SERVICES AGREEMENT

between

PEU CAPITAL PARTNERS (PTY) LTD ("PEU")

and

CITY OF TSHWANE METROPOLITAN MUNICIPALITY ("CoT")
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1 PARTIES

1.1 The Parties to this Agreement are –

1.1.1 Peu Capital Partners (Pty) Ltd; and

1.1.2 City of Tshwane Metropolitan Municipality.

1.2 The Parties agree as set out below.

2 INTERPRETATION

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

2.1.1 “Advanced Metering Infrastructure” or “AMI System” means the advanced metering infrastructure installed for purposes of measuring the supply and consumption of electricity by the AMI Customers, analysing the usage of electricity by AMI Customers, communicating with metering devices including the Smart Meters, and all its component parts including but not limited to the hardware to support such system, and all relevant software (including meter data management software);

2.1.2 “AFSA” means the Arbitration Foundation of Southern Africa;

2.1.3 “Agreement” means this services agreement including annexures annexed hereto, each as may be amended from time to time in accordance with clause 27.2;

2.1.4 “AMI Customers” means those customers of the CoT whose consumption of electricity is measured and monitored through the AMI System;

2.1.5 “Applicable Laws” means all applicable statutes, ordinances, regulations, by-laws, rules, policies, directives, decrees, decisions, determinations, rulings, judgements and
orders of any competent court or authority, which have the force of law in South Africa;

2.1.6 "Arrear Payments" means the payments made by CoT Customers in respect of all outstanding amounts owed to CoT for the provision of any municipal services (including rates and taxes) where such payment is discharged at the Points-of-Sale;

2.1.7 "Contact Centre" means the contact centre/s to be established by or on behalf of Pau in terms of this Agreement and for the purposes set out in Annexure 1 (Contact Centre Protocol);

2.1.8 "Contact Centre Protocol" means the procedures setting out the manner in which a Service Request, Incident and/or Problem will be logged, recorded, dispatched and rectified in accordance with the levels of service, as set out in Annexure 1 (Contact Centre Protocol);

2.1.9 "Completion Certificates" means the certificates issued by the Engineer certifying that a Section of the Services in respect of the Roll-Out Phase has been completed and complies with the Output Specification;

2.1.10 "Consent" means any licence, permit, permission, approval, consent or other authorisation;

2.1.11 "CoT" means City of Tshwane Metropolitan Municipality, a metropolitan municipality established in terms of section 12 of the Local Government: Municipality Structures Act No. 117 of 1998;

2.1.12 "CoT Customers" means all persons future and current in whose names accounts have been established with the CoT for purposes of the provision of municipal services, including the provision of electricity, and includes the CoT Electricity Customers;
2.1.13 "CoT Electricity Customers" means all persons future and current in whose names accounts have been established with the CoT for purposes of the provision of electricity and includes the AMI Customers;

2.1.14 "CoT Event of Default" means any of the following defaults to the extent not directly caused or contributed to by Peu –

2.1.14.1 non-payment of the Service Fee by the CoT in terms of this Agreement which non-payment is not remedied within the remedy period envisaged in clause 19.2;

2.1.14.2 any breach of CoT's obligations under this Agreement which would substantially frustrate, delay or prevent Peu from performing the Services for a period of more than 10 (ten) Business Days;

2.1.14.3 an event of Material Adverse Government Action occurs;

2.1.14.4 CoT either failing to timeously obtain, maintain or breaching the terms of any Consent required for purposes of enabling it and/or Peu to discharge its obligations under this Agreement or rendering this Agreement lawful;

2.1.14.5 failure by CoT to timeously notify Peu of a Notification Event which has a material adverse impact on Peu's ability to provide the Services;

2.1.15 "Credits" means pre-paid electricity credits purchased by CoT Electricity Customers, allocated pre-paid electricity in terms of provision of free basic electricity or any request by CoT for transfer of pre-paid electricity credits to any of its customers for purposes of activating electricity consumption through a Smart Meter;

2.1.16 "Effective Date" means the date on which the last of the suspensive conditions contained in clause 4 is fulfilled;

2.1.17 "Electricity By-laws" means the electricity by-laws that have replaced or shall replace the "Standard Electricity Supply By-Laws" in force as at 31 December 2012, and
which have been made or shall be made by the CoT, in accordance with Applicable Laws, for purposes of regulating inter alia the metering of electricity sold and supplied by the CoT to the CoT Electricity Customers by means of the Smart Meters, mandating that all CoT Electricity Customers must purchase Credits on a pre-paid basis and the purchase and payment of such Credits by CoT Electricity Customers by means of the Vending System;

2.1.18 "Engineer" means the Independent engineer jointly appointed by Peu and CoT for purposes of issuing the Completion Certificate and the Final Completion Certificate;

2.1.19 "Expiry Date" means the last day of the Initial Period or if this Agreement is renewed in terms of clause 5 the last day of the Renewal Period;

2.1.20 "Fault" means an unplanned interruption to a Service or a reduction in the quality of a Service that has impacted the Service;

2.1.21 "Final Completion Certificate" means the final certificate issued by the Engineer certifying that the whole of the Roll Out Phase has been completed and complies with the Output Specification;

2.1.22 "Financing Agreements" means the agreements concluded between the Lenders and Peu in respect of the provision of funding to the Project, including any and all Security Agreements as well as any and all hedging agreements and instruments, concluded and obtained pursuant thereto;

2.1.23 "Force Majeure" means any event or circumstance whatsoever which is not within the reasonable control of a Party including vis major, casus fortuitus, any act of God, strike, theft, fire, explosion, riot, Insurrection or other civil disorder, war (whether declared or not) or military operations, International sanctions, embargos or other restrictions, any requirement of any international authority, any requirement of any government (including foreign country governments) or other competent local authority (excluding Material Adverse Government Action), any court order, export control and any shortage, interruption and/or cessation of the supply of electricity;
2.1.24 "Front-end Infrastructure" means the infrastructure and equipment required to operate the Front-end System;

2.1.25 "Front-end System" means the system developed by or on behalf of Peu to communicate between the Points-of-Sale, the Project PMU, the Contact Centre, Smart Meters and the Advanced Metering Infrastructure;

2.1.26 "Full Operations Phase Commencement Date" means the Business Day following the date on which the Final Completion Certificate is issued;

2.1.27 "Good Industry Practice" means in relation to the manner in which the Services are rendered, the standards, practices, methods and procedures conforming to applicable law, and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under similar circumstances in South Africa;

2.1.28 "Incident" means an unplanned interruption to the Services or a reduction in the quality of the Services that has not yet impacted the Services;

2.1.29 "Independent Expert" means a person with not less than 10 (ten) years relevant financial management and investment banking experience appointed by the Parties as an expert for purposes of clauses 5.3 and/or 20 of this Agreement;

2.1.30 "Infrastructure" means collectively the Smart Meters, the Infrastructure comprising the Vending System (including the Points-of-Sale), the Project PMU Infrastructure, the Contact Centre, the Front-end Infrastructure and the Advanced Metering Infrastructure;

2.1.31 "Infrastructure List Price" means the retail price for new infrastructure other than the Smart Meters as at the Infrastructure Valuation Date, as recommended by the relevant Infrastructure Manufacturer plus installation costs as estimated by the relevant Infrastructure Contractor;
2.1.32 "Infrastructure Contractor" means a contractor appointed by Peu responsible for constructing, installing, commissioning and testing the Infrastructure;

2.1.33 "Infrastructure Manufacturer" means an original equipment manufacturer responsible for supplying any component/s of the Infrastructure;

2.1.34 "Infrastructure Valuation Date" means the date on which the Infrastructure is valued for purposes of clause 20.1, being 60 (sixty) days after the Termination Date;

2.1.35 "Initial Period" refers to the period commencing on the Full Operations Phase Commencement Date and terminating on the last day of the 8th (eighth) anniversary of the Full Operations Phase Commencement Date;

2.1.36 "Investors" means the holders of equity in ProjectCo;

2.1.37 "Lenders" means the debt lenders to the Project;

2.1.38 "Long Stop Date" means the Business Day falling 6 (six) months after the Scheduled Full Operations Phase Commencement Date;

2.1.39 "Market Value" means the market value as prescribed by the International Valuation Standards Committee, being the estimated amount for which the infrastructure should transfer on the date of valuation between a willing buyer and a willing seller in an arm's length commercial transaction after proper marketing where the parties of each acted knowledgeably, prudently and without compulsion;

2.1.40 "Material Adverse Government Action" means:

2.1.40.1 means any action or omission of the CoT in its legislative capacity or any action or omission of a committee or functionary of the municipal council of the CoT exercising powers delegated to it, including but not limited to the promulgation, implementation or repeal of any decision, by-law or policy after the Effective Date which has an adverse effect on the rights or obligations of Peu under this
Agreement or which results in any actual or prospective adverse change to Peu’s costs, revenues, returns or general economic position in respect of the Project, including the setting or reduction of electricity tariffs by the CoT or another regulatory body; or

2.1.40.2 the exercise of a statutory power by a sphere or tier of the Government including but not limited to the promulgation, implementation or repeal of any decision, law or mandatory policy after the Signature Date which has a material and adverse effect on the rights or obligations of Peu under this Agreement and or results in any actual or prospective change in the services, the duration of this Agreement or Peu’s costs, revenues, returns or general economic position in respect of the Project;

2.1.41 "MFMA" means the Local Government: Municipal Finance Management Act No. 56 of 2003 and all regulations issued thereunder, as amended from time to time;

2.1.42 "MSA" means the Local Government: Municipal Systems Act No. 32 of 2000, as amended from time to time;

2.1.43 "MSCMR" means Municipal Supply Chain Management Regulations published under General Notice 858 in Government Gazette 27636 of May 2005;

2.1.44 "Notification Event" means any of the following events –

2.1.44.1 any change in law (including a by-law) or implemented policy and/or procedure which amends or alters the electricity tariff, method of collecting electricity revenue or volume of electricity consumed;

2.1.44.2 any reduction in the volumes or revenue relating to the electricity service charge in terms of CoT’s agreements with its electricity suppliers; or

2.1.44.3 any failure by CoT to enforce the electricity tariff;
2.1.45 "Operations Phase" means the phase commencing on the date on which the first Operations Phase Commencement Date occurs, and terminating on the Expiry Date or the Termination Date, whichever is earlier;

2.1.46 "Operations Phase Commencement Date" means the first Business Day following the date on which a Section of the Roll-Out Phase is completed, as evidenced by the issue of a Completion Certificate;

2.1.47 "Output Specification" means the specifications developed by the CoT specifying the outputs with which the Smart Meters and the Vending System must comply as annexed hereto as Annexure 5 (Output Specifications);

2.1.48 "Parties" means the CoT and Peu and "Party" shall mean anyone of them as the context indicates;

2.1.49 "Penalty Deduction" means a penalty deduction be made in respect of the Services Fee in terms of clause 12 as a result of the Services not complying with the applicable service levels specified therein;

2.1.50 "Peu" means Peu Capital Partners (pty) Ltd, Registration Number 2003/007909/07, a limited liability company established in terms of the company laws of South Africa with its principal place of business at 2nd Floor, the Firs Office Complex, Corner of Cradock and Biermann Avenues, Rosebank, 2196;

