

Notarial Deed of Lease

Between

Eskom Holdings SOC Limited

and

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Protocol no.

Notarial Deed of Lease

Be it hereby made known

That on this the [•] day of [•] 20 before me,

[•]

Notary Public by lawful authority, duly sworn and admitted to practise in the Gauteng province, residing at Johannesburg and in the presence of the undersigned competent witnesses, personally came and appeared

[•]

(**Appearer**)

on behalf of:-

Eskom Holdings SOC Limited

Registration number 2002/015527/30

its successors-in-title or assigns

(**Lessor**)

the Appearer being duly authorised thereto by virtue of a Power of Attorney executed at [•] on the [•] day of [•] 20 and granted to her by [•] in his/her capacity as [•] of the Lessor, he/she being duly authorised thereto by a delegation of authority passed at [•] on the [•] day of [•] 20 ;

and

[Insert name of Appearer]

on behalf of:-

its successors-in-title or assigns

(Lessee)

the Appearer being duly authorised thereto under and by virtue of a Power of Attorney executed at [•] on the [•] day of 20 , and granted to her by the Lessee, the Lessee being duly authorised thereto by virtue of a resolution passed by the board of directors of the Lessee at [•] on the [•] day of ;

which Powers of Attorney and certified copies of which resolutions now remain filed in my Protocol together with the minute hereof;

and the said Appearer declared that:

Whereas:

A. The Lessor is the owner of the Property/ies which are hereby being leased to the Lessee:

1. _____

(the **Property/ies**).

B. The Lessor intends to let and the Lessee intends to lease from the Lessor the aforementioned Property/ies.

C. The parties wish to record their agreement in writing, execute same before the Notary and register this Lease against the title deed of the Property in respect of the Property.

Now therefore it is agreed as follows:

1. Parties

The parties to this Agreement are the Lessor and the Lessee.

2. Definitions and interpretation

2.1. In this Lease, except in a context indicating that some other meaning is intended:

- 2.1.1. **Agreement or Lease** means this Notarial Deed of Lease including all annexures thereto;
- 2.1.2. **Beneficial Interest** means as per the definition contained the Companies Act 71 of 2008 or any amendments thereto;
- 2.1.3. **Business Day** means any day of the week, excluding Saturday, Sundays and gazetted public holidays in South Africa;
- 2.1.4. **Change in Control** means any change whatsoever in Control of the Lessee, whether effected directly or indirectly, including any change of Control in respect of a company listed on a stock exchange;
- 2.1.5. **Charges** means levies, taxes, fees or other amounts payable by the Lessor to any authority having jurisdiction over the Property that arise from the ownership and use of the Property;
- 2.1.6. **Competent Authority** means any local or national department, minister, ministry, official or public or statutory person (whether autonomous or not) having jurisdiction over a Party to this Agreement, the subject matter of this Agreement, or any asset or transaction contemplated by this Agreement;
- 2.1.7. **Commencement Date** means the date of commencement of the Lease Agreement following the Execution Date;
- 2.1.8. **Commissioning Date** means the date on which the Power Plant is commissioned as notified by the Lessee to the Lessor in writing;
- 2.1.9. **Control** means the power to direct or cause the direction of the management and policies of the Lessee, whether through the ownership of voting securities or any interest carrying voting rights, or to appoint or remove or cause the appointment or

removal of any directors (or equivalent officials) or those of its directors (or equivalent officials) holding the majority of the voting rights on its board of directors (or equivalent body) whether by contract or otherwise;

- 2.1.10. **Control Office Site** means a site for the housing of an office, storeroom and workshop area with associated parking and ablution facilities, for operation and maintenance purposes, of such type, size and construction as the Lessee may reasonably require (or as may be reasonably required by any operation and maintenance contractor appointed by the Lessee from time to time);
- 2.1.11. **Construction Areas** means those parts of the Property which the Lessee reasonably requires to occupy for purposes of constructing the Power Plant on a short-term basis and consisting of the Lay-down Area and Contractor's Site Office as referred to in the SDP – which areas are required on a temporary basis and are not categorised as Project Site intended for permanent inclusion in this Lease;
- 2.1.12. **Construction Commencement Date** means the date on which construction of the Power Plant commences in terms of a signed EPC Contract concluded between the Lessee and the relevant contractor; which date shall be within the period specified in clause 11.2 below;
- 2.1.13. **Construction Phase** means the period between the Construction Commencement Date and the Commissioning Date, during which period the Lessee shall construct and equip the Power Plant(s);
- 2.1.14. **CPI** means the consumer price index for all Urban Areas (utilising Classification of Individual Consumption by Purpose) as published by Statistics South Africa, or its successors in title, or any replacement index developed by statistics South Africa, from time to time);
- 2.1.15. **Default Notice Period** means the cure period which this Lease provides to a Party for curing a default in terms of clause 30;
- 2.1.16. **Direct Agreement** means an agreement between the Lessor and the Lessee and any Financier on such terms as are reasonably required by the Lessee and/or the Financier to facilitate the obtaining of loan funding as contemplated in clause 26;

- 2.1.17. **Dispose** means assign, transfer or otherwise dispose of or grant or permit or suffer the grant of any legal or equitable interest (either in whole or in part) whether by sale, lease, declaration or creation of a trust or otherwise;
- 2.1.18. **Domestic Prominent Influential Person (DPIP)** means an individual who holds, (including in an acting position for a period exceeding six months or has held at any time in the preceding 12 months), a prominent public function in South Africa;
- 2.1.19. **Electric Cables and Wires** means:
- 2.1.19.1. the electric cables and wires;
 - 2.1.19.2. telecommunications, data transmission and other cables related to the Power Plant;
 - 2.1.19.3. all associated apparatus, lines, poles and stays, pylons, insulators and associated guards and wires and all other plant and equipment making up or supporting said cables and lines, supports, all control cables and all connections, cable markers, cable terminals, drains, culverts, inspection hatches, jointing bays and other underground works;
 - 2.1.19.4. all associated earthing systems;
- laid or erected or to be laid or erected by the Lessee pursuant to this Lease on the Property, as the case may be, and where applicable, as depicted on any Lease Diagram, servitude diagram or other diagram pertaining to the Property, as the case may be, or along such alternative and/or additional routes as the Lessor may approve (such approval not to be unreasonably withheld or delayed);
- 2.1.20. **EIA** means an Environmental Impact Assessment or basic assessment in terms of the National Environment Management Act 107 of 1998;
- 2.1.21. **Electrical Sub-station Yard** means a site identified on the SDP for the purpose of erection of an electricity sub-station (including yard for the housing of high voltage transformers, switch gear, metering units, etc, together with such other facilities such as toilet, washroom facilities and associated drainage facilities as may be required in relation to the electricity sub-station) of such type, size and construction as the Lessee may reasonably require (or as may be reasonably required by the Network Operator);

- 2.1.22. **Electricity Infrastructure** means any asset of the Lessee that is lawfully constructed, erected, used, placed, installed or affixed to the Property, in connection with provision of the Power Plant;
- 2.1.23. **Electricity Infrastructure of Lessor** means any electrical infrastructure that is lawfully constructed, erected, used, placed, installed or affixed to the Property, by the Lessor shall remain the property of the Lessor;
- 2.1.24. **Environmental Laws** means laws, including, but not limited to common law, municipal laws, provincial laws, national laws and international laws, and aimed at reclamation, rehabilitation, remediation or restoration of property; abatement of pollution; protection of the environment; protection of wildlife, including, without limitation, endangered species; ensuring public safety from environmental hazards; protection of cultural or historic resources; management, storage or control of hazardous materials and substances; releases or threatened releases of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances such as wastes into the environment, including without limitation, ambient air, surface water and groundwater; and all other laws relating to the manufacturing, processing, distribution, use, treatment, storage, disposal, handling or transport of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes, including but not limited to the National Environmental Management Act 107 of 1998, the National Water Act 30 of 1998 and the National Environmental Management: Waste Act 59 of 2008 together with the regulations issued in terms of the said acts;
- 2.1.25. **EPC Contract** means a contract for the engineering, procurement and construction of the major electricity generating equipment required for the Power Plant, and the Interconnection Facilities;
- 2.1.26. **Execution Date** means the date upon which the Lease is duly signed and executed by a duly appointed Notary Public;
- 2.1.27. **Existing Access Roads** means the roads existing on the Property or on adjoining properties as at the Execution Date over which the Lessor enjoys a right of way (including, without prejudice to the foregoing, by way of registered or unregistered servitudes having been constituted in the Lessor's favour) and including all bridges, cattle grids, culverts, drains, ditches, walls, fences and the like associated therewith;

