification for Commercial Operation is not issued within a reasonable timeframe.	
17.	6 August 2025	Distribution Agreement	Clause 16	**16. Right to Curtail or Interrupt Under Emergency Conditions** **16.1 CURTAILMENT OF GENERATION** The CUSTOMER shall, if and when required and on instruction by the MUNICIPALITY, reduce peak generation during abnormal system conditions or low load periods. Any such curtailment shall be compensated by the MUNICIPALITY through Deemed Energy payments calculated in accordance with the Power Purchase Agreement, unless such curtailment was due to an emergency interruption as contemplated in clause 16.2. **16.2 EMERGENCY INTERRUPTION** Either Party shall have the right to disconnect the Facility from the Distribution System under emergency conditions as described in the Code(s) if such action is deemed necessary by it (acting as a Reasonable and Prudent Operator) for the protection of life or equipment or for maintaining the reliability and security of the Distribution System or the Facility (as the case may be). The Parties shall give reasonable advance notice of such action where possible. In respect of the MUNICIPALITY's rights under this clause, the disconnection may be effected by the MUNICIPALITY in such a way that the CUSTOMER will not be able to close the	The Distribution Agreement does not deal with any commercial energy payments or deemed energy payments, so the insertion of this text into the Distribution Agreement is not accepted. However, the protection that the bidder is seeking already exists in the PPA i.e. curtailment of generation on instruction from the MUNICIPALITY would qualify as a System Event and the Deemed Energy Payment regime would apply.

No	Date Received	Category	RFP Reference	Query	Response
				relevant circuit breaker until the MUNICIPALITY has reset the circuit breaker controls. All disconnections shall be recorded and reported to the CUSTOMER with sufficient detail, including cause, duration and scope. **16.3 RE-CONNECTION FOLLOWING AN EMERGENCY INTERRUPTION** The MUNICIPALITY shall rectify the conditions leading to the emergency interruption as quickly as reasonably practicable and shall notify the CUSTOMER as quickly as reasonably practicable after such emergency conditions have passed. Thereafter, following receipt of such notification the CUSTOMER may re-synchronise the Facility to the Distribution System. **16.4 LOAD SHEDDING** The CUSTOMER shall, if and when required by the MUNICIPALITY, switch off generation during load shedding according to published load shedding schedules. Request: Deemed Energy should be payable in case of certain curtailments.	This proposal is acceptable, on the basis that the reporting requirement should apply to disconnections from both the CUSTOMER and the MUNICIPALITY.
18.	6 August 2025	Distribution Agreement	Clause 17.1	17.1. The CUSTOMER grants to the MUNICIPALITY an irrevocable right-of-way ~~in perpetuity~~ only for the duration of this Agreement, free of charge, to convey electricity and telecommunication over the Property on the terms and conditions set out below. Request: Customer cannot grant a right of way in perpetuity.	The proposed amendment is accepted: "…irrevocable right-of-way ~~in perpetuity~~for the duration of this Agreement, free of charge, to convey electricity and telecommunication over the Property…"
19.	6 August 2025	Self-Build Agreement		**NOTE: The Self-Build Agreement has not been provided, and we reserve the right to provide comments on same at the appropriate time. However, as a matter of transparency, we would require the following wording (or the effect thereof) to be present in the Agreement.**	The recommended wording is noted.