2.1.51 "Peu Event of Default" means any of the following defaults to the extent not directly caused or contributed to by CoT:

2.1.51.1 Insolvency of ProjectCo;

2.1.51.2 failure to commence the Operations Phase by the Long Stop Date;

2.1.51.3 failure to provide a substantial and material part of the Services during the Operations Phase which failure is not reasonably and practically rectifiable by Peu,
for more than 10 (ten) Business Days;

2.1.52 a material breach of Peu's obligations under the Agreement which persists for longer than 60 (sixty) Business Days;

2.1.53 "Prime Rate" means the publicly quoted basic rate of interest, compounded monthly in arrears and calculated on a 365 (three hundred and sixty five) day year irrespective of whether or not the year is a leap year, from time to time published by [Insert name of bank] as being its prime overdraft rate, as certified by any representative of that bank whose appointment and designation it will not be necessary to prove;

2.1.54 "Project Account" means the bank account opened in the name of Peu and in respect of which the CoT shall have unfettered and reasonable access for the duration of this Agreement;

2.1.55 "Points-of-Sale" means -

2.1.55.1 the physical points at which CoT Electricity Customers can purchase Credits, which shall be established at the locations set out in Annexure 2 (Points of Sale Framework) and;

2.1.55.2 the on-line gateway through which CoT Electricity Customers can purchase Credits; and

2.1.55.3 the physical points at which CoT Electricity Customers can purchase Credits, which shall be operated by third party agents that shall be contracted by Peu as part of the Project;

2.1.56 "Problem" means the unknown root cause of one or more existing or potential Incidents or Faults;

2.1.57 "Project" means the performance by Peu of the obligations set out in this Agreement
In accordance with the Output Specifications, including but not limited to the following—

2.1.57.1 the supply, installation, maintenance and repair of the Smart Meters;

2.1.57.2 the supply, installation, commissioning, maintenance and repair of the Vending System and all its component parts, including the infrastructure related thereto;

2.1.57.3 the supply, installation, commissioning, maintenance and repair of the Front-end System, such that the Front-end System communicates with the AMI System, the Vending System, the Contact Centre and the Project PMU;

2.1.57.4 the establishment of a Contact Centre, and the operation thereof;

2.1.57.5 the establishment and operation of the Project PMU in accordance with Good Industry Practice;

2.1.57.6 the appointment of Service Providers and the management thereof by the Project PMU; and

2.1.57.7 the provision of the Services;

2.1.58 “Project Communications Strategy” means the marketing strategy developed by the CoT in consultation with Peu including but not limited to such aspects as a communications strategy for engagement with the media, existing CoT employees and Project Stakeholders for the duration of this Agreement, and attached hereto as Annexure 3 (Project Communications Strategy);

2.1.59 “Project PMU Infrastructure” means the infrastructure required for purposes of operating the Project PMU;

2.1.60 “Project PMU” means the project management unit established by Peu to monitor the provision of the Services and responsible for generating, among other things,
performance monitoring reports and monthly Credit collections reports from bank statements and data generated by the Front-end System;

2.1.61 "Project Stakeholders" means the parties referred to in Section 33 of the MFMA;

2.1.62 "ProjectCo" means the company to be established by Peu for purposes of implementing of the Project and in which Peu and the Investors shall participate as shareholders;

2.1.63 "Relief Event" means –

2.1.63.1 any tempest, flood where the flood waters are above the 1,000 year flood line, ionising radiation (to the extent it does not constitute an event of Force Majeure), earthquakes, or pressure waves caused by devices travelling at supersonic speed;

2.1.63.2 any theft, vandalism, sabotage, riot, civil commotion or protest to the Project;

2.1.63.3 any reduced or ceased supply of electricity for purposes of Issuing Credits which results in the Services not being fully available;

2.1.63.4 any CoT failure to renew a consent or approval required for the Project;

2.1.63.5 any fire, explosion or accidental loss or damage to the Infrastructure not caused by the gross negligence of Peu;

2.1.63.6 any official or unofficial strike, lockout, go slow or other such labour disputes generally affecting the public sector and/or the public service;

2.1.63.7 any Material Adverse Government Action; and

2.1.63.8 any Notification Event;
having an effect on the Project, unless any of the events listed in Clauses 2.1.63.1 to 2.1.63.6 inclusive arises (directly or indirectly) as a result of any negligence, wilful misconduct or default of Peu or Service Provider;

2.1.64 “Renewal Period” has the meaning ascribed to it in clause 5.2;

2.1.65 “Roll-Out Phase” means the phase of the Project during which the phased roll out of the Infrastructure will be undertaken by or on behalf of Peu, commencing 3 (three) months after the Effective Date and ending on the Full Operations Phase Commencement Date;

2.1.66 “Roll-Out Programme” means the programme prepared by Peu setting out the Sections, phases and milestones for the roll out of the Project, annexed hereto as Annexure 4 (Roll-Out Programme);

2.1.67 “Scheduled Full Operations Phase Commencement Date” means the date falling not later than the 3rd (third) anniversary after the Effective Date;

2.1.68 “SCM Policy” means the Supply Chain Management Policy of the CoT which such policy is established in accordance with the provisions of the MFMA and MSCMR and utilised for the procurement of goods and services required by the CoT;

2.1.69 “Section” means a portion of the Services to be provided during the Roll-Out Phase, as specified in the Roll-Out Programme;

2.1.70 “Security Agreements” means the agreements to be held by the Security Company on behalf of the Lenders;

2.1.71 “Security Company” means the security special purpose vehicle established by the Lenders to the Project;

2.1.72 “Service Providers” means all providers of the Services Subcontracted by Peu for the duration of the Agreement, including but not limited to –
2.1.72.1 the Smart Meters Manufacturers;

2.1.72.2 the Smart Meters Contractors;

2.1.72.3 the Technical Support and Spares Service Providers;

2.1.72.4 the Contact Centre service providers;

2.1.72.5 the Security Company responsible for the collection of payments received from the purchase of Credits and Arrear Payments from Points-of-Sale and depositing such payments into the Private Account;

2.1.72.6 the ICT company responsible for the supply, installation, maintenance and repair of the Front-end System;

2.1.72.7 the company responsible for the supply, maintenance and repair of the Vending System including the Points of Sale Infrastructure;

2.1.72.8 "Service Request" means a request from a CoT Electricity Customer for information, or advice, or for a standard change or access to the Services;

2.1.73 "Services" means all of the services provided by Peu in terms of this Agreement, both prior to and during the Roll Out Phase as well as during the Operations Phase;

2.1.74 "Services Fee" means the fee that Peu is entitled to and which is withheld by Peu from payments made into the Project Account in terms of clause 12.4 as compensation for providing the Services;

2.1.75 "Signature Date" means the date of signature of this Agreement by the Party last signing provided that both Parties sign this Agreement;

2.1.76 "Smart Meters" means the pre-paid electricity meters designed and manufactured in
accordance with the Output Specification;

2.1.77 "Smart Meters Contractor" means the contractor appointed by Peu responsible for installing and commissioning the Smart Meters;

2.1.78 "Meters List Price" means the retail price for new smart meters of the Smart Meters as at the Smart Meters Valuation Date, as recommended by the Smart Meters Manufacturer plus installation costs plus installation costs as estimated by the relevant Smart Meters Contractor;

2.1.79 "Smart Meters Manufacturer" means an original equipment manufacturer responsible for supplying the Smart Meters;

2.1.80 "Smart Meters Supply Agreement" means the agreement concluded between Peu and the Smart Meters Manufacturer for the supply of the Smart Meters;

2.1.81 "Smart Meters Valuation Date" means the date on which the Smart Meters are valued for purposes of clause 20.1, being 60 (sixty) days after the Termination Date;

2.1.82 "Technical Support and Spares Service Provider" means either the Smart Meters Manufacturer or the Smart Meter Contractor or such other third party, as the case may be, appointed by Peu in terms of the Technical Support Services and Spares Supply Agreement;

2.1.83 "Technical Support and Spares Agreement" means the agreement concluded between Peu and the Technical Support and Supply Service Provider in respect of the following services –

2.1.83.1 technical support, including maintenance and repair of the Smart Meters;

2.1.83.2 supply of spares required to repair Smart Meters;

2.1.83.3 replacement of Smart Meters (on CoT request and for CoT's account);
2.1.84  "Termination Amount" means the amount payable by the CoT to Peu upon termination of this Agreement as a result of Force Majeure, in accordance with clause 20.4;

2.1.85  "Termination Compensation" means the amount payable by CoT to Peu upon termination of this Agreement as agreed by the Parties or as determined by the Independent Expert which shall include at least the aggregate of the following amounts:

2.1.85.1  In the case of termination during the Initial Period the aggregate amount of the following:

2.1.85.1.1  the Services Fee, as calculated from the Termination Date, and for the remaining period of the Initial Period;

2.1.85.1.2  disbursements, receivables and direct costs;

2.1.85.1.3  any and all finance related breakage costs, charges, fees and penalties arising from the termination or unwinding of the Finance Agreements including any costs, charges and fees arising from the termination or unwinding of any and all hedging agreements and instruments; and

2.1.85.1.4  any other amounts for claims as presented by Peu.

2.1.85.2  In the case of termination during the Renewal Period the aggregate amount of the following:

2.1.85.2.1  disbursements, receivables and direct costs; and

2.1.85.2.2  any other amounts for claims as presented by Peu;

2.1.86  "Termination Date" means the date on which the Agreement shall terminate in terms of clauses 19.2, 19.4 or 19.5;
2.1.87 "Variation" means any variation to the Services in accordance with clause 18; and

2.1.88 "VAT" means Value Added Tax as contemplated in the Value Added Tax Act Number 89 of 1991;

2.1.89 "Vending System" means the system in terms of which payments for Credits and Arrear Payments are -

2.1.89.1 effected by CoT Electricity Customers, whether through cash payments at Points-of-Sale or on-line payments through electronic funds transfer or credit card payments; and

2.1.89.2 collected by Peu or its Service Providers, whether physically from the Points-of-Sale and deposited into the Project Account or electronically through clearance and transfer into the Project Account;

2.2 In this Agreement -

2.2.1 cause headings and the heading of the Agreement are for convenience only and are not to be used in its interpretation;

2.2.2 an expression which denotes -

2.2.2.1 any gender includes the other genders;

2.2.2.2 a natural person includes a juristic person and vice versa;

2.2.2.3 the singular includes the plural and vice versa;

2.2.2.4 a Party includes a reference to that Party's successors in title and assigns as permitted in terms of this Agreement; and
2.2.2.5 a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last mentioned clauses.

2.3 Any reference in this Agreement to—

2.3.1 "business hours" shall be construed as being the hours between 08h30 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time;

2.3.2 "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the Government of the Republic of South Africa from time to time;

2.3.3 "person" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality.

2.3.4 The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.

2.4 Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 2 or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.

2.5 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.

2.6 Unless otherwise provided, defined terms appearing in this Agreement in title case shall
be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.

2.7 A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.

2.8 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.