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- 2.1.28. **Financial Close** means all conditions precedent to which the Financing Documents are subject;
- 2.1.29. **Financier** means any bank or authorized financial institution which finances the Lessee for the development of the Power Plant and/or the Project Site as will more fully appear in the Financing Documents;
- 2.1.30. **Financing Documents** means any and all loan agreements, notes, bonds, indentures, security agreements, direct agreements, registration or disclosure agreements, export credit agency agreements, guarantees or insurance policies, subordination agreements, mortgages, deeds of trust, credit agreements, inter-creditor agreements, note or bond purchase agreements, hedging agreements, participation agreements and other documents (including international, regional, Islamic or local facilities agreements, equity bridge loans, service agency agreements, lease agreements, purchase agreements and agency and asset participation agreements) entered into by the Lessee relating to, among other things, the financing of the Power Plant and/or the development thereof as provided by any financing party, including but not limited to any modifications, supplements, extensions, renewals and replacements of any such financing or refinancing;
- 2.1.31. **Force Majeure** means, fire, earthquake, flood, tornado, or other acts of God and natural disasters; strikes or labour disputes; war, civil strife or other violence; any law, order proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility; or any other act or condition beyond the reasonable control of a party and as more explained in clause 34;
- 2.1.32. **Foreign Prominent Public Official (FPPO)** means a foreign prominent public official is an individual who holds, or has held (at any time in the preceding 12 months), a prominent public function in any foreign country including that of a Head of State or head of a country or government; Member of a foreign royal family; Government minister or equivalent senior politician or leader of a political party; Senior judicial official; Senior executive of a state-owned corporation; or High-ranking member of the military;
- 2.1.33. **Green Attributes** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants as accredited by a Competent Authority

- 2.1.34. **Interconnection Facilities** means all the interconnection facilities and all the connections and physical tie-ins to the Lessees' Power Plant to enable Lessor to receive the electrical output. Interconnection facilities placed by the Lessee from the Power Plant to the delivery point and vice versa shall be owned by the Lessee;
- 2.1.35. **Law** means:
- 2.1.35.1. any constitution, statute, ordinance, treaty, decree, proclamation or subordinated legislation or other legislative measure, including all national and provincial statutes and legislation and all municipal by-laws, as well as the common law and customary law and any judgment, decision, order or rule of any court or tribunal with relevant jurisdiction, in each case having the force of law in South Africa; and
 - 2.1.35.2. any present or future directive, requirement, instruction, request, order, regulation, condition of or limitation in any necessary approval, permission, permit, approval, consent, licence, authorisation, registration, grant, acknowledgement, exemption or agreement to be obtained from any Responsible Authority, or direction or rule of a Responsible Authority;
- 2.1.36. **Lease Diagram** means a cadastral diagram of the Property, where applicable, which has been framed by a land surveyor and approved by the surveyor general in accordance with applicable law;
- 2.1.37. **Lease Period** means the period for which this Lease subsists, including any period for which it is renewed as contemplated in clause 7;
- 2.1.38. **Lease Year** means the 12 (twelve) month period commencing on the Commencement Date and each successive 12 (twelve) month period thereafter during the Term;
- 2.1.39. **Leasehold Mortgage** means any mortgage encumbering this Lease;
- 2.1.40. **Leasehold Mortgagee** means any holder of a Leasehold Mortgage (and its successors and permitted assigns);
- 2.1.41. **Month** means a calendar month, and more specifically

- 2.1.41.1. in reference to a number of months from a specific date, a calendar month commencing on that date or the same date of any subsequent month; and
- 2.1.41.2. in any other context, a month of the calendar, that is, one of the 12 months of the calendar, and “Monthly” has the corresponding meaning;
- 2.1.42. **Necessary Approvals** means the approvals contemplated in clause 9;
- 2.1.43. **Necessary Approvals Phase** means the period of this Lease between the Commencement Date and the Construction Commencement Date during which it is contemplated that the Lessee will secure all Necessary Approvals as referred to in clause 9 hereof;
- 2.1.44. **Network Operator** means the legal entity responsible for distributing electricity through the transmission and/or distribution system;
- 2.1.45. **New Access Roads** means those areas of the Property on which roads are to be constructed and/or current roads being upgraded by the Lessee, together with all ancillary works including, without limitation, all passing places, bridges, cattle grids, culverts, drains, ditches, walls, fences and the like associated therewith;
- 2.1.46. **Non Power Plant Areas** means those portions of the Property other than the Power Plant Project Site;
- 2.1.47. **Operating Phase** means the period contemplated in clause 12 of this Agreement when electricity generated by the Power Plant is sold. The Lessee shall inform the Lessor in writing, on commencement of the operating phase;
- 2.1.48. **Politically Exposed Person or PEP** means an individual who is or has in the past (preferably 1 year after giving up any political function) been entrusted with prominent public functions in a particular country. The term includes persons whose current or former position can attract publicity beyond the borders of the country concerned and whose financial circumstances may be the subject of additional public interest;
- 2.1.49. **Power Plant** means a facility to be established and operated on the Project Site with a view to generate electricity by means of a renewable resource, the storage of such electricity, including but not limited to wind, solar and gas power for commercial purposes and shall include, but not be limited to, the erection, operation and

maintenance of wind turbines, their platform foundation bases, substations, maintenance and storage facilities, solar fields and solar panels, battery storage facilities, gas turbines and all structures and infrastructure associated therewith for purposes of sale of electricity to third parties appointed by the Lessee, which electricity will be transmitted to these third parties via the Eskom Grid. It shall include the, interconnection facilities, physical structures and infrastructure related thereto;

2.1.50. **Project** means the construction, operation, maintenance, decommissioning and rehabilitation in accordance with its obligations under Environmental Law of the Power Plant;

2.1.51. **Project Site** means the area on the Property where the Power Plant is located;

The Lessee may place the infrastructure indicated below on the Project Site and/or Property, where applicable

2.1.51.1. the fuel cell stack sites;

2.1.51.2. the electrical sub-station yard;

2.1.51.3. a hydrogen reduction plant;

2.1.51.4. interconnection site;

2.1.51.5. nitrogen buffer, gas cleaning and make-up water site;

2.1.51.6. a metering site;

2.1.51.7. control office site;

2.1.51.8. servitude areas to accommodate Electricity Infrastructure such as cables and wires, to the extent required;

2.1.51.9. servitude areas to accommodate access roads and access to utilities, electricity and water, to the extent required; and

2.1.51.10. substantially as depicted or referenced on the Lessee's SDP;

2.1.52. **Property** means the land being leased as described in the preamble of this Agreement;

2.1.53. **Responsible Authority** means any organ of state, any official in the public administration or any other governmental or regulatory department, commission,

institution, entity, service utility, board, agency, instrumentality or authority (in each case, whether national, provincial or municipal) within South Africa, including specifically any authority or board of such authority that is responsible for the allocation of any water use rights, or any court, each having jurisdiction over the matter in question within South Africa;

- 2.1.54. **Sanctions** means penalties levied against a country, its officials or it's citizens, either as punishment or in an effort to provide disincentives for it's targeted policies and actions. This action or order is given to force a country, individual or an entity to obey with international laws;
- 2.1.55. **SDP** means the Lessee's site development plan showing layout of proposed Power Plant , Existing Access Roads and New Access Roads (if any) on the Property which is subject to final variation taking into account minor changes due to any micro-siting exercise to be undertaken by the Lessee in the light of technical or other requirements identified by the Lessee and or the requirements of competent authorities having jurisdiction over the Property and arising out of, for example (and without limitation) the environmental authorisation obtained by the Lessee in respect of the Property, the requirements of the minister pursuant to any application for ministerial consent under the Sub-division of Agricultural Land 70 of 1970 Act (as contemplated in clause 7 below), Civil Aviation Authority clearance and any water use license granted to the Lessee under the National Water Act 36 of 1998. The SDP may also be augmented by additional servitude areas accommodating power-lines/cables and other access rights;
- 2.1.56. **Tendered Value** means the bid values submitted by the successful bidder, sourced in the bid submission documents;
- 2.1.57. **Term** means a period of 25 (twenty-five) Years from the Commencement date as may be reviewed in accordance with clause 7;
- 2.1.58. **Termination Date** means the last day of the Term, and if this Lease is renewed, means the last day of any renewal term;
- 2.1.59. **Year** means a period of 12 (twelve) consecutive months, and "Yearly" refers to a Year commencing on the date on which this Lease comes into operation or any anniversary of that date.

- 2.2. References to notices, statements and other communications by or from the Lessor include notices by or from the Lessor's agent.
- 2.3. Expressions in the singular also denote the plural, and vice versa.
- 2.4. Words and phrases denoting natural persons refer also to juristic persons, and vice versa.
- 2.5. Pronouns of any gender include the corresponding pronouns of the other gender.
- 2.6. Any provision of this Lease imposing a restraint, prohibition or restriction on the Lessee shall be so construed that the Lessee is not only bound to comply therewith but is also obliged to procure that the same restraint, prohibition or restriction is observed by everybody occupying or entering the Property through, under, by arrangement with, or at the invitation of, the Lessee, including (without limiting the generality of this provision) the family, guests and employees of the Lessee and any independent contractors or workers engaged by the Lessee.
- 2.7. Clause headings appear in this Lease for purposes of reference only and shall not influence the proper interpretation of the subject matter.
- 2.8. This Lease shall be interpreted and applied in accordance with South African law.

3. Letting and hiring

The Lessor lets and the Lessee hereby leases the Property described in preamble of this Agreement on the terms of this Agreement.