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<tr><th>No</th><th>Date Received</th><th>Category</th><th>RFP Reference</th><th>Query</th><th>Response</th></tr>
<tr><td></td><td></td><td></td><td></td><td>
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<tr><th>Ref</th><th>Comment Raised by Potential Bidder dated 6.8.25</th></tr>
<tr><td>Handover</td><td>“<i>As soon as the construction and installation of the Distribution Connection Works have been completed in in accordance with the Distribution Connection Works Specifications in the opinion of the Seller and are ready for hand over to the Buyer, the Seller shall notify the Buyer thereof (the “Completion Notification”).”</td></tr>
<tr><td>Defects Liability Period</td><td>“<i>The warranties given by the Seller under clause [X] above shall apply to all defects (latent and patent) for the duration of 12 months from the Hand-over Date (the “Defects Liability Period”).”</td></tr>
<tr><td>O&M responsibility and indemnity</td><td>It should be clarified in the Self-Build Agreement that the Municipality (Buyer) assumes full O&M responsibility post-handover, and Municipality (Buyer) indemnifies Seller against any loss, claim or damages suffered by Seller as a result of Municipality’s (Buyer’s) failure to maintain or operate the Distribution Connection Works.</td></tr>
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<tr><td>20.</td><td>6 August 2025</td><td>Independent Engineers Agreement</td><td>Clause 10.7</td><td>10.7. Timing for Decisions
On all matters properly referred to it for its review, decision or determination in accordance with the PPA, the Independent Engineer shall give its review findings, decision or determination in writing within the time period referred to in the relevant provision of the PPA or if no such period is prescribed, within a reasonable time period which in such latter event, shall be no later</td><td>Not accepted. The proposed amendment is not necessary as the concept is already covered in the existing wording.</td></tr>
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				than twenty (20) Business Days after being referred to the Independent Engineer. The Independent Engineer shall perform its functions under this Agreement reasonably and fairly and shall not unreasonably withhold or delay its review, decision or determination, or otherwise frustrate the commissioning of the Facility or the issuing of the Facility Completion Form. Independent Engineer should not be able to frustrate commissioning or issuing Facility Completion Form.	
21.	6 August 2025	Independent Engineers Agreement	Clause 10.10.1.1	10.10.1.1. it is duly qualified, skilled, registered with the Engineering Council of South Africa (ECSA) as a professional engineer ~~a professional body of engineers~~ and experienced to carry out its functions in accordance with the standards referred to in this Agreement; ECSA registration required.	The proposed amendment is not required. The role of the Independent Engineer (IE) only exists as set out in the PPA and IE Agreement. There is no regulatory / statutory requirement for the role of the IE, hence there is no specific requirement for ECSA registration. Therefore, it is acceptable that the IE is registered with any professional body of engineers – this includes ECSA in South Africa, or any equivalent professional body in another country. The intent of this requirement is to ensure that the IE is generally recognised as competent in the field of engineering.
22.	6 August 2025	Independent Engineers Agreement	Clause 19.1	The Seller shall, on its own initiative or upon request by the Buyer (and if the Seller refuses such a request, the Buyer may refer the dispute for determination in accordance with the provisions of clause 30 (*Fast Track Dispute Resolution*) of the PPA which shall apply *mutatis mutandis*), be entitled to terminate this Agreement, upon written notice to the Independent Engineer and with the prior written consent of the Buyer (which consent may not be unreasonably withheld or delayed), in the following circumstances:	The proposed wording is acceptable.

No	Date Received	Category	RFP Reference	Query	Response
				Request: Consent not to be unreasonably withheld or delayed.	
23.	6 August 2025	Direct Agreement		4.1. The Buyer agrees to make all payments due or which may become due from the Buyer under or arising from the PPA to the account of the Seller, the details of which account shall be notified by the Seller to the Buyer in writing on or before the date on which the PPA become effective in accordance with its terms, or such other verified account as may be notified in writing to the Buyer by the Agent from time to time, and it is agreed by the Seller that the authority and instruction in this clause 4.1 cannot be revoked or varied without the prior written consent of the Agent. The Seller acknowledges and agrees that all payments made by the Buyer to any account, not being the account of the Seller, on the instruction of the Agent shall discharge the Buyer's liability to the Seller in respect of such payments. Request: Should be a verified account.	The proposed addition is acceptable.
24.	6 August 2025	Direct Agreement		Financiers feedback: Our financiers confirmed that the form of the Distribution Agreement follows the REIPPP form which has been banked for the last 10 years. They don't have any material bankability concerns to raise at this point other than to mention that the lender rights under REIPPP (and therefore the form of Direct Agreement) were formulated and settled by the market based on a full debt underpin (Buyout value) for Buyer Events of Default. It's not really fair of the Municipality to completely change the key lender protections (i.e. Buyout Value) under the Power Purchase Agreement and then assume lenders will be fine to accept a Direct Agreement in exactly the same form. They believe this can be managed and are not saying there will definitely be changes required, given that the cure periods remain reasonable in their view. However, it remains uncertain whether lenders will fund the project unless their requirements for the Buyout value or termination payment as outlined earlier in this document are met.	Noted.