2.9 If the due date for performance of any obligation in terms of this Agreement is a day which is not a business day then (unless otherwise stipulated), the due date for performance of the relevant obligation shall be the immediately preceding business day.

2.10 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.

2.11 The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.

2.12 No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (stipulatio alteri) who is not a Party to this Agreement.

2.13 The use of any expression in this Agreement covering a process available under South African law, such as winding-up, shall, if either of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.

2.14 Any reference in this Agreement to "this Agreement" or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented.
from time to time.

2.15 In this Agreement the words "clause" or "clauses" and "annexure" or "annexures" refer to clauses of and annexures to this Agreement.

2.16 Whenever any person is required to act "as an expert and not as an arbitrator" in terms of this Agreement, then –

2.16.1 the determination of the expert shall (in the absence of manifest error) be final and binding;

2.16.2 subject to any express provision to the contrary, the expert shall determine the liability for his or its charges, which shall be paid accordingly;

2.16.3 the expert shall be entitled to determine such methods and processes as he or it may, in his or its sole discretion, deem appropriate in the circumstances provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable;

2.16.4 the expert shall consult with the relevant Parties (provided that the extent of the expert's consultation shall be in his or its sole discretion) prior to rendering a determination;

2.16.5 the expert shall perform his assessment and processes and deliver his findings within sixty (60) Business Days of his appointment; and

2.16.6 having regard to the sensitivity of any confidential information, the expert shall be entitled to take advice from any person considered by him or it to have expert knowledge with reference to the matter in question.

3 RECORDAL

3.1 The CoT, acting through its Group Financial Services Department, released a tender (per
tender reference CB364/2011) for, *inter alia*, a panel of financial and legal advisors to assist the CoT by identifying and exploring revenue generating opportunities capable of being implemented by means of off-balance sheet funding solutions. Peu was appointed to the panel in March 2012.

3.2 Thereafter the CoT invited all panel advisors to submit proposals for the provision of funded off balance sheet solutions which would enhance the CoT’s security of revenue.

3.3 Peu developed and submitted a proposal to the CoT on the 11th of May 2012 which proposal was subsequently accepted by the CoT on the 25th of May 2012 in terms of which Peu would conclude this Agreement with CoT and would, *inter alia*, undertake and fund the Project thereby provide the CoT with revenue collection and management services that would enable the CoT to measure the sale, supply and usage of electricity by the CoT Electricity Customers through the use of the Smart Meters and related Infrastructure.

3.4 Peu shall incorporate the ProjectCo, which shall be a vehicle through which the Services and related equipment and infrastructure are rolled out and provided in terms of this Agreement.

3.5 The CoT hereby appoints Peu and Peu hereby accepts such appointment to perform and to render the Services upon the terms and subject to the conditions contained in this Agreement.

3.6 The Parties wish to record in writing their agreement in respect of the above and matters ancillary thereto.

4 CONDITIONS PRECEDENT

4.1 Save for clauses 1 to 4, and clauses 13, 14, 15, 16, and 19 to 29 all of which will become effective immediately, this Agreement is subject to the fulfilment of the following suspensive conditions -
4.1.1 the board of directors and shareholders of Peu shall have passed a resolution ratifying the conclusion of the Agreement;

4.1.2 the municipal council of the CoT adopts a resolution in relation to this Agreement in terms section 33(1)(c) of the MFMA;

4.1.3 the municipal council of the CoT shall have passed the Electricity By-laws in terms of section 75(1) of the MSA; and

4.1.4 all suspensive conditions under the Financing Agreements shall have been fulfilled or waived, as the case may be.

4.2 Each of the suspensive conditions is stipulated for the benefit of Peu. Peu shall accordingly be entitled to waive fulfilment of any or all such suspensive conditions precedent by giving written notice to that effect CoT on or prior to the date specified in clause 4.4.

4.3 The Parties shall use their reasonable commercial endeavours and the Parties shall cooperate in good faith to procure the fulfilment of the suspensive conditions contained in clause 4.1 as soon as reasonably possible after the Signature Date.

4.4 Unless the suspensive conditions have been fulfilled or waived by not later than 90 (ninety) days after the Signature Date (or such later date or dates as may be agreed in writing between the Parties) the provisions of this Agreement, save for clauses 1 to 4, and clauses 13, 14, 15, 16, and 19 to 29, which will remain of full force and effect, will never become of any force or effect and the status quo ante will be restored as near as may be and neither of the Parties will have any claim against the other in terms hereof or arising from the failure to fulfil the conditions precedent.

5 NATURE AND DURATION

5.1 This Agreement shall commence on the Effective Date and shall endure until the earlier of the Termination Date and the Expiry Date.
5.2 Peu shall have the option to renew this Agreement for a further period of 3 (three) years from the first Business Day after the Expiry Date ("Renewal Period"), provided that notice of renewal is given to the CoT, in writing, by no later than 6 (six) months prior to the Expiry Date, and provided further that the Service Fee is agreed or determined prior to the Expiry Date in terms of clause 5.3. The CoT undertakes to take all necessary steps to ensure that it complies with all Applicable Laws in respect of such renewal.

5.3 The terms and conditions of this Agreement shall apply mutatis mutandis during the Renewal Period, provided that the Service Fee shall be renegotiated between the Parties to reflect market-related rates and provided further that if the Parties are unable to reach agreement on a market-related Service Fee within 30 days of the CoT receiving the written notice of renewal in terms of clause 5.2 the Service Fee shall be determined by an independent Expert.

6 PROJECT RELATED TASKS AND ACTIVITIES PRIOR TO THE ROLL-OUT PHASE

6.1 The CoT, with the reasonable assistance of Peu, shall develop and implement the Project Communications Strategy at least 3 (three) months prior to the commencement of the Roll-Out Phase in accordance with Annexure 3 (Project Communications Strategy).

6.2 The Project Communications Strategy shall incorporate, but shall not be limited to the following aspects:

6.2.1 the CoT shall, in consultation with Peu, inform and engage actively and constructively with all CoT officials and all affected CoT employees and trade unions including by means of individual engagements as well as collective workshops and information seminars and all affected CoT employees and trade unions shall be advised of and engaged in relation to any necessary re-deployment and re-skilling of affected CoT employees and any related training programmes to be undertaken by or on behalf of the CoT;

6.2.2 the CoT shall, in consultation with Peu, embark on comprehensive Information dissemination and public awareness programmes and campaigns relating to the
Electricity By-laws and the Project including information pamphlets distributed with all municipal Invoices as well as print media, radio, cellular and Internet based information programmes and campaigns, and shall inform and, where necessary, actively and constructively engage with all of its affected stakeholders, including the CoT Electricity Customers, the CoT officials, CoT affected employees and trade unions, relevant and affected CoT contractors, suppliers, services providers and financiers, and all provincial and national authorities of:

6.2.2.1 the Electricity By-laws; and

6.2.2.2 the nature of the Project, including the Roll-Out Programme, the nature and functioning and installation of the Smart Meters and the replacement of existing electricity meters, Vending System, and Points of Sale, the establishment and functioning of the Contact Centre, and the benefits of the Project to the CoT and the residents of the City of Tshwane;

6.2.3 CoT Customers which CoT has advised to ProjectCo shall not be permitted to purchase Credits if they are in arrears in respect of payments due to the CoT relating to their electricity accounts. In such event, the relevant CoT Electricity Customer will be required to settle or make arrangements to settle all arrear amounts at the Points-of-Sale before purchasing Credits; and

6.2.4 to the extent that the CoT, its services providers, such as Peu, and the subcontractors of such services providers, are not already permitted to do so in terms of any existing by-laws of the CoT, the CoT shall timeously obtain any necessary authorisations or consents from CoT Electricity Customers to enable the Smart Meter Contractor and/or its subcontractors to enter onto the premises of such CoT Electricity Customers at designated reasonable times in order to install Smart Meters, and to effect all repairs and maintenance to such Smart Meters, or to replace such Smart Meters, as the case may be.

6.2.5 CoT shall, in consultation with Peu, prepare a communication plan to inform and migrate all existing AMI Customers in accordance with the Roll-Out Programme.
6.3 For the avoidance of doubt, under no circumstances, shall Peu be liable for or bear the costs related to the re-deployment, re-skilling and training of any affected CoT employees.

7 SERVICES DURING THE ROLL-OUT PHASE

7.1 During the Roll-Out Phase Peu shall, in accordance with the Roll-Out Programme:

7.1.1 establish the Contact Centre and procure the supply, installation, commissioning and testing of the Contact Centre and the Contact Centre Infrastructure in accordance with the Output Specification;

7.1.2 procure the supply and Installation of the Smart Meters from the Smart Meters Manufacturer or the Smart Meter Contractors in terms of a Smart Meters Supply Agreement;

7.1.3 procure the supply, installation and commissioning of the Vending System in accordance with the Point of Sale Framework, including:

7.1.3.1 establishing an online Credit payment system for the purchase and payment of Credits via electronic payment, electronic funds transfer or by way of credit card;

7.1.3.2 leasing of premises at which Points-of-Sale will be located, in the event that such a lease is required;

7.1.3.3 procuring the Points-of-Sale Infrastructure in accordance with the Output Specification;

7.1.3.4 installing and commissioning the Points-of-Sale Infrastructure at various locations as specified in Annexure 2 (Points of Sale Framework);

7.1.3.5 connecting the Points-of-Sale to the Front-end System and the Advanced Metering Infrastructure;
7.1.3.6 procuring the services of a security services company for the collection of cash payments for Credits and Arrear Payments from Points-of-Sale and the deposit of such cash payments into the Project Account to the extent required and deemed necessary; and

7.1.3.7 opening and operating the Project Account;

7.1.4 procure the supply, installation and commissioning the Front-end System and the Front-end Infrastructure in accordance with the Output Specification, and in a manner that provides an interface between the Contact Centre, the Project PMU, the Points of Sale and the Advanced Metering Infrastructure; and

7.1.5 procure the establishment of the Project PMU and the Project PMU Infrastructure at a location as agreed to with the CoT, and shall procure the Project PMU Infrastructure, which agreement shall not unreasonably be withheld or delayed.

7.2 The Smart Meters shall be procured in accordance with

7.2.1 the requirements of the Output Specification; and

7.2.2 other specified terms and conditions

7.3 Peu shall procure the services of a Technical Support and Supply Service Provider in terms of the Technical Support and Spares Agreement.

7.4 The Technical Support and Spares Agreement shall be procured in accordance with

7.4.1 the requirements of the Output Specification; and

7.4.2 specified terms and conditions.
8 PHASED COMPLETION OF THE ROLL-OUT PHASE

8.1 The Parties shall appoint an Engineer to certify that each phase of the Roll-Out Phase has been completed in accordance with the Roll-Out Programme and that, where applicable, it complies with the Output Specification.

8.2 Peu shall notify the Engineer once it has completed a phase of the Roll-Out Phase in accordance with the Roll-Out Programme, whereupon the Engineer shall within 10 (ten) business days after the receipt of such notification, conduct its inspections, and where necessary, perform tests to satisfy itself that such phase of the Roll-Out Phase has been completed and complies with the Output Specification.