4. Use of the Project Site

- 4.1. The purpose of this Lease is to allow the establishment of a Power Plant and conduct the business of electricity generation and distribution generated by Renewable Energy Resources, e.g. Wind, solar, green hydrogen and/or a battery energy storage system. The use of the Project Site will include the right to:
 - 4.1.1. the construction and commissioning of the Power Plant; and
 - 4.1.2. the operation and maintenance of a Power Plant.
- 4.2. In connection with such use, the Lessee shall have the right to construct and place on the Property and to operate:
 - 4.2.1. one or more Solar Panels;

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- 4.2.2. on grid Inverter;
 - 4.2.3. electrical substations;
 - 4.2.4. interconnection facilities;
 - 4.2.5. photovoltaic switchgear;
 - 4.2.6. grid operator;
 - 4.2.7. back up metering system;
 - 4.2.8. foundations, concrete pads and footings;
 - 4.2.9. guy wires, support fixtures, anchors and fences;
 - 4.2.10. the associated electric cables and wires and related surface and subsurface equipment;
 - 4.2.11. collection and transmission grid;
 - 4.2.12. power conditioning equipment;
 - 4.2.13. electrical transformers and energy storage facilities;
 - 4.2.14. electricity distribution and transmission towers and Electric Cables and Wires either above ground or underground;
 - 4.2.15. electrical sub-station yards, substations or switching facilities for the purpose of connecting to the transmission grid;
 - 4.2.16. telecommunications equipment;
 - 4.2.17. facilities needed for operation and maintenance purposes and storage of related equipment;
- 4.3. such other related facilities, equipment and improvements as may be required, in the sole determination of the Lessee, for the purpose of conducting the business of a generator of electricity.
- 4.4. In connection with access to roads:

- 4.4.1. The Lessee shall have the right of ingress to and egress from the Property via Existing Access Roads and New Access Roads.
- 4.4.2. The Lessee shall gain access at it's own cost from public roads to the Property.
- 4.4.3. If necessary, and where possible, the Lessee shall have access over and across any adjacent property owned by the Lessor, by means of Existing Access Roads, or by routes which the Lessee or the Lessor may construct, on the Property or outside the Property.
- 4.4.4. To the extent that it is legally possible to do so, and where required by the Lessee, the Lessor shall grant the Lessee such servitudes as the Lessee may require, and the Lessor shall co-operate fully with, and sign such documentation as is prepared by the Lessee for the implementation and registration of such servitudes.
- 4.4.5. In so far as the roads are required to be refurbished, or newly constructed in order for the Lessee to have access to the Property, and in particular the Project Site, the costs of such construction and servitudes shall be borne by the Lessee.
- 4.5. The Construction Areas shall be included as part of the Property. Whenever the Construction Areas are used by the Lessee, the Lessee shall be obliged to exercise due care to ensure that full adherence is given to the specifications set out in the Environmental Management Plan (EMP) that has been approved in conjunction with the Lessee's environmental authorisation.

5. Electromagnetic interference

- 5.1. Subject to applicable law, the Lessee shall have the right with respect to the Property to cause light, audio, visual, view, flicker, noise, electromagnetic, electrical and radio frequency interference and any other effect caused by or attributable to the Power Plant.
- 5.2. In the event that there is any electromagnetic interference with the Lessor's equipment caused by the use of the Power Plant, the Lessee and the Lessor undertake to liaise and cooperate with one another to eliminate the interference.

6. Contamination of Property

- 6.1. The Lessee agrees and undertakes that, as between it and the Lessor:
 - 6.1.1. it shall be solely responsible for, shall bear full responsibility for and shall discharge all obligations in relation to any contamination of the Property pursuant to and in

accordance with the applicable Law, whether such contamination was existing at the time that the Lessee obtained its rights in respect of the Property or arises during the term of this Agreement;

6.1.2. it shall be solely responsible for, shall bear full responsibility for and shall discharge all obligations pursuant to any remediation order issued by any Responsible Authority pursuant to and in accordance with the applicable Environmental Laws in respect of any contamination of the Property, whether such contamination was existing at the time that the Lessee obtained its rights in respect of the Property or arises during the term of this Agreement;

6.1.3. the Lessor has no obligations of any nature to monitor compliance with or to enforce the terms and conditions of any remediation order issued by any Responsible Authority in respect of any contamination of the Property; and

6.1.4. the Lessee indemnifies and shall hold harmless, upon demand, the Lessor against any direct claims, damages, losses, expenses and any other consequences of or arising out of the Lessee's failure to comply with this clause 5.3.

6.2. The provisions of this clause 5.3 shall remain in full force and effect after the Termination Date.

7. Green Attributes and Carbon Emissions

The Lessee shall apply to a Competent Authority for a rating on any carbon emissions and Green Attributes utilized in the project. The Lessor shall be entitled to a fifty (50) percent share in any benefits arising from such Green Attributes and carbon emission reductions. The Lessee shall provide all necessary information and approvals to the Lessor, for the Lessor to realize such benefits. A supplementary agreement shall be concluded by the Parties to regulate the process.

8. Risk and liability

8.1. Subject to applicable Laws, the Lessee shall be fully responsible for the suitability of the Project Site, for the Project and for the condition of the Project Site, including but not limited to its climatic, hydrological, hydro-geological, ecological, environmental, geotechnical, geological, paleontological and archaeological conditions (including the discovery of any heritage resources as defined in the National Heritage Resources Act, 25 of 1999), the adequacy of the road and rail links to, and routing of power lines existing at the Commencement Date on, the Project Site and the availability of adequate supplies of utilities.

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- 8.2. The Lessee agrees and undertakes that, as between it and the Lessor:
- 8.2.1. it shall be solely responsible for, shall bear full responsibility for and shall discharge all environmental obligations in relation to the Project Facilities and the Project Site pursuant to and in accordance with the applicable Laws;
 - 8.2.2. if applicable, it shall be solely responsible for, shall bear full responsibility for, shall discharge all obligations and shall bear all consequences that arise as a direct or indirect result of any appeal or review being lodged against any amendment to any of the consents issued in terms of any Environmental Laws;
 - 8.2.3. it shall be solely responsible for, shall bear full responsibility for and shall discharge all obligations pursuant to any obligations or requirements to decommission the Power Plant at the end of its life, pursuant to and in accordance with the applicable consents and Environmental Laws;
 - 8.2.4. if the Lessee fails to comply with any of its obligations under clause 6.2.2, it alone shall be liable for and bear the full responsibility of and consequences for such failure, and the Lessor shall not bear any liability, responsibility or consequence for or of such failure;
 - 8.2.5. the Lessor has no obligations of any nature to monitor compliance with or to enforce the terms and conditions of any of the consents issued in terms of any Law; and
 - 8.2.6. it indemnifies and shall hold harmless, upon demand, the Lessor against any claims, costs (including Claims for indirect losses), damages, losses, expenses and any other consequences of or arising out of the Lessee's failure to comply with clause 6.2.2 and arising out of any circumstance, event or situation detailed in clause 6.2.2.
- 8.3. The provisions of this clause 6 (Risk and liability) shall remain in full force and effect after the Termination Date.
- 8.4. The Lessor does not warrant that:
- 8.4.1. the Property will comply with the requirements of any authority for the purpose of any license required by the Lessee for the conduct of its business in and from the Property; or
 - 8.4.2. any license, permit, consent or other authority required for the conduct of the Lessee's business will be granted or renewed; or

8.4.3. the Property is fit for the purpose for which it is let or any purpose whatsoever.

9. Duration

9.1. The Term of this Lease shall commence running on the Commencement Date for a period of 25 (twenty-five) Years and shall terminate on the Termination Date unless it lapses or is otherwise validly terminated before then in accordance with the provisions of this Agreement.

9.1.1. The Lessee shall have an option to renew this Lease, on the same terms and conditions for a further period or multiple periods of up to of up to 25 (twenty five) Years, save for the rental which will be:

9.1.1.1. if there are Power Plant in existence and generating power on the Project Site as of the date that the renewal period commences, the renewal rental shall be that rental payable to the Lessor pursuant to clause 14 hereof, immediately prior to the commencement of the renewal period; or

9.1.1.2. if there are no Power Plant in existence and generating power on the Project Site as at the date that the renewal period commences, the renewal rental shall be agreed between the parties within 30 Business Days of the Lessee giving notice of exercise of the option to renew, or, if no agreement can be reached within 30 (thirty) Business Days, at a market related rental determined by a professional valuer with not less than 10 (ten) Years relevant experience (acting as an expert and not as an arbitrator) and whose appointment shall be agreed upon by the parties within three Business Days and failing such agreement, shall be appointed by the chairperson for the time being of the SA Institute of Valuers or its successor in function. The costs of the valuer shall be borne by the Lessee.

9.1.1.3. The aforesaid option shall be exercised by notice in writing by the Lessee to the Lessor to reach the Lessor not less than six months prior to the Termination Date of the initial period of this Lease.

9.1.1.4. The right of renewal in this clause 7.1 are subject to further ministerial consents as indicated in the Sub-division of Agricultural Land Act 70 of 1970 being obtained for such renewal period/s, and any other consent /

certificate that may be required to the extent required under applicable law.

9.1.1.5. The Lessee shall take such steps that are necessary to procure the registration of the notarial deed/s of lease. The Lessor will assist the Lessee and do all that is reasonably required in order to procure registration.