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25.	6 August 2025	Independent Engineers Agreement	Clause 5.3	INDEPENDENT ENGINEER AGREEMENT – Clause 5.3: The requirements that the Independent Engineer is to confirm that " …*the Facility has been designed …in accordance with applicable and relevant industry standards and specifications …"* is unnecessarily onerous given that the EPC will have exercised that duty already, and will result in unwarranted cost for the project. Furthermore the "clause 5.3 design related requirements" do not aligned, in terms of veracity, with clauses 5.2.2.3 and 5.4.1 with regard to "design oversight". It is hence requested that the excessive design verification requirements of 5.3 be reviewed accordingly.	The Municipality is willing to make the changes set out below, to clause 5.3.2: In order to carry out the function referred to in clause 5.3.1, the Independent Engineer shall be entitled to review all documentation submitted to the Independent Engineer by the Seller but shall only be required to review the certifications evidencing that (a) the design of the Facility complies with applicable and relevant industry standards; and (b) the Facility, including all Key Equipment, has been installed in accordance with its designs and original equipment manufacturers' installation manuals.
26.	6 August 2025	Independent Engineers Agreement	Clause 10.10.2	INDEPENDENT ENGINEER AGREEMENT – Clause 10.10.2: Kindly explain in simple terms what this clause is stating. The Parties acknowledge that the Independent Engineer and its Affiliates (the "**Group**") provide professional engineering and or consultancy services internationally to clients other than the Appointers, some of whom may have interests adverse to either Appointer or its Affiliates. Each Appointer hereby agrees that any member of the Group may at any time and from time to time provide professional engineering and or consultancy services to any other clients which may have interests in any one or more Renewable Energy projects including any other projects selected pursuant to the STMIPPPP but excluding, except, in respect of an Affiliate of the Independent Engineer, with the prior written consent of the Seller and the Buyer (which consent may not be unreasonably withheld or delayed), this Project, subject at all times to and without limitation of the representations and warranties made by the Independent Engineer pursuant to clause	The purpose of this clause is to manage potential conflicts of interest between the Independent Engineer's duties towards the Appointers (Seller and Buyer), and its other clients. The clause says that the Independent Engineer's company (and its related companies i.e. Affiliates) can still work for other clients on other renewable energy projects, even if those clients are competitors of the Seller — but they can't work on *this* Project for someone else without permission. For example, the IE appointed for Project X under the STMIPPPP cannot be appointed by the EPC Contractor on Project X to produce the design for Project X.

No	Date Received	Category	RFP Reference	Query	Response
				10.10.1 or its obligations pursuant to clause 15 (*Intellectual Property Rights*) and clause 16 (*Confidentiality*).	However, an Affiliate of the IE appointed for Project X, could be appointed by the EPC Contractor on Project X to produce the design for Project X, with the prior written consent of the Appointers. In these examples, the definition of "Project" is as per the RFP. In all cases, the IE and its Affiliates still must keep all promises about good faith, independence, protection of intellectual property, and maintain confidentiality.
27.	6 August 2025	PPA	Clause 20.2	Please note that the amended PPA clause 20.2 Termination for Buyer Default is not adequate and we request that the PPA explicitly incorporates provisions to prevent the Buyer from willfully reducing offtake or procuring energy from alternative IPPs in a manner that constitutes a capricious or voluntary default. To protect the commercial integrity of the Project, the PPA should include: 1. Exclusive purchase obligations for the contracted energy volumes; 2. A prohibition on capricious procurement from other sources that undermines the PPA; 3. A definition of voluntary default that captures buyer actions taken without force majeure or legitimate system constraints; 4. A requirement for a termination payment or buyout value to be made by the Buyer in the event of such a default. These provisions are necessary to ensure bankability and long-term viability of the project, particularly where infrastructure is built and financed specifically to serve the Buyer's load.	The Municipality accepts the principle that repudiation of the PPA, by the Municipality, should not be subject to the same limitations on compensation as in the case of termination for Buyer Default arising from inability to perform. Appropriate drafting will be incorporated in the final PPA to the effect that termination of the PPA as a result of repudiation will entitle the Seller to damages.

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				The actual final wording of the PPA will need to be subject to confidential commercial negotiations	
28.	6 August 2025	PPA	Clause 20.2	**<u>Clause affected:</u>** 20.2: Termination Buyer Default and definition of Buyer Default Amount **<u>Stellenbosch Municipality response</u>** We raised a comment in the initial round of feedback, requesting additional liquidity support from the Seller and we note your response as follows: 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, 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. **<u>New clarification and motivation for suggestion</u>** Unfortunately, this does not address our concerns as lender, and we urge you to consider alternatives other than merely allowing a	The proposal is not accepted by the Municipality.