8.3 The Engineer may, in its sole discretion, and within 5 (five) business days of completing its inspection and any related tests in terms of clause 8.2, issue a Completion Certificate in respect of the relevant phase of the Roll-Out Phase where it is reasonably satisfied that, in respect of such phase, has been completed in accordance with the Output Specification.

8.4 If the Engineer is not satisfied that a phase of the Roll-Out Programme meets the Output Specification, the Engineer shall withhold the issuing of the relevant Completion Certificate and shall notify Peu and CoT, in writing, within 5 (five) business days, of all remedial work, corrective measures and/or outstanding tasks and aspects that are required to be performed in respect of that phase (the "Remedial Notice"), and Peu shall attend to such remedial work, corrective measures and/or outstanding tasks and aspects within a reasonable time of receipt of the notice from the Engineer. Following completion of the necessary remedial work, corrective measures and/or outstanding tasks and aspects identified in the Remedial Notice, PEU shall notify the Engineer that it has attended to the remedial work, corrective measures and/or outstanding tasks and aspects and that it has completed the relevant phase of the Roll-Out Phase and clauses 8.2 and 8.3 shall apply once again.

8.5 If following a notice by PEU to the Engineer in terms of clause 8.4 the Engineer is not satisfied that the phase is completed, the procedure contained in clauses 8.2, 8.3 and
8.4 shall be repeated to the extent applicable until all the outstanding matters specified by the Engineer in its initial Remedial Notice have been rectified to the reasonable satisfaction of the Engineer and the relevant Completion Certificate for such phase has been issued by the Engineer.

8.6 The Engineer shall issue the Final Completion Certificate only once he is reasonably satisfied that all of the phases of the Roll-Out Phase have been completed and, where applicable, comply with the Output Specification.

9 SERVICES DURING THE OPERATIONS PHASE

9.1 Unless otherwise agreed by the Parties, all Services relating to the Operations Phase of the Project shall commence on the Scheduled Full Operations Phase Commencement Date.

9.2 All Services relating to the Operations Phase shall be provided in accordance with the Output Specification and the terms of this Agreement.

9.3 In providing Services during the Operations Phase Peu will -

9.3.1 implement a quality assurance system as approved by the CoT in order to ensure that the quality of Services complies with the Output Specification which approval shall not be unreasonably withheld or delayed.

9.3.2 be responsible for monitoring the performance of the Services and the generation of regular reports to CoT and in a form agreed to by the Parties;

9.3.3 operate the Project PMU in accordance with the standards and hours of operation specified in the Output Specification, and will staff the Project PMU with appropriately skilled personnel.

9.3.4 ensure that the Contact Centre Protocol is complied with where CoT Electricity Customers and/or CoT officials and employees log Faults.
9.3.5 be responsible for the monitoring and management of all Service Providers.

9.3.6 Peu shall be responsible for identifying the technical and non-technical losses using its Project related infrastructure and shall duly inform the CoT to take appropriate actions. The responsibility of Peu shall be limited to the extent of identifying and reporting such losses.

10 OWNERSHIP AND MAINTENANCE OF INFRASTRUCTURE

10.1 Peu shall own and operate the Smart Meters, Vending System, Front-end System, Project PMU, the Contact Centre, and all related infrastructure. All infrastructure will be owned and operated by Peu for the duration of the Agreement and Peu shall be entitled to encumber and to grant security interests in and over the Smart Meters, Vending System, Front-end System, Project PMU, the Contact Centre, and/or the related infrastructure, for purposes of and as may required in terms of the Financing Agreements.

10.2 Subject to clause 10.3, Peu will be responsible for, and shall at its own cost, maintain, repair and, where required, replace the Smart Meters, Vending System, Front-end System, Project PMU, the Contact Centre and all related infrastructure during the term of this Agreement.

10.3 The repair of the Smart Meters shall be the responsibility of Peu, however all the costs related to the provision of spares and the replacement of a Smart Meter shall be for the cost of the CoT, and as specified in the Technical Support and Spares Agreement other than where the provision of such parts or replacement of such Smart Meter is as a consequence of the enforcement of a warranty provided by the Smart Meters Manufacturer to Peu under the Smart Meters Supply Agreement, in which case the cost shall be borne by Peu.

11 CO-T OBLIGATIONS

The CoT shall -
11.1 ensure that for purposes of the supply and installation of the Smart Meters and to the extent not already addressed in the Electricity By-laws or where it is required in accordance with Electricity By-laws, it procures the consent of all CoT Electricity Customers prior to the Smart Meter Contractor entering onto the premises of such CoT Electricity Customers in order to install and commission the Smart Meters, or test, repair, upgrade, maintain and replace such Smart Meters;

11.2 ensure that all costs and risks related to interface of its SAP system with the Front-end System and the Vending System, shall be borne and dealt with at its own expense. The CoT shall also ensure that its plan to implement changes in its SAP system shall be consistent with the Roll-Out Programme as informed or requested by Peu from time to time.

11.3 at all times be responsible for the management of the Project Stakeholders and the other stakeholders envisaged in clause 6.2.2, with the reasonable assistance of Peu;

11.4 at all times be responsible for implementing the Project Communication Strategy in consultation with and with the reasonable assistance of Peu;

11.5 shall immediately, but not later than 5 (five) Business Days after becoming aware of same, notify Peu of any Notification Event. Where the Notification Event results in Peu having in any way to vary or amend the provision of the Services or Impact on the Services Fee, Peu shall provide CoT with a Variation order and CoT will be deemed to have accepted such Variation order issued by Peu pursuant to this clause 11.5;

11.6 ensure, at Its cost, the continued and uninterrupted supply of electricity to the Smart Meters, Vending System, Front-end System, Project PMU, the Contact Centre and all related Infrastructure, as applicable, for each Section or phase of the Roll-Out Programme and for the remaining duration of this Agreement;

11.7 be responsible for all cost variations not within the control of Peu relating to the procurement of the the Smart Meters, Vending System, Front-end System, Project PMU, the Contact Centre and all related Infrastructure, including but not limited to foreign
exchange fluctuations and inflation from the Effective date to the Operations Phase Commencement Date. In such instances Peu shall provide the CoT with a Variation order and CoT will be deemed to have accepted such Variation order issued by Peu pursuant to this clause 11.7;

11.8 ensure that any CoT employee, agent or contractor performs its duties and functions in a manner which enables Peu to comply with its obligations in terms of this Agreement including the provision of the Services;

11.9 ensure that all instructions for the use of infrastructure contained in its owner’s manual, shall be adhered to and shall not permit the infrastructure to be operated by any person other than the authorised designated person;

11.10 not permit the the Smart Meters, Vending System, Front-end System, Project PMU, the Contact Centre and all related infrastructure to be tampered with, altered, relocated, removed or used by the CoT officials, employees, contractors, agents, representatives or service providers;

11.11 in consideration for Peu rendering the Services in terms of this Agreement (save as may be provided expressly to the contrary in this Agreement), for the duration of this Agreement and during any period of termination notice given in terms of this Agreement, source all its requirements in relation to the Services from Peu, it being recorded that the commercial viabiliity of the Project, the Services which Peu is able to render and the Services Fees in respect thereof are based on such assumption; and

11.12 assist Peu in obtaining any and all Consents, rebates/waiver of import duties, taxes, levies etc. and any other regulatory clearance required in the procurement and importation of the the Smart Meters, Vending System, Front-end System, Project PMU, the Contact Centre and all related Infrastructure from the DTI (Department of Trades and Industry) or any other Government department or authority.
12 PAYMENTS

12.1 Peu shall ensure that all payments made into the Project Account (whether by way of deposit of cash payments, electronic funds transfer or credit card payments) will be cleared on a daily basis following the deduction or withholding of the Service Fee in relation to each payment so made, and reconciled in accordance with 12.2.

12.2 The Project PMU will, upon receipt of a daily bank statement, and a print-out of a daily payments report generated by the Front-end System, reconcile such payment report and bank statement, and allocate each payment either to Arrear Payments or payments for Credits. Copies of such statements, payment reports and allocations will be made available to the CoT.

12.3 At the end of each month, the Project PMU will reconcile all daily payments and collate same into a monthly payments report.

12.4 Peu will against generation of a daily payments report in respect of payments for Credits and Arrear Payments, withhold R0.195 (nineteen and a half cents) for every R1 (one rand) collected at a Point of Sale, and deposited and/or transferred into the Project Account.

12.5 At the request of CoT, Peu may be required to acquire the existing CoT AMI system and other electricity related infrastructure ("Acquired Assets") and the additional Service Fee for Acquired Assets shall be a maximum of R0.055 (five and half cents) for every R1 (one rand) collected at a Point of Sale.

12.6 Each day Peu shall deduct from the Services Fee plus VAT and less any Penalty Deductions that accrue in respect of each day to which the Services Fee applies. Should CoT dispute the calculation of Penalty Deductions, such dispute shall be determined in accordance with clause 22 [Dispute Resolution].

12.7 The difference between the payments made into the Project Account and the Services Fee less any Penalty Deductions shall stand to the credit of CoT and shall be paid into a
bank account designated by Peu on a daily or other basis as determined by Peu.

12.8 By no later than the 5th (fifth) business day after the end of each Month in which Services were provided and Services Fee were withheld, Peu shall provide CoT with a VAT invoice, together with a detailed statement of the allocation of payments referred to in 12.3.

12.9 All amounts payable in terms of this Agreement are stipulated exclusive of VAT, which shall be payable by the relevant Party at the prescribed rate, simultaneously with the payment to which it relates, unless expressly stated otherwise. The Party to be paid shall provide the other Party with a VAT invoice in the format, and containing the particulars, required by law, including, without limitation, an indication of which items are subject to VAT and those which are not.

13 WARRANTIES

13.1 In deciding to enter into this Agreement, the Parties rely on the representations and warranties which the other Party makes in this clause 13 as being true, correct and complete and the Parties recognise and agree that the other Party would not have entered into this Agreement but for the representations and warranties contained in this Agreement. It being recorded that all such representations and warranties are material to the entry into and performance of this Agreement.

13.2 Peu Warranties

Peu warrants that—

13.2.1 It has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this Agreement;

13.2.2 this Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms; and
13.2.3 the execution of this Agreement and the performance of its obligations hereunder does not and shall not –

13.2.3.1 contravene any law or regulation to which Peu is subject;

13.2.3.2 contravene any provision of Peu’s constitutional documents; or

13.2.3.3 conflict with, or constitute a breach of, any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it.

13.3 CoT Warranties

The CoT warrants that –

13.3.1 it has taken all necessary actions and obtained all the necessary approvals and Consents required in terms of law (including but not limited to, SCM Policy, MSCMR and the MFMA) to authorise the execution of this Agreement, including but not limited to –

13.3.1.1 compliance with section 33 of the MFMA;

13.3.1.2 compliance with section 75A of the MSA; and

13.3.1.3 consent in terms of Regulation 36 of the MSCMR, 2005;

13.3.1.4 exemption from certain provisions of Chapter 11 the MFMA relating to service agreements;

13.3.2 all the business information such as revenues, sold Credits, number of CoT Electricity Customers, technical and non-technical losses etc., provided to Peu while putting the proposal and signing of this Agreement is correct and accurate.
13.3.3 this Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms;

13.3.4 the municipal council of the CoT shall have passed the Electricity By-laws in terms of section 75(1) of the MSA;

13.3.4.1 giving effect to the implementation and enforcement of its electricity tariff policy; and

13.3.4.2 confirming that electricity will be provided to CoT Electricity Customers through Smart Meters on a pre-paid basis which will be installed at or near the premises of CoT Customers in accordance with the Roll-Out Programme; and

13.3.5 It has lawfully secured all Consents required to conclude this Agreement, both from the CoT's municipal council, as well as any other Project Stakeholder or other authority, to the extent required.