9.1.1.6. The Lessee may not, however, exercise the rights of renewal while in breach or default of any of the terms of the Lease.

9.1.1.7. Should the Lessee fail to commence and continue with the Construction Phase of the Power Plant within six [6] months of the conclusion of the Necessary Approvals Phase or such extended period agreed between the parties (both acting reasonably), the Lessor may cancel this Lease after expiry of such period, on written notice to the Lessee.

9.1.2. Should the Lessee fail to progress to development of the Power Plant/s as per the schedule to be provided by the Lessee as contemplated in clause 11.2. below (or such extended period as may be agreed in writing between the Lessor and the Lessee, both acting reasonably), provided that the Lessor will have given at least (2 months) written notice of its intention to do so beforehand, the Lessor may cancel this Lease after expiry of such period, on written notice to the Lessee.

9.1.3. The Lessor may only proceed to terminate this Lease as contemplated in clauses 7.1. above, subject to the rights of Leasehold Mortgagees and Financiers pursuant to clause 26.

10. Servitude Rights

10.1. Subject to the Lessee having obtained any consents referred to in clause 9.2(4) and 9.2(5), any servitude(s) that the Lessee may require in order to (i) secure and protect its rights of access to and egress, (ii) to establish and operate Electricity Infrastructure and (iii) to conduct or transmit electricity across or over the Property, consent is hereby granted to the Lessee by the Lessor for notarial deed/s of servitude to be registered.

10.2. Save to the extent that such rights are separately established in terms of separate, substantive notarial deeds pursuant to clause 8.1 above, the Lessor hereby also agrees to grant the Lessee the following rights in respect of the Property:

- 10.2.1. rights of way over all Existing Access Roads and New Access Roads to the extent that they are situated on any adjacent portion of the Property, which is situate outside the Property, including the right to upgrade any such road or right of way to the extent reasonably required by the Lessee, for purposes of having access to and from the Property;
- 10.2.2. Lessee shall have the right to extend the area of the Project Site or to create a new Power Plant on the Non Power Plant Area on the terms and conditions consistent with those contained in this Lease, and for periods which shall not exceed the Lease Period of this Agreement, but subject to the Lessor the right to veto any proposed use of a portion of his area;
- 10.2.3. such servitude or other rights as may be required by the Lessee for the establishment and operation of the Power Plant or a Network Operator in connection with the conveyance of electricity water, telecommunication and so forth, across the Property;
- 10.2.4. such servitude or other rights as may be required by the Lessee for any renewable resource e.g., Wind Turbine blades (if applicable) to over sail any portion of the Property; and
- 10.2.5. the restrictive covenants or conditions contained in clause 24.2 of this Agreement, on a basis acceptable to the Lessee.

11. Necessary Approvals Phase

- 11.1. During the Necessary Approvals Phase, this Lease shall be binding as between the Lessor and the Lessee and the Lessee shall be given the opportunity of securing the Necessary Approvals with the assistance (insofar as it may be required) of the Lessor in accordance with the provisions of this Agreement.
- 11.2. In so far as the Necessary Approvals have not been secured by the Lessee under the Option Phase, the Lessee shall obtain the approvals indicated below:
 - 11.2.1. to the extent required by Law), the framing of and approval of servitude diagrams in respect of those portions of the Property required by the Lessee for servitude purpose pursuant to clause 8;

- 11.2.2. to the extent required by the parties for the purposes of clause 9 written Ministerial Consent under the Sub-division of Agricultural Land Act, 70 of 1970 in relation to the framing and approval of any servitude diagram in respect of servitudes or prospective servitudes situated on the Property;
 - 11.2.3. to the extent required and if applicable, Civil Aviation Authority approval for construction of the Power Plant, any Water Use Licence that the Lessee may require under the provisions of the National Water Act, 36 of 1998 and any other consent or permit that the Lessee may require for the establishment and operation of the Power Plant;
 - 11.2.4. to the extent required and if applicable, approval of the application made by the Lessee (or its nominee) for an electricity generation and water use licence/s in accordance with applicable law in respect of the Power Plant to be established on the Property;
 - 11.2.5. approval of loan funding from Financier(s) for establishment of the Power Plant on the Power Plant Project Site, using this Lease as security;
 - 11.2.6. Ministerial Consent in terms of section 53 of the Mineral and Petroleum Resources Development Act (MPRDA);
 - 11.2.7. To the extent required and if applicable, application to a Competent Authority for a Green Attribute certificate/s and/or carbon credits to be issued in respect of the Power Plant to be established and;
 - 11.2.8. any other consents, licences, approvals, permits, concessions, acknowledgements, exemptions or other authorisations which are required in terms either in terms of law and such other authorisations as may required for the establishment of the Interconnection Facilities.
- 11.3. As soon as the Lessee has received all of the Necessary Approvals it shall notify the Lessor thereof in writing.

12. Power of Attorney and Undertaking to Assist

- 12.1. To facilitate the Lessee obtaining the Necessary Approvals and any other Approvals or contractual arrangements with third parties that may be required for the establishment of Power Plant/s, and if the aforementioned approvals or arrangements were not secured by the Lessee under the

Option Phase: the Lessor by its signature hereto hereby irrevocably appoints the Lessee (with power of substitution) as the Lessor's attorney and agent to, in the Lessor's name and on the Lessor's behalf -

- 12.1.1. to make application, on behalf of and in the name of the Lessee, to the Minister for the requisite consent pursuant to SALA to register any servitudes that may be required by the Lessee over the Property and to sign all documents reasonably required and do all things reasonably necessary to make the application to the Minister on behalf of the Lessor; and
- 12.1.2. instruct a registered surveyor where applicable to prepare servitude diagrams, and to have these diagrams approved by the Surveyor General;
- 12.1.3. to the extent required and if applicable, make application to the minister of Minerals and Energy for approval in terms of section 53 of the Mining and Petroleum Resources Development Act (MPRDA);
- 12.1.4. to the extent required and if applicable, Civil Aviation Authority approval for construction of the Power Plant, any Water Use License that the Lessee may require under the provisions of the National Water Act, 36 of 1998 and any other consent or permit that the Lessee may require for the establishment and operation of the Power Plant;
- 12.1.5. to the extent required and if applicable, approval of the application made by the Lessee (or its nominee) for an electricity generation license in accordance with applicable law in respect of the Power Plant to be established on the Project Site; and
- 12.1.6. any other consents, licenses, approvals, permits, concessions, acknowledgements, exemptions or other authorisations which are required in terms in terms of law.

- 12.2. All costs of and incidental to the application to the Minister for the consents as envisaged in clause 9 and 10 above, shall be borne and paid for by the Lessor.

13. Construction Phase

- 13.1. The Construction Phase of this Lease commences on the Construction Commencement Date and terminates on the Commissioning Date.
- 13.2. During the Construction Phase the Lessee shall procure construction and commissioning of the Power Plant on the Project Site. The Lessee shall develop and submit to the Lessor a detailed integrated written schedule indicating the plan and phases of the project development for the establishment of the Power Plant, within thirty (30) days following the Commencement Date. The Lessee shall notify the Lessor of the time period within which Construction of the Power Plant is required to be completed, provided it is within a period of 24 (twenty four months) from the Construction Commencement Date (or such extended period as may be agreed in writing between the Lessor and the Lessee, both acting reasonably) to the Operating Phase. Should Construction of the Power Plant not be complete within this time period, the Lessor shall be entitled to provide at least (2 months') written notice to the Lessee of its intention to cancel this Lease.

14. Operating Phase

The Operating Phase of this Lease commences on the Commissioning Date and ends on the Termination Date, as defined.

15. Lessee's Right to Terminate

- 15.1. Provided the consent of the Leasehold Mortgagees and Financier has first been obtained, subject to the provisions of clause 26.1, if applicable and:
 - 15.1.1. notwithstanding that this Lease shall have become valid and binding on the Commencement Date, and all Necessary Approvals shall have been obtained or the requirement for same waived by the commencement of the Construction Phase, the Lessee may at any time (and whether during the Necessary Approvals Phase, Construction Phase or Operating Phase) give not less than 3 months written notice of the termination of this Lease to the Lessor for any reason deemed sufficient by the Lessee (in its sole discretion);
 - 15.1.2. if the Lessee has terminated this Lease in accordance with the provisions of clause 15.1.1 it shall cease and terminate without prejudice to any rights or remedies which it may then have accrued to either Party against the other in respect of any antecedent breach of any of the terms or conditions contained in this Agreement, but subject to the limitation of liability set out in clause 16.