No	Date Received	Category	RFP Reference	Query	Response
				Seller to wheel energy to a third party offtaker. Wheeling would mean that the Seller would need to renegotiate new terms in a new wheeling PPA which could significantly alter the economics of the project. While the wheeling market exists, it is still at a very early stage and as more and more participants enter this market it is likely to drive down the price of wheeled energy. This makes wheeling an unappealing remedy and which makes capital raising (both from lenders but also other investors) extremely difficult as the investors are expecting a target return. This is also a risk that lenders simply cannot take. **Suggestion** A suggestion which would help the bankability of the project in lieu of a longer guarantee is to provide for a "put option" whereby the solar system is sold to the Buyer at an agreed NPV value on the occurrence of a Buyers Default. In this scenario the Seller's economics are kept whole and the Seller is not penalised for Buyers Default. It would make capital raising significantly easier. The Buyer (Municipality) is receiving the solar PV assets and therefore still receives fair value for the put option consideration which is fair for all parties. If you are open to this remedy, we would gladly provide suggested legal wording for insertion into the PPA.	

5. ADDITIONAL INFORMATION ON ITEMS FROM BRIEFING NOTE 5

No	Date Received	Category	RFP Reference	Query	Response
1.	6 August 2025	Appendix 36		New Bien Donne Substation:	Further response to Briefing Note 5 – Item 33 i. The target date for commissioning and operation of the new Eskom Bien Donne

No	Date Received	Category	RFP Reference	Query	Response
				i. What is the planned date for commissioning and operation of the new Eskom Bien Donne 11kV substation? ii. Please confirm if the coordinates of the planned new Bien Donne Substation are correct in Appendix 36. The coordinates supplied in Appendix 36 (18° 58'54.1"E 33°50'42.7"S) does not seem like a plausible location. Refer to attached image of location. 	11kV substation has been revised to December 2029. A Commercial Operation Date of December 2029 would not fit within the STMIPPPP timetable provided at clause 7.2 of the RFP. An exception will therefore be made, in relation to items 7.2.14 to 7.2.17 of the RFP, for Solar PV and BESS Projects connecting at the new Eskom Bien Donne 11kV substation, so as to allow for the delay. Provisional appointments as Preferred Bidders for Solar PV and BESS Projects connecting at the new Eskom Bien Donne 11kV substation will be conditional on completion and commissioning of the substation. The letter of provisional appointment as Preferred Bidder, in relation to that category of Projects, will also contain the appropriate conditions, requirements and processes to facilitate a coordinated Project construction process. The requirements of Clause 7.8.3 will still apply in respect of those Preferred Bidders. ii. Answered in Briefing Note 5.
2.	6 August 2025			NERSA (GRID) CODES – General: A number of the NERSA Grid Codes and related approval and compliance testing requirements may not have been revised to efficiently accommodate embedded generation at municipal level. · What are the Stellenbosch Municipality specific requirements with regard to grid connection requirements, and where are they documented.	Further response to Briefing Note 5 – Item 35 In addition to the response in Briefing Note 5, the following standards shall also apply to the Distribution Connection Works (both provided as Annexures 1 and 2 to this Briefing Note 6): 1. Stellenbosch Municipality's Directive on Electricity Services (August 2017)

No	Date Received	Category	RFP Reference	Query	Response
				· Would Stellenbosch Municipality assist the Project with exemption applications from Grid Code requirements, in cases where such exemptions are in the interest of the Project?	2. Eskom's Standard for MV/LV Self-Build Customer Projects in Distribution (October 2017) In the case of any conflicting requirements between these two documents, the Stellenbosch Municipality's Directive on Electricity Services shall take precedence.

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.
4	31 July 2025	This Briefing Note addresses Bidders' queries and clarification requests received between 5 July 2025 and 18 July 2025.
5	14 August 2025	This Briefing Note addresses Bidders' queries and clarification requests received during 19 July 2025 and 6 August 2025 as well as clarifications received during the Compulsory Bidders Conference.
6	21 August 2025	This Briefing Note addresses Bidders' comments received on the Project Agreements, and further clarifications not addressed in Briefing Note 5.