13.4 Each of the Parties hereby warrants to and in favour of the others that —

13.4.1 It has the legal capacity and has taken all necessary corporate actions required to empower and authorise it to enter into this Agreement, including compliance with any Applicable Laws and specifically for the CoT, the MFMA, MSCMR, MSA and its SCM Policy as the case may be;

13.4.2 to the best of its knowledge and belief, it is not aware of the existence of any fact or circumstance that may impair its ability to comply with all of its obligations in terms of this Agreement;

13.4.3 It is entering into this Agreement as principal (and not as agent or in any other capacity);

13.4.4 no other Party is acting as a fiduciary for it;
13.4.5 it is not relying upon any statement or representation by or on behalf of any other Party, except those expressly set forth in this Agreement;

13.4.6 the natural person who signs and executes this Agreement on its behalf is validly and duly authorised to do so;

13.4.7 the execution of this Agreement and the performance of its obligations hereunder does not and shall not—

13.4.7.1 contravene any law or regulation (including any Applicable Laws) to which that Party is subject, including but not limited to any applicable provisions of the MSA, MSCMR and MEMA in respect of CoT and the Companies Act in respect of PEU;

13.4.8 contravene any provision of that Party's constitutional documents; and/or

13.4.9 conflict with, or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it; and

13.5 Each of the representations and warranties given by the Parties in terms of clause 13 shall—

13.5.1 be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other words in this Agreement;

13.5.2 continue and remain in force notwithstanding the completion of any or all the transactions contemplated in this Agreement; and

13.5.3 prima facie be deemed to be material and to be a material representation inducing the other Party to enter into this Agreement.
14 INDEMNITIES

14.1 Peu indemnifies and shall keep CoT indemnified at all times against all direct losses sustained by CoT in consequence of-

14.1.1 any-

14.1.1.1 breach by Peu of a statutory duty of Peu arising under the Applicable Laws;

14.1.1.2 claim for or in respect of the death or personal injury of any individual; or

14.1.1.3 other claim, action, charge, cost, demand or expense by a third party, (including, without limitation, any reasonable legal fees or costs);

arising in connection with the performance or non-performance of any one or more Services, save to the extent caused by or constituting-

14.1.1.3.1 the negligence of intentional acts and omissions of the CoT staff, employees, agents or contractors of;

14.1.1.3.2 the inappropriate use of any Infrastructure by CoT or CoT employees, contractors and agents; or

14.1.1.3.3 any Relief Event, Force Majeure or a CoT Event of Default; or

14.1.1.3.4 a breach by the CoT or CoT officials, employees, contractors or agents of any provision of this Agreement; or

14.1.1.4 any breach by Peu of any warranties given by it in this Agreement.

14.2 CoT shall indemnify and shall keep Peu indemnified at all times from and against all losses, damages and claims sustained by Peu in consequence of-
14.2.1 a breach by CoT or a CoT employee of a statutory duty arising under applicable law; or

14.2.2 the death or personal injury or damage to the property of any individual caused by the negligence or intentional acts and omissions of CoT or a CoT employee, contractor or agent; or

14.2.3 any breach by CoT of any warranties given by it in this Agreement.

14.3 Notwithstanding anything to the contrary in this Agreement, Peu’s liability under any indemnities provided for in this Agreement shall, in relation to all indemnified claims brought in any year:

14.3.1 in respect of any claim that is insured under any of the Project Insurances, be limited to the proceeds of such Project Insurance received by Peu;

14.3.2 in respect of all and any claim that is not insured under any of the Project Insurances, be limited to the sum of [R2 000 000.00 (two million rands)] in aggregate for all such claims arising in that specific year.

15 RELIEF EVENTS

15.1 if and to the extent that a Relief Event occurs and -

15.1.1 directly or indirectly causes a delay in the Scheduled Full Operations Phase Commencement Date; and/or

15.1.2 materially adversely affects the ability of Peu to perform any of its obligations under this Agreement including the performance of any Services,

then Peu shall be entitled to obtain relief from any rights of CoT arising under clauses 19.2 (Breach) and 19.2 (Termination for Peu Event of Default).
15.2 To obtain relief, Peu must -

15.2.1 as soon as practicable, and in any event within 5 (five) Business Days after it became aware that the Relief Event has caused or is likely to cause delay and/or materially adversely affect the ability of Peu to perform the services, give to CoT a notice of its claim for relief from its obligations under this Agreement, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;

15.2.2 within 20 (twenty) Business Days of issuance of the notice referred to in clause 15.2.1, give full details of the relief claimed; and

15.2.3 demonstrate to the reasonable satisfaction of CoT that:

15.2.3.1 Peu could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure; and

15.2.3.2 the Peu is using reasonable endeavours to perform those of its obligations under this Agreement which are not prevented, hampered or delayed by the occurrence of the Relief Event in question;

15.3 In the event that Peu has complied with its obligations under clause 15.2, then -

15.3.1 the Full Scheduled Operations Phase Commencement Date and the Long Stop Date shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect or delay, and the Roll Out Programme shall be adjusted accordingly; and/or

15.3.2 CoT shall not be entitled to exercise its rights to terminate this Agreement under clauses 19.2 (Breach) and 19.2 (Termination for Peu Default) and shall give such other relief as has been requested by Peu and agreed between the Parties; and/or

15.3.3 Peu shall be entitled to receive payment of its Service Fee during the Operations
Phase in case the Relief Event has hampered Peu in discharging its obligations under this Agreement without any Penalty Deduction directly attributable to such failure.

15.4 In the event of a Relief Event continuing for a period in excess of 180 (one hundred and eighty) consecutive days the Parties shall meet in order to agree a mutually satisfactory solution for dealing with such prolonged Relief Event.

15.5 If the Parties cannot agree on the extent of the relief required, or CoT disagrees that a Relief Event has occurred or that Peu is entitled to any extension of a Scheduled Full Operations Phase Commencement Date and/or the Long Stop Date and/or relief from other obligation(s) under Agreement, the Parties shall resolve the matter in accordance with clause 22 (Dispute Resolution).

16 FORCE MAJEURE

16.1 Subject to clauses 16.2 and 16.3 the Party claiming relief as a result of the occurrence of an event of Force Majeure shall be relieved from liability under this Agreement to the extent that by reason of the Force Majeure event it is not able to perform all or a material part of its obligations under this Agreement.

16.2 Where a Party is (or claims to be) affected by an event of Force Majeure -

16.2.1 It shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Agreement including without limitation, apply any applicable Project Insurance proceeds in mitigation of the consequences of such an event, resume performance of its obligations affected by the event of Force Majeure as soon as practicable and use all reasonable endeavours to remedy its failure to perform; and

16.2.2 It shall not be relieved from liability under this Agreement to the extent that it is able to perform, or has not in fact performed, its obligations under this Agreement due to its failure to comply with its obligations under Clause 16.2.1.
16.3 The Party claiming relief shall serve written notice on the other Party within 5 (five) business days of it becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.

16.4 A subsequent written notice shall be served by the Party claiming relief on the other Party within a further 20 (twenty) business days which shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Clause 16.2.1, the date of the occurrence of the event of Force Majeure and an estimate of the period of time required to overcome it (and/or its effects).

16.5 The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and when performance of its affected obligations can be resumed.

16.6 If, following the issue of any notice referred to in Clause 16.4, the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure (and/or any failure to perform), it shall submit such further information to the other Party as soon as reasonably possible.

16.7 If an event of Force Majeure occurs before the Scheduled Full Operation Phase Commencement Date and as a result thereof the Peu is unable to achieve Full Operations Phase Commencement Date in respect of the Roll-Out Phase on or before the Scheduled Full Operation Phase Commencement Date and Peu has complied with its obligation under this Clause 16 then subject to Clause 19.5 (Termination for Force Majeure), the Scheduled Full Operation Phase Commencement Date and the Long Stop Date shall be postponed by such time as shall be reasonable for such event of Force Majeure, taking into account the likely effect of delay.

16.8 In the event that the Party claiming relief is unable to perform any of its obligations in terms of this Agreement for a period of more than 5 (six) months as a result of any
event of Force Majeure, the other Party shall be entitled to cancel this Agreement by giving 30 (thirty) days' written notice to that effect to the affected Party.

17 SUPPORT

The Parties undertake at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of this Agreement.

18 VARIATIONS

18.1 If Peu wishes to introduce a Variation to the Services, it must serve a notice on CoT providing details of such Variation (a "Peu Variation Proposal").

18.1.1 The Peu Variation Proposal must:

18.1.1.1 set out the proposed Variation in sufficient detail to enable CoT to evaluate the Peu's Variation Proposal;

18.1.1.2 specify Peu's reasons for the Peu Variation Proposal;

18.1.1.3 specify any increases in the Services Fee as a result of implementing the Peu Variation Proposal;

18.1.1.4 request CoT to consult with Peu with a view to deciding whether to agree to the Peu Variation Proposal and, if so, what consequential changes CoT requires as a
result;

18.1.1.5 specify all implications of the Peu Variation Proposal on this Agreement and any of its terms;

18.1.1.6 indicate if there are any dates by which a decision by CoT is critical.

18.2 CoT shall evaluate the Peu’s Variation Proposal taking into account all relevant issues.

18.3 As soon as practicable after receiving the Peu’s Variation Proposal, the Parties shall meet and discuss the matters referred to in it. During their discussions CoT may propose modifications or accept Peu’s Variation Proposal.

18.4 To the extent that CoT proposes modifications to the Peu Variation Proposal, Peu may either accept such modifications, reject such modifications or withdraw the Peu Variation Proposal.

18.5 The Parties shall attempt to resolve any dispute arising out of or relating to a Peu Variation Proposal through negotiations between senior executives of the Parties, who have authority to settle the same. If the matter is not resolved by negotiation within 30 days of receipt of a written ‘Invitation to negotiate’, the parties will attempt to resolve the dispute in good faith through an agreed mediation procedure to be administered by the AFSA, upon such terms as agreed between the Parties and the Secretariat of AFSA. The Parties shall attempt to agree upon the appointment of a mediator, upon receipt, by either of them, of a written notice to concur on such appointment. Should the parties fail to agree within fourteen (14) days, either party, upon giving written notice, may apply to the President for the time being of the South African Institute of Chartered Accountants: Gauteng Region for the appointment of a mediator.

19 BREACH AND TERMINATION

19.1 Either Party shall be allowed to terminate this Agreement, on at least 90 (ninety) days prior notice on the other Party, in the event of a Peu Event of Default or a CoT Event of
Default or as a result of a prolonged event of Force Majeure or during the Renewal Period.