16. Rent

- 16.1. Necessary Approvals Phase: The rental payable by the Lessee to the Lessor in terms of this Lease during the Necessary Approvals Phase shall be equivalent to 1,5 % of the tendered value of the property excluding VAT, which shall be paid via EFT commencing on signature of this agreement and every Year thereafter until the Construction Commencement Date, provided that such rental shall be pro-rated for any portion of the Necessary Approvals Phase which is less than a Year.
- 16.2. Construction Phase: The rental payable during the Construction Phase shall be equivalent to 50% of the tendered value of the Property (Construction Phase Rental), excluding VAT which shall be paid via EFT annually in arrears one Year after the Construction Commencement Date and thereafter on every anniversary of the Construction Commencement Date until the Commissioning Date, provided that such rentals shall be pro-rated for any portion of the Construction Phase which is less than a Year.
- 16.3. Operating Phase: The rental payable during the Operating Phase shall be equivalent to 100% of the tendered value of the property, excluding VAT which shall be paid via EFT annually in arrears for the leased areas.
- 16.4. The rental in 12.1 to 12.3 shall escalate by the CPI announced in June every Year or 5% whichever if the greater, on the first anniversary of the Commencement Date and on every anniversary of that date thereafter.
- 16.5. The rental payable by the Lessee in terms of this Lease shall be paid by the Lessee upon receipt of a valid tax invoice from the Lessor, by electronic transfer in South African Rands free of bank charges, into a bank account nominated by the Lessor as stipulated in writing by the Lessor from time to time. The rental payable is as per the table indicated below, subject to the final extent of the Leased Property as depicted on the approved surveyor general diagram attached to this Agreement.

IPP	Parcels	Property description	Approx. extent of hectares (ha)- Final extent indicated on approved SG Diagrams (where applicable)	Price tendered /ha/ annum

17. Power Plant

- 17.1. The Power Plant shall at all times be regarded as movable, notwithstanding the manner and method by which they are affixed or shall otherwise appear to have acceded to the Property.
- 17.2. The Lessee shall at all times retain the exclusive right of use and enjoyment of the Power Plant, and the Lessor shall subject to clause 7 above, have no ownership or other interest in any Power Plant installed on the Project Site (which ownership shall vest in the Lessee). The Lessee shall have the right, at any time and in its sole discretion, to remove one or more Solar Panels /Wind Turbines/ Electricity generation infrastructure. Wind Power Plant or any other associated Infrastructure placed by it, from this site.
- 17.3. The Lessor hereby expressly waives any statutory or common law landlord's lien to which the Lessor might be entitled.
- 17.4. Upon the termination of this Lease for any reason or in the event that the Lessee removes any portion of the Solar /Wind Power/ Battery Storage/Green Hydrogen or other similar Renewable Resource Energy Facilities during the Term of this Lease, that portion shall be removed to a depth of 100 cm below the natural surrounding grade and the Lessee shall at its cost be responsible for rehabilitating the area concerned (including the surface of the land) to the specifications set out in the environmental management plan (EMP) that has been approved in conjunction with the Lessee's environmental authorisation, after such removal.

18. Limitation of liability

- 18.1. Each Party shall be held liable for direct damages that may arise or be claimable under this Agreement by the other Party. This will not include any indirect or consequential damages.
- 18.2. Each Party shall be held liable for any act or omission on its part, or on the part of its employees, contractors or agents, whether such act arises out of contract or delict.

19. Property Rates and Taxes

- 19.1. The Lessee shall not be liable for any taxes, assessments or other charges of any type levied or assessed against the Property. However, the Lessee shall pay, during the Lease Period, any increase in ad valorem real property rates and taxes attributable to the Lessee's installation of the Power Plant. To receive reimbursement under this clause, the Lessor must submit the rates bill to the Lessee, together with documentation showing the Lessee's liability for the increase in ad valorem rates and taxes, within 30 days after the Lessor receives the bill from the taxing

authority and at least 10 days prior to the due date. The parties agree to fully cooperate to obtain any available tax/rates refunds or tax/rates abatements.

- 19.2. The Lessee shall have the right to dispute the aforementioned taxes, assessments and other charges referred to above with the relevant taxing authority, for and on behalf of the Lessor.

20. Improvements

- 20.1. The Lessor shall not be responsible for any improvements on the Property.
- 20.2. The Lessee shall not make any structural alterations or improvements to the Property without the Lessors prior written consent, which consent shall not be unreasonably withheld, and then only on such terms and conditions as shall be determined by the Lessor, save for the erection of the Power Plant on the Project Site or as contemplated in this Agreement.
- 20.3. The Lessee shall be entitled, at its own cost to provide, security guards, install, erect and maintain such security systems as are reasonably required to enable the Lessee to safely use the Property for its intended use.
- 20.4. All improvements including buildings, installations, fences, irrigation works, structures, dams and roads, together with any integral machinery, and infrastructure which form part of the foregoing on the Property that exist on Execution Date shall be the property of the Lessor. All improvements done on the Property by the Lessee after the Execution Date including the Power Plant, New Access Roads and Electricity Infrastructure shall be the property of the Lessee.

21. Withholding of Rent

The Lessee shall not be entitled to withhold or delay payment of any monies due by it to the Lessor under this lease by reason of the total or partial destruction or defects in the Power Plant, building, infrastructure, or any part thereof being in a defective condition or in a state of disrepair or for any other reason whatsoever.

22. Costs in The Event of Legal Proceedings

In the event of the Lessor being obliged to instruct an attorney to take legal proceedings against the Lessee for breach of any term or condition this agreement and /or performance of any of the terms hereof, and should such proceedings be resolved in the Lessor's favour then the Lessee shall pay all legal costs incurred by the Lessor in connection therewith as between Attorney and own client, including such collection commission as such Attorney may in law be entitled to charge.

23. Possession and Occupation

The Landlord shall tender, and the Lessee shall accept possession and occupation of the Property on the Commencement Date.

24. Change in Control

- 24.1. Unless a cession, nomination, assignment or disposal is affected pursuant to clause 26.1.2, should the Lessee cede, nominate, assign or dispose of this Lease Agreement in any manner to another third party, or should the Lessee be, a limited liability company, close corporation, trading trust, or any other entity then in such event the Lessor shall be informed of the identities of the parties who Controls these entities, on commencement date, and on the date of such cession, nomination, assignment or dispossession of this Lease Agreement, where applicable.
- 24.2. No change in Control to such an entity or in the constitution of its shareholders shall be of effect vis-a-vis the Lessor unless the Lessor's written consent was first had and obtained in the time frame mentioned in clause 25.1, failing which the Lessee shall be deemed to have committed a material breach entitling the Lessor to cancel this Agreement and claim such relief as may be available to the Lessor either in terms of this Agreement or at Law.
- 24.3. The Lessee shall conduct an investigation and verification of the party to whom the Lessee wishes to dispose, cede, assign this Lease Agreement or sub-let the Property or any of its rights or obligations in terms of this Lease Agreement, to indicate that such a party is not a Politically Exposed Person, (PEP), Domestic Prominent Influential Person, (DPIP), a Foreign Prominent Public Official, (FPPO), or a sanctioned individual or organisation. This report shall be delivered and consented to or rejected by the Lessor, prior to such a dispossession, cession, assignment or sub-lease. The Lessee shall be deemed to have committed a material breach entitling the Lessor to cancel this Agreement and claim such relief as may be available to the Lessor either in terms of this Agreement or at Law, should this clause not be complied with.
- 24.4. No change in the holding of the direct Beneficial Interest in the Lessee shall be of effect unless the Lessor's written consent was first obtained, failing which the Lessee shall be deemed to have committed a material breach entitling the Lessor to cancel this Agreement and claim such relief as may be available to the Lessor either in terms of this Agreement or at Law. The Lessor shall provide its consent contemplated in this clause promptly and within 90 days of

receipt of the request for the consent if no adverse findings are established from an anti-bribery and corruption perspective against this Lessee.

25. Lessee's Representations, Warranties and Covenants

- 25.1. *Construction of Power Plant:* Prior to the Lessee's construction of the Power Plant, the Lessee shall consult with the Lessor for informational purposes only, but the Lessor shall not have the right of approval or veto in respect of any portion of the Power Plant. The Lessee will obtain the Lessor's approval as to disposition of excavated materials on the Non-Project Site (if applicable). All topsoil will be reserved and replaced on the Project Site unless otherwise agreed in advance by the parties. The Lessor shall not unreasonably withhold or delay any required approvals.
- 25.2. *Insurance and Indemnity:* The Lessee shall maintain liability insurance insuring the Lessee against loss caused by the Lessee's use of the Project Site under this Lease, in an amount not less than R10 million of combined single-limit liability coverage and shall provide certificates of this insurance coverage to the Lessor upon the Lessor's written request.
- 25.3. The Lessee shall indemnify the Lessor against liability for injuries and claims for direct physical damage to the extent caused by the Lessee's exercise of rights granted in this Lease.
- 25.4. This indemnity does not extend to, and the Lessor expressly waives and releases any claims for:
- 25.4.1. property damage or personal injuries attributable to risks of dangers reasonably unknown to the Lessee associated with electrical generating facilities or contributed to by a breach of this Agreement by the Lessor; or
 - 25.4.2. claims of nuisance based on the construction, operation, maintenance, or removal of the Power Plant.
- 25.5. *Requirements of applicable law and Governmental Agencies:* The Lessee shall comply in all material respects with valid laws applicable to the Power Plant, but shall have the right, in its sole discretion and at its sole expense, in its name or the Lessor's name, to contest the validity or applicability to the Project Site or the Power Plant of any law, ordinance, order, rule or regulation of any governmental agency or entity. The Lessee shall control any such contest and the Lessor shall cooperate with the Lessee in every reasonable way in such contest, at no out-of-pocket expense to Lessor.
- 25.6. *Contractor's Liens:* The Lessee shall not permit any contractor's or other liens, other than those in favour of the Leasehold Mortgagee and/or Financier arising out of the Lessee's use (or use by

the Lessee's contractors) of the Project Site pursuant to this Lease and shall wherever applicable obtain a suitable written waiver of lien from the contractor concerned.

- 25.7. *Hazardous Materials*: The Lessee shall indemnify the Lessor against the Lessee's material violation on the Project Site of any applicable law or regulation relating to any substance, material or waste classified as hazardous or toxic, or which is regulated as waste.

26. Lessor's Representations, Warranties and Covenants

- 26.1. The Lessor hereby represents warrants and covenants as follows:

- 26.1.1. *Lessor's Authority*: The Lessor is the sole owner of the Property and has the unrestricted right and authority to sign this Lease and to grant the Lessee the rights granted in this Lease. When executed by the Lessor and Lessee, this Lease constitutes a valid and binding agreement enforceable against the Lessor in accordance with its terms.
- 26.1.2. *Absence of Land Claims*: The Lessor is not aware of any land claim under the Restitution of Land Rights Act 22 of 1994 as amended (Restitution Act) pending in respect of the Property and no notice contemplated in Section 11(1) of the Restitution Act has been published in the Government Gazette in respect of the Property.
- 26.1.3. *No Interference*: The Lessor agrees that the Lessee shall have the exclusive right to generate electricity on the Power Plant Project Site. The Lessor's activities and any grant of rights the Lessor makes to any third party, whether located on the Property or elsewhere, shall not, now or in the future, interfere in any way with the Lessee's use of the Property or the rights granted under this Lease. The Lessor shall not interfere with the power generation activities on the Project Site by engaging in any activity on the Project Site or elsewhere that might cause a decrease in the output or efficiency of the Power Plant. The Lessor reserves the right to erect buildings for ordinary agricultural use (which includes human habitation by the Lessor and its employees) on the Non-Power Plant Areas, except that the Lessor must consult with and obtain the Lessee's prior written approval as to the location, dimensions and terms of utilisation of all structures.
- 26.1.4. *Documentation*: The Lessor shall provide the Lessee with a copy of the title deeds of the Property should the Lessee require them.

26.1.5. *Requirements of Governmental Agencies:* The Lessor shall assist and fully cooperate with the Lessee, at no out-of-pocket expense to the Lessor, in applying for (including signing in the Lessor's name, if necessary), complying with or obtaining any land use permits and approvals, building permits, environmental impact assessment or any other approvals required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of the Power Plant.

26.1.6. *Hazardous Materials:* The Lessor hereby represents and warrants to the Lessee that, to the best of the Lessor's knowledge:

26.1.6.1. there are no abandoned wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks located on the Property;

26.1.6.2. the Property does not contain levels of petroleum or hazardous substances which require remediation; and

26.1.6.3. the Property is not subject to any judicial or administrative action, investigation or order under any applicable environmental laws or regulations.

26.1.7. The Lessor warrants that it has done nothing to contaminate the Property with hazardous substances or wastes. The Lessor shall indemnify, defend, protect and hold the Lessee harmless from and against all damages, losses, costs, expenses (including reasonable attorneys' fees), liabilities, injuries and claims resulting from violation of any applicable environmental laws, except those violations resulting from the Lessee's activities on the Property.

26.2. *Negative Covenants:*

26.2.1. The Lessor shall not grant, convey, assign or provide any servitude, license, permit, lease or other right for access across the Property, for generation or transmission of power on or across the Property to any third party in connection with the construction or operation of electrical generating or transmission facilities unless it gets written permission to do so from the Lessee, which consent will not be unreasonably withheld. The foregoing shall not be interpreted so as to prevent the Lessor from granting any servitude or other rights that the Lessee may require

the Lessor to make available to the Network Operator or any third party as contemplated in clause 8.

26.2.2. Should the Lessor at any stage during the subsistence of this Lease obtain a bona fide offer from a third party to purchase the Property or a portion thereof, over which this Lease is registered the Lessor shall not be entitled to sell the Property to such third party until such time it has offered the Property to the Lessee for sale at a purchase price equivalent to the purchase price offered by the third party referred to, and on terms no more onerous than those at which the sale to the third party is contemplated.

26.2.3. Any such offer received from a third party shall be conveyed to the Lessee in writing and left open for a period of 60 days for the Lessee to accept. Should the Lessee fail to accept the offer within the said 60 day period in writing, the right of first refusal contained in this sub-clause shall be deemed to have lapsed and the Lessor shall be entitled to proceed with the sale of the Property to the said third party (provided that if the terms and conditions of the proposed sale to the third party should in the interim be amended so as to become more favourable to the third party, the Lessor shall be obliged to re-offer the Property to the Lessee mutatis mutandis in accordance with the above provisions, for a further period of 60 days. This procedure shall be repeated every time that the proposed terms and conditions of sale are amended so as to become more favourable to the third party.

26.3. The foregoing provisions shall not apply in respect of sales contemplated between the Lessor and any beneficiary of the Lessor (where the Lessor is a trust), or between the Lessor and any shareholder of the Lessor (where the Lessor is a company, as the case may be.

26.4. The Lessor shall not assign or encumber any of its rights under this Lease to a third party without the prior written consent of the Lessee (which shall not be unreasonably withheld or delayed) having been obtained.

27. Assignment and Subletting by Lessee; Servitudes and Licenses

27.1. Notwithstanding anything else herein contained, the Lessor acknowledges and agrees that the Lessee shall be entitled to cede, nominate, assign or dispose of its rights and obligations hereunder and to sub-let the Property or any portion thereof to any Company, Nominee or Special Purpose Vehicle for the purpose of further Projects, provided the prior consent of the Lessor has

been obtained. The Lessor undertakes to approve or deny this application for a consent by the Lessee within 90 (ninety) days of receipt of such an application.

- 27.2. The Lessee shall be entitled at any time to require that a sub-lease in terms of clause 25.1 be notarially executed and registered in the relevant deeds office at the cost of the Lessee.
- 27.3. The Lessee shall ensure that all Necessary Approvals, consents or permits required by Law are obtained prior to such cession, assignment, sub lease etc. These shall include SALA, NEMA and re-zoning consents where applicable.
- 27.4. The right of the Lessee to sub-let, cede, assign or dispose of this Lease Agreement, to create a new Power Plant/s on the Property, shall be on the terms and conditions consistent with those contained in this Agreement, and for periods which shall not exceed the Lease Period of this Agreement.
- 27.5. The Lessee shall be entitled to sub- let the portions of the Property not utilised by it, for commercial farming purposes, and for a period not exceeding 5 (five) Years.
- 27.5.1. The Lessee shall be solely responsible for, and shall discharge all obligations pursuant to any obligations or requirements to sub- let the abovementioned areas, and to remove all sub lessees on termination of the sub lease in accordance with applicable Laws;
- 27.5.2. The Lessee shall also have the right to require the Lessor to grant servitudes, licenses or similar rights (however denominated but strictly limited to those required for the development and operation of the Power Plant as well as for facilitating the generation of and transmission of electricity on and to or from the Project Site over the Non Power Plant Area which are reasonably required for use of the Project Site as a Power Plant, to one or more persons or entities, provided that any consent required by law for doing so, has first been obtained.
- 27.6. Indemnity
- 27.6.1. The Lessee hereby indemnifies the Lessor against any harm, damages or claims sustained by the Lessor as a consequence of the aforementioned property being sub- let. This indemnity excludes all indirect consequences or losses sustained by the Lessor.

- 27.6.2. Any sub-lease entered into between the Lessee and the sub-lessee shall end on Termination of this Lease.

28. Leasehold Financing

28.1. Mortgage by Lessee:

28.1.1. The Lessee may, from time to time, mortgage this Lease for purposes of financing this Project, and to the extent permitted by law, hypothecate, mortgage, or pledge the Power Plant/s.

28.1.2. The Lessee may cede, mortgage or hypothecate all of the Lessee's rights under this Lease, for financing of this Project, to the Financing Parties (or their nominees or assigns).

28.2. The Lessee may cede and delegate or transfer all of its rights and obligations under this Lease to a substitute lessee, as provided for in the Direct Agreement.

28.3. In the event of any conflict between the provisions contained in this Lease and the provisions contained in the Direct Agreement, the provisions of the Direct Agreement will prevail insofar as the Direct Agreement is still in force and has not lapsed or been cancelled by the parties thereto.

28.3.1. The Lessor hereby agrees that –

28.3.1.1. the Lessee may permit as contemplated in the Direct Agreement, an authorised representative to assume, jointly and severally with the Lessee, all of the Lessee's rights and obligations under this Lease in accordance with the Direct Agreement.

28.3.1.2. the Lessor shall not Dispose or agree to Dispose of all or any of the Lessor's right, title and interest in and to the Property or any part of it except upon the condition that the assignee or transferee enter into a Direct Agreement, if required to do so by the Lessee.

29. Default and/or Insolvency

29.1. In the event that –

- 29.1.1. the right, title and interest of the Lessee in and to this Lease is sold in execution of the judgment of a court, whether at the instance of the Leasehold Mortgagee and Financier or any other party, the Lessor hereby, to the extent applicable, consents to the cession and assignment of the Lessee's right, title and interest in and to this Lease to the purchaser at such sale; or
- 29.1.2. the Lessee is placed under liquidation, the Lessor hereby, to the extent applicable, consents to the cession and assignment of the Lessee's right, title, and interest in and to this Lease to any party nominated for this purpose by the liquidator.