19.2 Breach

19.2.1 In addition to and without detracting from the provisions of clauses 19.3 and 19.4, if a Party (the "Defaulting Party") commits a breach of any material provision or term of this Agreement (other than those which contain their own remedies or limit the remedies in the event of a breach thereof) and fails to remedy such breach within 14 (fourteen) days of receipt of written notice from the other Party (the "Aggrieved Party") requiring it to do so (or if it is not reasonably possible to remedy the breach within 14 (fourteen) days, within such further period as may be reasonable in the circumstances, (the onus of demonstrating such reasonableness being on the Defaulting Party) provided that the Defaulting Party also furnishes evidence to the Aggrieved Party within the period of 14 (fourteen) days, which is reasonably satisfactory to the Aggrieved Party, that it has taken whatever steps are available to it, to commence remedying the breach) or is incapable of remedy, then the Aggrieved Party shall, in addition to any other remedy available to it at law or under this Agreement, be entitled (but not obliged) without notice, to:

19.2.1.1 claim specific performance; or

19.2.1.2 terminate this Agreement solely in respect of and in relation to the Defaulting Party with immediate effect on further written notice to the Defaulting Party;

in either event without prejudice to the Aggrieved Party's right to claim damages, which right shall be subject to the provisions of 19.2.2,

19.2.2 No Party shall be liable to any other Party for any consequential loss or any special, consequential or indirect damages, or economic loss and/or damages of any other Party whatsoever, including but not limited to loss of turnover, profit, production, contract or anticipated saving, demurrage, howsoever such consequential, special, indirect or economic loss and/or damages arise.
19.3 Termination for Peu Event of Default

19.3.1 Peu shall notify CoT of the occurrence, and details, of any Peu Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Peu Event of Default, in either case promptly on the Peu becoming aware of its occurrence.

19.3.2 Any failure by Peu to give CoT notice in terms of clause 19.3.1 shall not affect or prejudice any rights of CoT on or after the occurrence of a Peu Event of Default. On the occurrence of any Peu Event of Default, or within 5 (five) Business Days after CoT becomes aware of same, CoT may serve notice on Peu of the occurrence (and specifying details) of such Peu Event of Default.

19.3.3 If the relevant Peu Event of Default has not been remedied or rectified within 45 (forty five) Business Days of the notice referred to in Clause 19.3.2 being delivered to Peu, or such reasonable period under the circumstances, being no more than 90 (ninety) days after receipt of such notice, CoT may, without prejudice to its other rights under this Agreement or at law, but subject to any step-in rights of the Landers, serve a further notice on Peu terminating this Agreement on at least 30 (thirty) days written notice.

19.3.4 CoT shall not exercise or purport to exercise any rights to terminate this Agreement (or accept any repudiation of this Agreement) except as expressly provided for herein.

19.4 Termination for CoT Event of Default

19.4.1 CoT shall notify Peu of the occurrence, and details, of any CoT Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a CoT Event of Default, in either case promptly on CoT becoming aware of its occurrence.

19.4.2 Any failure by CoT to give Peu notice in terms of clause 19.4.1 shall not affect or
prejudice any rights of Peu on or after the occurrence of a CoT Event of Default. On the occurrence of any CoT Event of Default, or within 5 (five) Business Days after Peu becomes aware of same, Peu may serve notice on CoT of the occurrence (and specifying details) of such CoT Event of Default.

19.4.3 If the relevant CoT Event of Default has not been remedied or rectified within 45 (forty five) Business Days of the notice referred to in Clause 19.4.2 being delivered to CoT, or such reasonable period under the circumstances, Peu may, without prejudice to its other rights under this Agreement or at law, serve a further notice on CoT terminating this Agreement on at least 30 (thirty) days written notice. Peu shall not exercise or purport to exercise any rights to terminate this Agreement (or accept any repudiation of this Agreement) except as expressly provided for herein.

19.5 Termination for Force Majeure

19.5.1 If, in the circumstances referred to in clause 16 (Force Majeure) the Parties have failed to reach agreement on any modification to this Agreement pursuant to that clause within 180 (one hundred and eighty) days of the date on which the Party affected serves notice on the other Party in accordance with that clause, either CoT or Peu may on at least 30 (thirty) days written notice terminate this Agreement, provided always that the effects of the relevant events of Force Majeure continue to prevent the Party affected from performing any material obligation under this Agreement.

20 CONSEQUENCES OF TERMINATION OR EXPIRY

20.1 Termination during the Initial Period

20.1.1 Subject to the Financing Agreements, where this Agreement terminates during the Initial Period owing to a Peu Event of Default, then CoT shall have an option, which shall be exercised within 60 (sixty) days of the Termination Date, to instruct Peu to transfer all infrastructure either to —
20.1.1 the party/parties nominated by CoT (hereinafter the "CoT Service Provider"), provided that Peu and the CoT Service Provider do so on such commercial terms as Peu accepts, which shall not be less than the Market Value of the Infrastructure as at the Termination Date; or

20.1.2 CoT at its Market Value.

20.1.2 Where this Agreement terminates during the Initial Period owing to a CoT Event of Default, then CoT shall within 60 (sixty) days of the Termination Date –

20.1.2.1 make payment to Peu of the Termination Compensation; and

20.1.2.2 remove the Smart Meters from CoT Customers' residences and return to Peu such Smart Meters and the remainder of the Infrastructure in good working condition, fair wear and tear excepted, failing which CoT shall make payment to Peu of the Smart Meters List Price and the Infrastructure List Price.

20.2 Termination during the Renewal Period

20.2.1 Where this Agreement terminates during the Renewal Period owing to a Peu Event of Default, then the provisions of clause 20.1.1 shall apply mutatis mutandis to such termination.

20.2.2 Where this Agreement terminates during the Renewal Period owing to a CoT Event of Default or cancellation, then CoT shall within 60 (sixty) days of the Termination Date –

20.2.2.1 make payment to Peu of the Termination Compensation; and

20.2.2.2 remove the Smart Meters from CoT Customers' residences and return to Peu such Smart Meters and the remainder of the Infrastructure in good working condition, fair wear and tear excepted, failing which CoT shall
make payment to Peu of the Smart Meters List Price and the Infrastructure List Price.

20.3 Termination on the Expiry Date

20.3.1 Where this Agreement terminates on the Expiry Date (and to the extent that it has not been renewed in terms of 5.2), then the provisions of clause 20.1.1 shall apply mutatis mutandis to such termination.

20.4 Consequences of Termination for prolonged Force Majeure

20.4.1 In the event of termination for prolonged Force Majeure, Peu shall transfer ownership of the Infrastructure to Co against payment, within 60 days of termination, of a Termination Amount equal to all outstanding debt (including fees, costs, pre-payment costs, breakage costs) as at the Termination Date together with compensation to Peu representing the return on equity to Peu calculated taking into account the cash equity contribution into ProjectCo escalated at a rate equivalent to the growth in the All Share Index of the JSE Limited plus 8% (eight per cent) from the Effective Date until the payment of the Termination Amount.

20.5 To the extent that the Termination Compensation has not been agreed by the Parties, it shall be determined by an Independent Expert, the identity of whom shall be agreed between the Parties on failing agreement within 5 (five) Business Days of nomination by any Party, by the President for the time being of the South African Institute of Chartered Accountants: Gauteng Region. The determination of the Independent Expert shall be binding on the Parties. The Independent Expert shall act as an expert and not as an arbitrator.

21 CESSION AND ASSIGNMENT

21.1 Subject to clause 21.2, no Party shall be permitted to cede, delegate or assign its rights and obligations under this Agreement without first obtaining the approval of the other Party, which approval shall not be unreasonably withheld or delayed.
21.2 The CoT consents to the cession and assignment of Peu's rights and obligations under this Agreement to ProjectCo.

22 DISPUTE RESOLUTION

22.1 In the event of there being any dispute or difference between the Parties arising out of this Agreement, the said dispute or difference shall on written demand by either Party be submitted to arbitration in Johannesburg in accordance with the AFSA rules, which arbitration shall be administered by AFSA.

22.2 Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration (as last applied by AFSA) before an arbitrator appointed by agreement between the parties to the dispute or failing agreement within 10 (ten) business days of the demand for arbitration, then any party to the dispute shall be entitled forthwith call upon the chairperson of the Johannesburg Bar Council to nominate the arbitrator, provided that the person so nominated shall be an advocate of not less than 10 (ten) years standing as such. The person so nominated shall be the duly appointed arbitrator in respect of the dispute. In the event of the attorneys of the parties to the dispute failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the parties to the dispute.

22.3 The arbitrator shall be, if the matter in dispute is principally:

22.3.1 a legal matter, a practising advocate or attorney in South Africa of at least 15 (fifteen) years' standing;

22.3.2 an accounting matter, independent auditors appointed by agreement between the Parties;

22.3.3 any other matter, any independent person, agreed upon between the Parties
to the Dispute and failing agreement the independent person shall be
appointed by AFSA.

22.4 Should the Parties who are party to the Dispute fail to agree in writing whether the
Dispute is principally a legal, accounting or other matter within 7 (seven) days after the
arbitration was demanded, the matter shall be deemed to be a legal matter.

22.5 Should the Parties who are party to the Dispute fail to agree in writing on an arbitrator
within 14 (fourteen) days after the giving of notice in terms of clause 22.1, the arbitrator
shall be appointed at the request of any of the Parties who are party to the Dispute in
terms of the rules of AFSA.

22.6 The decision of the arbitrator shall be final and binding on the Parties who are party to
the Dispute and may be made an order of the court referred to in clause 25.2, at the
instance of any of the Parties who are party to the Dispute.

22.7 Nothing herein contained shall be deemed to prevent or prohibit a Party from applying
to the appropriate court for urgent relief.

22.8 The Parties hereby consent to the jurisdiction of the High Court of South Africa (Gauteng
Provincial Division) in respect of the proceedings referred to in clause 22.

22.9 The provisions of this 22 (Dispute Resolution):

22.9.1 constitute an irrevocable consent by the Parties to any proceedings in terms hereof
and no Party shall be entitled to withdraw therefrom or claim at any such
proceedings that it is not bound by such provisions; and

22.9.2 are severable from the rest of this Agreement and shall remain in effect despite the
cancellation or termination of or Invalidity for any reason of this Agreement.

22.10 Any arbitration in terms of this clause 22 shall be conducted in camera and the Parties
shall treat as confidential details of the dispute submitted to arbitration, the conduct of
the arbitration proceedings and the outcome of the arbitration, except for purposes of an order to be made in terms of clause 22.6.

22.11 The Parties agree that the written demand by a Party in terms of clause 22.1 that the dispute or difference be submitted to arbitration, is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 1969.

23 NOTICES AND DOMICILIA

23.1 The Parties select as their respective domicilia citandi et executandi the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the following telefax numbers -

<table>
<thead>
<tr>
<th>Name</th>
<th>Physical Address</th>
<th>Telefax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peu Capital Partners (Pty) Ltd</td>
<td>2nd Floor the Firs Office Complex, Corner of Cradock and Biermann Avenues, Rosebank, 2196</td>
<td>011 880 8324</td>
</tr>
</tbody>
</table>

Marked for the attention of: Busi Tshili

<table>
<thead>
<tr>
<th>Name</th>
<th>Physical Address</th>
<th>Telefax</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Tshwane</td>
<td>Isivuno House, 20th Floor, Corner of Madiba and Lillian Ngoyi Streets, Pretoria</td>
<td>012 358 1112</td>
</tr>
</tbody>
</table>

Marked for the attention of: Jason Ngobeni (City Manager)
provided that a Party may change its domicilium or its address for the purposes of notices to any other physical address or telefax number by written notice to the other Party to that effect. Such change of address will be effective 5 (five) business days after receipt of the notice of the change.

23.2 All notices to be given in terms of this Agreement will be given in writing and will -

23.2.1 be delivered by hand or sent by telefax or email;

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

23.2.3 if sent by telefax during business hours, be presumed to have been received on the date of successful transmission of the telefax. Any telefax sent after business hours or on a day which is not a business day will be presumed to have been received on the following business day.

23.3 Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause 23.

24 BENEFIT OF THE AGREEMENT

This Agreement will also be for the benefit of and be binding upon the successors in title and permitted assigns of the Parties or either of them.

25 APPLICABLE LAW AND JURISDICTION

25.1 This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.
26.2 Subject to clause 21, the Parties hereby consent and submit to the non-exclusive jurisdiction of the North Gauteng High Court, in any dispute arising from or in connection with this Agreement.

26 CONFIDENTIALITY

26.1 The Parties undertake that during the operation of, and after the expiration, termination or cancellation of, this Agreement for any reason, they will keep confidential—

26.1.1 any Information which a Party ("Disclosing Party") communicates to the other Party ("Recipient") and which is stated to be or by its nature is intended to be confidential;

26.1.2 all other information of the same confidential nature concerning the business of the Disclosing Party which comes to the knowledge of the Recipient whilst it is engaged in negotiating the terms of this Agreement, the Services Agreement or after conclusion thereof, including—

26.1.2.1 details of the Disclosing Party's financial structures and operating results; and

26.1.2.2 details of the Disclosing Party's strategic objectives and planning.

26.2 If the Recipient is uncertain as to whether any information is to be treated as confidential in terms of this clause 26, it shall be obliged to treat it as such until written clearance is obtained from the Disclosing Party.

26.3 Each Party undertakes, subject to clause 26.4, not to disclose any Information which is to be kept confidential in terms of this clause 26, nor to use such information for its own or anyone else's benefit.

26.4 Notwithstanding the provisions of clause 26.3, the Recipient shall be entitled to disclose any Information to be kept confidential if and to the extent only that the disclosure is bona fide and necessary for the purposes of carrying out its duties in terms of this Agreement.
26.5 The obligation of confidentiality placed on the Parties in terms of this clause 26 shall cease to apply to the Recipient in respect of any information which:

26.5.1 is or becomes generally available to the public other than by the negligence or default of the Recipient or by the breach of this Agreement by the Recipient;

26.5.2 the Disclosing Party confirms in writing is disclosed on a non-confidential basis;

26.5.3 has lawfully become known by or come into the possession of the Recipient on a non-confidential basis from a source other than the Disclosing Party having the legal right to disclose same, provided that such knowledge or possession is evidenced by the written records of the Recipient existing at the Signature Date; or

26.5.4 is disclosed pursuant to a requirement or request by operation of law, regulation or court order, to the extent of compliance with such requirement or request only and not for any other purpose,

provided that:

26.5.5 the onus shall at all times rest on the Recipient to establish that information falls within the exclusions set out in clauses 26.5.1 to 26.5.4 (both inclusive);

26.5.6 information will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in the Recipient’s possession; and

26.5.7 any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in the Recipient’s possession, but only if the combination itself and its principle of operation are in the public domain or in the Recipient’s possession.

26.6 In the event that the Recipient is required to disclose confidential information of the Disclosing Party as contemplated in clause 26.5.4, the Recipient will —
28.6.1 advise the Disclosing Party thereof in writing prior to disclosure, if possible;

28.6.2 take such steps to limit the disclosure to the minimum extent required to satisfy such requirement and to the extent that it lawfully and reasonably can;

28.6.3 afford the Disclosing Party a reasonable opportunity, if possible, to intervene in the proceedings;

28.6.4 comply with the Disclosing Party's reasonable requests as to the manner and terms of any such disclosure; and

28.6.5 notify the Disclosing Party of the recipient of, and the form and extent of, any such disclosure or announcement immediately after it is made.

26.7 The provisions of this clause 26 shall not prohibit the disclosure by Peu to the Lenders of such general information as may reasonably be required by the Lenders for purposes of providing funding to the Project. Provided that:

28.7.1 disclosure by Peu in such circumstances shall however be subject to Peu ensuring that any such information is used by the Lenders only for the above purposes and that the Lenders similarly keeps such information confidential.

27 GENERAL

27.1 Whole Agreement

27.1.1 This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.

27.1.2 This Agreement supersedes and replaces any and all agreements between the Parties
(and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.

27.2 Variations to be in Writing

No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties, it being recorded that for the purposes of this clause, "writing" means legible writing and in English and excludes any form of electronic communication contemplated in the Electronic Communications and Transactions Act, No. 25 of 2002.

27.3 No Indulgences

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

27.4 No Waiver or Suspension of Rights

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

27.5 Provisions Severable

All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

27.6 Continuing Effectiveness of Certain Provisions

The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

27.7 Exclusion of Electronic Signature

The reference in clauses 27.2 and 27.4 to writing signed by a Party shall, notwithstanding anything to the contrary in this Agreement, be read and construed as excluding any form of electronic signature.

28 COSTS

Except as otherwise specifically provided herein, each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and
Implementation of this Agreement.

29 SIGNATURE

29.1 This Agreement is signed by the Parties on the dates and at the places indicated below.

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

29.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.

29.4 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.
ANNEXURE 1

CONTACT CENTRE PROTOCOL

1. ProjectCo shall establish, operate and manage a Contact Centre facility for the purposes of:

   1.1. Logging Incidents, Faults and Service Requests received from CoT Customers or CoT officials relating to the Smart Meters;

   1.2. Logging Incidents, Faults and Service Requests received from CoT Electricity Customers or CoT officials relating to the Points-of-Sale and/or Vending System;

   1.3. Managing the reported incidents, Faults and Service Requests related to Items 1.1 and 1.2 to resolution;

   1.4. Signposting reported Incidents, Faults and Service Requests not associated to Items 1.1 and 1.2 to the appropriate CoT agency;

   1.5. Routing Incidents, Faults and Service Requests to the correct resolution agency. Depending on the Incident, Fault or Service Request this could be to either the Technical Support and Spares Service Provider or the responsible CoT function;

   1.6. Providing customer education in relation to the Smart Meters and Points of Sale / Vending System;

   1.7. Logging and triggering investigations of Fraud reported through a dedicated and anonymous Fraud Line.

2. CoT Customer access to the Contact Centre will be provided through the following six channels which are aligned to the CoT’s Target Operating Model (TOM) as defined within document ref “Appendix One – CoT Services to Channels Mapping.pdf”:

   2.1. Telephone (fixed or mobile) through the CoT’s ‘One Number’ platform (0123589999) that will route calls relating to Smart Meters, Points of Sale and/or Vending Platform through an IVR (Interactive Voice Response) system directly to the ProjectCo Contact Centre. This will be an Inbound and outbound service;
2.2. Internet Portal / Website offering ‘Self-service’. This will be an inbound only service;

2.3. E-mail (through a dedicated email address) – offering Inbound and outbound;

2.4. Traditional mail (inbound only);

2.5. SMS (inbound and outbound).

3. The Contact Centre Operational Hours shall be aligned to the CoT's Call Centre hours of operation. These are currently defined within the CoT’s TOM (document reference “City of Tshwane Call Centre Design v1.3.pdf”) as:

3.1. Office hours defined as 07:30hrs-16:00hrs (Mon-Fri);

3.2. After hours defined as 16:00hrs – 07:30hrs (Mon-Fri, Saturday, Sunday, Public Holidays);

3.3. The Contact Centre shall operate on a 24/7/365 basis.

3.4. The Contact Centre shall be staffed by suitably qualified and trained personnel.

4. The Contact Centre will measure and report its performance against a set of defined KPIs. These KPIs will match the CoT Call Centre KPIs. The current As a minimum this shall include:

4.1. All calls answered within 90 seconds of the call transferring from the CoT Call Centre into the ProjectCo Contact Centre, as averaged across all calls received by the Contact Centre in a calendar month;

4.2. % calls abandoned to be <20%;

4.3. % received calls answered to be >80%;

4.4. Calls per agent per hour (to be defined);

4.5. Average Handling Time (to be defined);
4.6. Average Wrap-Up Time to be 10 seconds;

5. The Contact Centre Infrastructure shall include the following systems from which information regarding the Inbound and outbound calls can be provided to the CoT:

5.1. Service Desk Software (which will be linked to CoT’s customer database) to provide:

5.1.1. The CoT Customer details in respect of every call received by the Contact Centre;

5.1.2. The date and time that each Incident, Service Request or Fault was notified to the Contact Centre;

5.1.3. The nature of each Incident, Service Request or Fault reported to the Contact Centre;

5.1.4. The date and time that each Incident, Service Request or Fault was satisfactorily resolved by the Contact Centre (subject to the particular Incident, Service Request or Fault raised falling within the scope of the Contact Centre operation);

5.1.5. The date and time that each Incident, Service Request of Fault was passed to the resolving agency (for incidents, Service Requests and Faults which fall outside the scope of the Contact Centre operation);

5.1.6. Time stamping of milestone activities associated with managing the incident, Service Request of Fault through to resolution.

5.2. A Call Logger

5.2.1. Call logging facilities to ensure that the date and time of the conversation of every call received and made by the Contact Centre is captured.

5.3. A Voice Recorder

5.3.1. A voice recording of every conversation in respect of every call made to the Call Centre, which shall be stored by ProjectCo and be made readily available to the CoT for a period of not less than 3 (three) months after the month in which the relevant call was made to the Call Centre for the purpose of clarifying disputes.
5.4. Automatic Call Distribution (ACD)

5.4.1. An ACD will be established (as appropriate) to enable the efficient routing of calls between Contact Centre Agents.