30. General

- 30.1. The foregoing provisions of 26 and 27 are stipulated as between the Lessor and the Lessee as *stipulatio alterii* for the benefit of any third party who becomes a Leasehold Mortgagee and Financier in relation to this Lease, and who may in writing accept the benefit of such stipulations, at any stage.

31. Lessor's development and/or lease of adjacent property

- 31.1. It is recorded that the Lessor intends to develop and/or lease properties adjacent to the Property for the purposes of constructing and operating additional electricity generation facilities or other power plants. (Additional Projects).
- 31.2. Should such Additional Projects be undertaken, the Lessee undertakes to co-operate with the Lessor or such other developer, as the case may be, by providing reasonable access to the Property as and when required. The Lessee undertakes further to not frustrate the development of any such Additional Projects.
- 31.3. The Lessor and/or other developer, as the case may be, shall not undertake any activity that is deemed to be an activity that unreasonably interferes with or has the potential to unreasonably interfere with the Lessee's permitted use.
- 31.4. The Lessor shall exercise its rights in such a manner that they do not interfere with or compromise any activities of the Lessee permitted under, and/or the exercise of the rights of the Lessee in terms of this Agreement.

32. Default and Termination

- 32.1. Remedies Upon Lessee's Default:

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- 32.1.1. The Lessee shall be in default under this Lease if:
- 32.1.1.1. the Lessee shall have failed to perform any of the Lessee's covenants under this Lease (other than the payment of rent or other charges) and such failure shall have continued for a period of 30 days after written notice from the Lessor (or if such failure is not reasonably capable of being cured within 30 days, if the Lessee shall not have commenced to cure the same within said 30-day period and/or shall not have diligently prosecuted the same to completion); or
- 32.1.1.2. The Lessee shall have failed to pay rent or other charges herein required to be paid by the Lessee and such failure shall have continued for a period of 15 days after written notice from the Lessor.
- 32.1.2. Subject to the Direct Agreement, if the Lessee is in default after the expiration of the cure period set forth above, then the Lessor shall be entitled, at its election, to terminate this Lease, re-enter the Project Site and take possession thereof subject, however subject to the rights of Leasehold Mortgagees and Financiers pursuant to clause 26.
- 32.1.3. Alternatively, for so long as the Lessor does not terminate the Lessee's right to possession of the Project Site keep this Lease in full force and effect and collect rent and other charges from the Lessee as and when due under this Lease, with the Lessor having the obligation to mitigate damages. If the Lessor shall elect (and be permitted) to terminate this Lease, then all rights and obligations of the parties shall terminate, except that the Lessor shall have the right to sue for and collect all rents and other amounts with respect to which the Lessee shall then be in default, and all damages to the Lessor by reason of such default, the Lessor having the obligation to mitigate damages, and the Lessee shall surrender the Project Site to the Lessor.
- 32.1.4. Upon the termination of this Lease, the Lessee shall as soon as reasonably practicable thereafter, remove all Power Plant from the Project Site in accordance with the requirements of clause 33. If the Lessee fails to remove the Power Plant within 24 months after termination of this Lease, then the Lessor may do so, in which case the Lessee shall reimburse the Lessor for the reasonable costs of removal (less salvage) incurred by the Lessor.

33. Remedies Upon Lessor's Default:

33.1. If the Lessor shall at any time be in default of any of its covenants under this Lease and such default shall continue for a period of 30 days after written notice to the Lessor (or if such default is not reasonably capable of being cured within 30 days, if the Lessor has not commenced to cure the same within said 30-day period and/or has not diligently prosecuted the same to completion), then the Lessee shall be entitled to exercise concurrently or successively any one or more of the following rights, in addition to all other remedies provided in this Lease or available at law or in equity:

33.1.1. to sue for the collection of any amounts for which the Lessor may be in default, or for the specific performance of any other covenant or agreement of the Lessor, without terminating this Lease; and/or

33.1.2. to terminate this Lease upon 60 (Sixty) days' written notice to the Lessor subject, however, to the rights of Leasehold Mortgagees pursuant to clause 26.

33.2. in either event, without waiving the Lessee's rights to damages for the Lessor's failure to perform its obligations hereunder.

34. Termination Insolvency

The insolvency of either the Lessor or the Lessee shall not terminate this Lease. However, the trustee of the Lessee's insolvent estate (or liquidator if the Lessee is a company) shall, subject to the rights of Leasehold Mortgagees pursuant to clause 26) above, have the option to terminate this Lease by notice in writing to the Lessor. If the trustee, alternatively, liquidator, does not within three months of his appointment as trustee/liquidator notify the Lessor that he desires to terminate the Lease on behalf of the insolvent Lessee, he shall be deemed to have elected to continue with the Lease.

35. Duty to Rehabilitate the Property

Upon the termination of this Lease, howsoever caused, the Lessee shall as soon as reasonably practicable thereafter, remove its infrastructure from the Project Site and rehabilitate the Property in accordance with its obligations under Environmental law.

36. Force Majeure

36.1. A Force Majeure Event must be any event or circumstance or combination of events or circumstances:

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- 36.1.1. which is beyond the reasonable control (direct or indirect) of the Affected Party;
 - 36.1.2. which was not foreseeable or, if foreseeable, could not have been prevented or avoided or overcome by the Affected Party;
 - 36.1.3. which materially and adversely affects the performance by the Affected Party of its obligations or the enjoyment by the Affected Party of its rights under this Agreement or renders performance so impractical as reasonably to be considered impossible in the circumstances; and
 - 36.1.4. is not the direct result of a breach by the Affected Party of this Agreement or any other Project Document to which it is a party.
- 36.2. Force Majeure Events shall not include, except to the extent that such event or circumstances occur directly as a result of a Force Majeure Event, any event caused by:
- 36.2.1. The:
 - 36.2.1.1. negligence or intentional action, errors or omissions;
 - 36.2.1.2. failure to comply with any Laws; or
 - 36.2.1.3. breach of or default under this Agreement by any Party, its Contractors, other subcontractors, vendors or suppliers of that Party and its Affiliates or agents or employees;
 - 36.2.1.4. the economic hardship of the Affected Party or changes in market conditions;
 - 36.2.1.5. normal wear and tear or inherent flaws in materials and equipment or breakdowns of equipment;
 - 36.2.1.6. inability to obtain or maintain adequate funding;
 - 36.2.1.7. the failure of the technology or equipment comprising and incorporated into the Power Plant to perform as anticipated, expected or guaranteed; or
 - 36.2.2. failure to make a payment of money in accordance with this Agreement, except to the extent all banks in South Africa are closed and all other means of payment are

unavailable or inaccessible, in each case, due to the occurrence of a Force Majeure Event.

36.3. Notification and obligation to remedy

36.3.1. In the event of the occurrence of a Force Majeure Event, the Affected Party shall:

- 36.3.1.1. as soon as reasonably practicable notify the other Party in writing of such Force Majeure Event;
- 36.3.1.2. give the other Party a second notice, describing the Force Majeure Event in reasonable detail and, to the extent that can be reasonably determined at the time of the second notice, provide a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the Affected Party will be unable to perform the obligations, and other relevant matters as soon as practicable, but in any event, not later than ten (10) Business Days after the initial notice of the occurrence of the Force Majeure Event is given by the Affected Party;
- 36.3.1.3. not be entitled to suspend performance under this Agreement for any greater scope or longer duration than is required by the Force Majeure Event;
- 36.3.1.4. use all reasonable endeavours to remedy its inability to perform and to resume full performance hereunder as soon as practicable;
- 36.3.1.5. keep such other Party apprised of such efforts on a continuous basis;
- 36.3.1.6. provide written notice of the cessation of the Force Majeure Event as soon as practicable; and
- 36.3.1.7. thereafter, resume performance hereunder.

Notwithstanding the occurrence of a Force Majeure Event, the Parties shall perform their obligations under this Agreement to the extent the performance of such obligations is not impeded by the Force Majeure Event.

36.4. Consequences of Force Majeure Event

Subject to delivery of notice as required by Clause 34, neither Party shall be responsible or liable for, or deemed in breach hereof because of, any failure or delay in complying with its obligations under this Agreement which it cannot perform due solely to one or more Force Majeure Events or its or their effects or by any combination thereof, and the periods allowed for the performance by the Parties of such obligation(s) shall be extended on a day-for-day basis for so long as one or more Force Majeure Events continue(s) to affect materially and adversely the performance of such Party of such obligation(s) under or pursuant to this Agreement.

36.5. Notwithstanding Clause 34.4:

36.5.1. no relief shall be granted to the Affected Party pursuant to this Clause 34 to the extent that such failure or delay would have nevertheless been experienced by the Affected Party had such Force Majeure Event not occurred; and

36.5.2. either Party may terminate this Agreement upon thirty (30) days' written notice if a Force Majeure Event:

36.5.2.1. results in the Plant not achieving the Commercial Operation Date within three hundred and sixty five (365) days after the Required Commercial Operation Date; or

36.5.2.2. prevents either Party from performing its obligations under this Agreement for a period of three hundred and sixty five (365) consecutive days.

In such event the provisions of Clause 34 shall apply.

37. Miscellaneous

37.1. *Confidentiality:* The Lessor shall maintain in the strictest confidence, for the sole benefit of the Lessee, all information pertaining to the terms and conditions of this Lease, including, without limitation, the financial terms of, and payments under, this Lease, the Lessee's site design and product design, methods of operation, methods of construction, power production or availability of the Power Plant, and the like, whether disclosed by the Lessee or discovered by the Lessor, unless such information is in the public domain by reason of prior publication. The Lessor shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others.

- 37.2. *Successors and Assigns*: This Lease shall burden the Property and shall run with the land. This Lease shall inure to the benefit of and be binding upon the Lessor and the Lessee, and their successors in title and assigns.
- 37.3. *Domicilia and Notices*: All notices pursuant to this Lease shall be in writing and shall be sent only by the following methods: personal delivery; mail (first-class, certified, return-receipt requested, postage prepaid); or delivery by an overnight courier service which keeps records of deliveries (such as DHL, by way of example but not limitation). The parties choose as their *domicilia citandi et executandi* the addresses mentioned below, provided that such *domicilium* of either Party may be changed by written notice from such Party to the other Party with effect from the date of receipt or deemed receipt by the latter of such notice.

Lessor address:

Address: Maxwell Drive, Sunninghill, Sandton, 2157

E-mail:

Tel no.:

Lessee address:

Address:

Email address:

Tel no:

- 37.4. Any Party may change its address at any time by giving written notice of such change to the other Party in the manner provided herein. All notices shall be deemed given on the date of personal delivery or, if mailed by certified mail, on the delivery date or attempted delivery date shown on the return-receipt.
- 37.5. *Entire Agreement/Amendments*: This Lease and any Annexures thereto constitute the entire agreement between the Lessor and the Lessee respecting its subject matter, and replace and supersede any prior agreements. This Lease shall not be modified or amended except in writing signed by both parties or their lawful successors in interest.

37.6. *Legal Matters:* This Lease shall be governed by and interpreted in accordance with the law of South Africa. Save for where a Party seeks an interdict or interim relief from any division of the High Court of South Africa having jurisdiction, on an urgent basis, pending the outcome of arbitration, any dispute between the parties in regard to:

- 37.6.1. the interpretation of;
- 37.6.2. the effect of;
- 37.6.3. the parties' respective rights and obligations under;
- 37.6.4. a breach of;
- 37.6.5. any matter arising out of;

this Agreement shall be decided by arbitration in the manner set out in this clause.

37.7. The said arbitration shall be held subject to the provisions of this clause:

- 37.7.1. It will be held at Johannesburg;
- 37.7.2. otherwise in accordance with the provisions of the Arbitration Act, 1965 and the rules of the Arbitration Foundation of Southern Africa (AFSA);
- 37.7.3. it being the intention that if possible it shall be held and concluded within 21 (twenty one) Business Days after it has been demanded.

37.8. *The arbitrator shall be if the question in issue is:*

- 37.8.1. primarily an accounting matter, an independent accountant agreed upon between the parties;
- 37.8.2. primarily a legal matter, a practising senior advocate with no less than 10 (ten) Years' standing agreed upon between the parties;
- 37.8.3. any other matter an independent person agreed upon between the parties.

37.9. If the parties cannot agree upon a particular arbitrator under the provisions of clause 35.8 above within 7 (seven) Business Days after the arbitration has been demanded, the nomination in terms of clauses 35.8 as the case may be, shall be made by the Secretariat of AFSA within 7 (seven) days after the parties have so failed to agree, upon the application of any one of them.

37.10. The parties irrevocably agree that the decision in these arbitration proceedings:

37.10.1. shall (subject to the provisions of clause 35.11 be binding on them,

37.10.2. shall be carried into effect, and

37.10.3. may be made an order of any Court of competent jurisdiction.

37.11. The parties irrevocably agree that the submission of any dispute to arbitration pursuant to this clause 35.6 is subject to a Party's right to appeal the arbitration ruling by giving written notice to that effect to the other parties within 20 (twenty) Business Days of the relevant ruling of the arbitrator being handed down. The appeal shall be dealt with in accordance with the appeals procedure of AFSA or such other rules as may be agreed by the parties, before a panel of three arbitrators whose appointment shall be agreed on by the parties, or failing agreement within 5 (five) Business Days, shall be appointed by AFSA for this purpose. The parties irrevocably agree that on expiry of the 20 (twenty) Business Day period for noting of an appeal, if an appeal has not already been noted, the period for doing so, shall be deemed to have lapsed and the finding of the arbitrator shall become final and binding on them on the basis contemplated in clause 35.10.1.

37.12. The provisions of this clause 35.6 will continue to be binding on the parties notwithstanding any prior termination or lapsing of this Agreement.

37.13. *Partial Invalidity:* Should any provision of this Lease be held, in a final and unappealable decision by a court of competent jurisdiction or, if applicable, final arbitration award, to be invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding. Notwithstanding any other provision of this Lease, the parties agree that in no event shall the Term (or a renewal term, if applicable) be for longer periods than permitted by applicable law.

37.14. *Quiet Enjoyment:* The Lessor covenants and warrants that the Lessor is the true and lawful owner of the Property and all rights therein, subject only to those matters shown on the title deeds as detracting from such rights and has full right and power to lease the same. The Lessor agrees that the Lessee shall quietly and peaceably hold, possess and enjoy the Property for the Term of this Lease, and any extension thereof, without any hindrance or molestation. The Lessor shall defend title to the Property and Project Site and the use and occupancy of same against the claims of all persons, except those claiming by or through the Lessee. The Lessor shall not enter into or modify any documents, including any declarations, servitudes, restrictions or other similar instruments,

that are or may be recorded against the Property and Power Plant Project Site, or otherwise affect the Property and Power Plant Project Site, or the rights and/or obligations of the Lessee, without first obtaining the prior written consent of the Lessee.

- 37.15. *Brokerage Commissions*: Each of the Lessor and the Lessee warrants and represents to the other that there are no brokers' commissions, finders' fees or any other charges due to any broker, agent or other party in connection with the negotiation or execution of this Lease, or on behalf of either of them. Each Party shall indemnify, defend, protect and hold the other Party harmless from and against all damages, losses, costs, expenses (including reasonable attorneys' fees), liabilities and claims with respect to any claims made by any broker or finder based upon such broker's or finder's representation or alleged representation that the indemnifying Party gave a mandate to such broker or finder which entitled the broker or finder to a commission or fee under this Agreement.

38. Ownership of Improvements following Termination

- 38.1. On Termination of this Lease, any improvements made to the Property and/or Power Plant Project Site:
- 38.1.1. will, at the Lessee's sole cost, be removed and the Property will be rehabilitated and returned to the Lessor as grazing land; or
 - 38.1.2. in the event that the Lessee fails to remove (or cause to be removed) from the Leased Premises any such Improvement within a reasonable time period, the Lessor may effect such removal and thereafter claim the cost of such removal from the Lessee.
- 38.2. The Lessor shall afford the Lessee and option to renew this Lease for a further period of 3 (three) Years to decommission and rehabilitate the Property back to grazing.
- 38.3. Subject to any environmental approval being required and subject to any condition attaching to an existing environmental approval, if any, the Lessee shall on or before the termination of this Lease Agreement remove all equipment, improvements and capital structures erected by it, on the Property and/or the Power Plant Project Site, which equipment, improvements and structures shall at all times be regarded as movable for purposes of this Lease, notwithstanding the manner and method by which it is affixed or shall otherwise have acceded to the Property.

- 38.4. The Lessee may agree, on the request of the Lessor, to leave specific components of infrastructure including fencing and structures for the benefit of the Lessor. Such agreement shall be in writing and on the terms and conditions as negotiated by the parties at the time.
- 38.5. The Lessee shall, at the request of the Lessor, transfer such existing services as may have been installed or provided by the authorities to the Lessee to the Lessor as required and to the extent reasonably possible, subject to prior agreement on costs, which agreement shall be in writing and on terms and conditions as negotiated by the parties.
- 38.6. Notwithstanding the provisions of clause 36.4 above and subject to compliance with Environmental Law, the Lessee shall take such measures to rehabilitate the Property as the Lessor directs, in writing, for the purpose of restoring the Property to the condition in which it was at the Commencement Date including amongst others, decommissioning if applicable of the Project Site and Power Plant.

39. Severability of Terms

If any provision of this Lease Agreement is declared to be invalid, unenforceable, or illegal by any court, such invalidity, unenforceability, or illegality shall not prejudice or affect the remaining provisions of this Lease Agreement, which shall continue in full force and effect.

40. Independent Advice

Each of the Parties hereby respectively agrees and acknowledges that it has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so.

Executed at Johannesburg on the date, month and Year recorded in the preamble to this Agreement, in the presence of the subscribed witnesses and of me, the Notary.

Witnesses:

qq Lessor

Witnesses:

qq Lessee

Quod Attestor:

NOTARY PUBLIC

Annexure 1 : LEASE DIAGRAMS