6. The Call Centre services shall include but not be limited to:

6.1. Response and dispatch of Smart Meter assistance;

6.2. Scheduling, coordinating and managing of all services and maintenance of Smart Meters;

6.3. Scheduling, coordinating and managing of all services and maintenance of the Points of Sale infrastructure;

6.4. Recording all statistical data of faults reported on a monthly basis;

6.5. Provide clarity to customers looking for information;

6.6. Become the first point of contact for all Smart Meter and Points of Sale related queries;

6.7. Follow the daily operations centre checklist of which reading confirmation is a critical component;

6.8. Draw the relevant reports;

6.9. Provide inputs into change requests suggested;

6.10. Monitor inbound and outbound integration of the flat file into SAP (and troubleshoot if applicable); and

6.11. Create relevant master data in Master Station should the automated process be offline.
ANNEXURE 2

POINTS OF SALE FRAMEWORK

1. ProjectCo shall establish, operate and manage a Vending System Framework for the purposes of:

1.1. The sale of prepaid electricity directly to CoT Customers in a convenient and accessible manner

1.2. The sale of prepaid electricity via third party, CoT endorsed, vending agents

1.3. Disallowing the purchase of prepaid electricity by CoT Electricity Customers until any arrears with their electricity payments are settled

1.4. Settling CoT Electricity Customer electricity arrear payments

1.5. Allowing CoT Electricity Customers the facility to manage their credit balances

1.6. Enable the application of credit onto CoT Electricity Customers accounts that are placed on the Indigent Register and management of that credit to include roll-over to following months in the event that not all the credit is used in a given month

1.7. Supporting CoT customer fault logging

1.8. Emergency credit support – 2% of previous month's bill

2. The Vending System will allow CoT Customers to buy prepaid electricity via the following channels:

2.1. Self Service Options

2.1.1. Internet Portal/Website
2.1.2. Mobile (SMS based)

2.1.3. Mobile (GPRS Web use)

2.1.4. Contact Centre (Automated IVR service)

2.2. Location Specific Outlets

2.2.1. Automated Vending Machines (AVM) / Kiosks / Hand Held Terminals

2.2.2. ATMs

3. The Vending System will allow CoT Customers without mobile and or Internet access to buy prepaid electricity at locations and times that at least meet Nersa Regulation (NRS 047-1:2002 Edition 2.3) for SPUs:

3.1. Where practical and necessary, there shall be a vending station within 5 km of every customer.

3.2. Where practical and necessary, the licensee shall provide at least one vending station for every 2000 customers.

3.3. Where practical and necessary, there shall be vending stations in every region and every ward within the CoT borders.

3.4. Where several vending stations at one location can be justified, these could be manned according to customers' purchasing patterns, with the maximum number manned at times of peak demand.

3.5. Vending stations should sell tokens during normal shopping hours on weekdays, and from 08:00 to 12:00 on weekends and public holidays.

3.6. Certain vending stations may close on weekends and public holidays, and during normal office hours, provided that there are vending stations in operation nearby.

4. The Vending System will include the following AVM / kiosk locations (locations to be defined):
4.1. CoT Offices, Post Offices;

4.2. Public spaces such as stations, tax points, shopping malls;

4.3. Major retail chain outlets such as supermarkets, banks, petrol stations;

5. The Vending System will extend its footprint via smaller Agencies and support the development of SMMEs in CoT:

5.1. Small shops such as Spazas may purchase a mobile vending terminal and become a registered reseller of CoT prepaid electricity.

5.2. With a laptop or cell phone and a small amount of capital, anyone (minimum acceptance criteria to be developed) has the potential to become a registered reseller of CoT prepaid electricity.

6. The Vending System will support the following STS compliant tokenless methods to reduce the risk of fraud and theft:

6.1. Paper or virtual receipt sent to CoT Customer and prepaid electricity meter directly recharged via the Vending System.

7. The Vending System will support cash and cashless forms of payment.

8. The Vending System will seek to promote cashless forms of payment as far as possible and will support the following forms of payment by CoT Customers:

8.1. Electronic Funds Transfer (EFT)

8.2. Credit and debit card

8.3. Other virtual money usage options such as Moola (Mokit), eBucks (First National Bank), e-purse or Mpesa, MTN mobile money (prepaid electricity) and WIZZIT

8.4. Cash at ATMs, AVMs and via registered smaller reseller agencies and SMMEs.
9. The Vending System will support the following cashless forms of payment by registered reseller Agents, smaller reseller agencies and SMMEs:

9.1. EFT

9.2. Credit and debit card

9.3. Other virtual money usage such as Moola (MXIt), eBucks (First National Bank), e-purse or Mpesa, MTN mobile money (prepaid electricity) and WIZZIT.

10. The Online Vending System will act as the interface between CoT, financial institutions, customers, vending reseller networks, PoS and the back-end systems (MDMS and SAP.) The following is the minimum set of requirements that the vending module should contain:


10.2. Payment encryption through two-way communication with the payment encryption module of the MVMS; and

10.3. Meter vending engine, based on inputs from SAP (Transaction and tariff data) and MDMS (Meter verifications and up-to-date customer balances)

10.4. The Online Vending server will support XML Vend 2 as a vending protocol

The vending infrastructures and systems should support the existing proprietary CoT eVend protocol (partly based XML vend 2) and Suprima system. (?)
ANNEXURE 3

PROJECT COMMUNICATIONS STRATEGY

1. PDU shall produce a Project Communications Strategy in collaboration with CoT that:

1.1. Defines an approach to Stakeholder Engagement, including:

1.1.1. Development of information packs / conduct tailored presentations to key Stakeholders identified by the CoT

1.1.2. Work with CoT to identify the key messages and agree the content of any Stakeholder communications

1.2. Defines a Communications and Marketing Plan to include:

1.2.1. The preparation of a customer-oriented marketing strategy (awareness campaign) which focuses on highlighting the benefits of the Project to customers

1.2.2. To identify different customer profiles / segmentation and map tools of engagement against each category. This will include considering:

1.2.2.1. VLPUs

1.2.2.2. LPUs

1.2.2.3. SPUs >1000kWh/month

1.2.2.4. SPUs<1000kWh/month

1.2.2.5. Sensitive Customers

1.2.2.6. Indigent Customers
1.2.3 Peu shall identify (in conjunction with CoT) the likely issues and concerns that the CoT Customers may raise and ensure that the key communications messages address these concerns.

1.2.4 Peu shall work with CoT to pro-actively address any issues that are raised by CoT Customers during the marketing campaign.

1.2.5 Peu shall work with CoT to create, manage and update a FAQ portal for all stakeholders (LPUs and SPUs).

1.2.6 Peu shall work with CoT to market the benefits of the project continuously thorough the process until substantial roll-out is completed.

1.2.7 Peu shall work with CoT to solicit the support of influential community Leaders to reinforce the benefits for customers.

1.3 Defines the scope of the Launch event, including:

1.3.1 Identification of location

1.3.2 Development of a ‘demo’ platform

1.3.3 Identification of media channels to be utilised

1.3.4 Identification of dignitaries and key stakeholders to be invited

1.4 Defines the Communications and Marketing strategy associated with Go-Live event, including:

1.4.1 Identification of media channels to be utilised
ANNEXURE 4

DRAFT ROLL OUT PROGRAMME (SUBJECT TO FINAL SELECTION OF VENDORS)
ANNEXURE 5

OUTPUT SPECIFICATION

1. The CoT wants to achieve benefits with the Project related to a broad set of business, operations, customer, regulatory and societal categories. To this end Peu shall install, initially approximately 800,000 (eight hundred thousand) smart prepaid meters for residential customers of CoT and approximately 8,000 smart prepaid meters for commercial and industrial customers.

2. The Infrastructure as defined in this Agreement shall be compatible with the key SAP modules operated by CoT, to the extent required.

3. Value based outcomes within many of these levers allow CoT to maximise their investment in the infrastructure.

4. In terms of the Agreement the minimum Output Specification for the system is as follows:

   4.1. Comply with National regulation 773 which mandates the use of smart systems and time-of-use ("TOU") tariffs for customers consuming over 1,000kWh.

   4.2. Improve revenue collection - Reduce non-technical losses and meter reading costs through improved status monitoring and alarming;

   4.3. Shift Load as part of National Demand Management (if mandated by CoT) - Shift residential load from morning & evening peaks using TOU tariffs, should CoT implement TOU tariffs;

   4.4. Change Customer Behaviour - Incentivise the efficient use of electricity with real-time energy usage information and TOU tariffs;

   4.5. Participate in a National Load Management Programme, if required - shed both commercial and industrial load as a result of grid capacity constraints;

   4.6. Maximize Operational efficiencies - Deliver better electricity service & reduce operational costs through improved alarming

5. Improved and new customer services

   5.1. Empowering Customers to be more energy efficient and aware of their consumption;

   5.2. Visualization of consumption data on the web;
5.3. Automatic upload of credit to the meter, whereby the customer is not reliant on a vending network, or time-bound to when and where electricity can be purchased. This adds another more convenient mechanism for customers to purchase electricity;

5.4. Automatic transfer of services to new occupants of house before transfer of property. This also ensures continuous revenue collection for Tshwane.

6. Improved revenue management:

6.1. Automated meter reading enabling quasi real time consumption information across the CoT

6.2. Provide customers with accurate consumption data

6.3. Correct and timely billing for all customers every month

6.4. Assist in customer dispute resolution, as customers would have access to profile data of their consumption

6.5. Minimization of theft and tampering

6.6. Implementation of new tariff models such as Static Time of Use Tariffs

6.7. Ability to conduct customer usage profiling (e.g. analysis of Peak and Off-peak usage)

6.8. Provide reminders of pending cuts of service due to insufficient credits

6.9. Energy balancing to balance supply vs consumption. This will allow CoT to easily identify electricity fraud at a very granular level. It will also allow CoT to identify unmetered customers

7. Improved Operations

7.1. Improve the identification and resolution of power problems in a timely, proactive and efficient manner, thereby providing a better customer service

7.2. Real-time outage detection and control

7.3. Power quality monitoring

7.4. Curtailment of interruptible services
ANNEXURE 6

ASSUMPTIONS

1. General

1.1. Duration of the agreement is for 8 years from the completion of the roll-out phase

1.2. CoT will provide support (and the necessary technical resource) to enable Peu to achieve a roll out phasing of 40% of Smart Meters in the first year and the remaining 60% in the second year

1.3. The smart metering solution is based upon a maximum of 800,000 smart meters

11. Smart Metering Equipment

1.4. All 800,000 meters would be replaced by new smart meters

1.5. The no. of LPU consumers is 8,000, for whom the roll out will be completed within the first year

1.6. The no. of SPU - Three phase consumers is assumed to be 8% of overall consumer mix (64,000)

1.7. The remaining consumers are assumed to be on SPU-Single phase meters (728,000)

1.8. All meters will be fixed with a Customer Interface Unit (CIU) at the consumer site

1.9. 70% of the SPU meters would be on PLC technology and 30% of the SPU meters plus the LPU meters would be on GPRS technology. Changes to this will be determined by the CoT as-built electricity network infrastructure.

1.10. The average life of the meter is 15 years
12. Metering Interface

12.1. There will be no DCU for LPU and SPU-GPRS consumers

12.2. There will be 1 DCU for every 100 SPU (PLC communication) consumers

13. Communication

13.1. PLC will be applicable on 70% of SPU consumers

13.2. GPRS will be applicable on 30% of SPU consumers and all LPU consumers

13.3. GPRS will be applicable on all DCUs (connected to SPU consumers)

14. General (One-off) costs

14.1. Advertising and stakeholder engagement expenses are to be capped at Rxxx for 2 years of rollout

14.2. There should be a minimum of 1 vending point for every 2,000 consumers. The maximum number of vending points required would be 400 vending points.

15. Recurring Expenditure (CPEX)

15.1. Cost of meters (for replacement) will be borne by CoT