

Notarial Deed of Lease

Between

Eskom Holdings SOC Limited

and

[Lessee]

Draft

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Annexure A

Annexure B

Protocol no.

Notarial Deed of Lease

Be it hereby made known

That on this the [•] day of [•] 2022 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 [•] 2022;

and

[Insert name of Appearer]

on behalf of:-

Lessee

Registration number [•]

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 July 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 July 2022;

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 registered owner of the following property/ies, namely:-

[property description to be provided]

(the **Property**)

B. The Lessor intends to let and the Lessee intends to hire from the Lessor the Property or portions of the Property for use as a [insert renewable resource] on the basis contemplated in this Agreement.

C. The consent of the Minister (**Ministerial Consent**) pursuant to the *Sub-division of Agricultural Land Act 70 of 1970* (**Sub-division Act**) has been obtained for the framing of Lease Diagrams (and where applicable, servitude diagrams), to accommodate those portions of the Property which the Lessee wishes to hire and the Lessor intends to let as described in D below;

D. The Project Site/s situated on the Property are described as follows:

- (i) Portion [] of the Farm Geduld 123, Registration Division I.R., Province of Gauteng, depicted by the letters [•] in extent [•] hectares as shown on Diagram SG No. [•] approved by the Surveyor General on [•], annexed hereto as Annexure "A";

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

Now therefore it is agreed as follows:

1 Parties

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

2 Definitions and *interpretation [Definitions to be supplemented and adapted to speak to the renewable energy resource terminology]*

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

- (1) **Agreement or Lease** means this Notarial Deed of Lease;
- (2) **Business Day** means any day of the week, excluding Sundays and gazetted public holidays in South Africa;
- (3) **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;
- (4) **Commencement Date** means the date of notarial execution of this Agreement by the Lessor and Lessee before the Notary;
- (5) **Commissioning Date** means the date on which the first [insert renewable resource] are commissioned on the Project Site;
- (6) **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);
- (7) **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;
- (8) **Construction Commencement Date** means the date on which construction of Power Plant is scheduled to commence in terms of a signed EPC Contract concluded between the Lessee and the relevant contractor;
- (9) **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);
- (10) **CPI** means the consumer price index for all Urban Areas (utilising Classification of Individual Consumption by Purpose) as published by Statistics South Africa or any replacement index developed by statistics South Africa, from time to time;
- (11) **Default Notice Period** means the cure period (calculated in days) which this Lease provides to a Party for curing a default in terms of clause 20;
- (12) **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 19.2(6)(a);

- (13) **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;
- (14) **Electric Cables and Wires** means:
- (a) the electric cables and wires;
 - (b) telecommunications, data transmission and other cables related to the Power Facilities;
 - (c) 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;
 - (d) all associated earthing systems,

laid or erected or to be laid or erected by the Lessee pursuant to this Lease on the Property or the Power Plant Project Site or Non Power Plant Areas, as the case may be, and where applicable, as depicted on any Lease Diagram, servitude diagram or other diagram pertaining to the Property, Power Plant Project Site or Non Power Plant Areas, 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);

- (15) **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);
- (16) **Electricity Infrastructure** means any asset of the Lessee as contemplated in Section 23 of the *Electricity Regulation Act 4 of 2006*, that is lawfully constructed, erected, used, placed, installed or affixed to the Property, Power Plant Project Site or Non Power Plant Project Site in connection with provision of the Power Facilities, and which, notwithstanding the fact that such asset may be of a fixed or permanent nature, remains the property of the Lessee, and does not accede to the Property, Power Plant Project Site or Non Power Plant Areas, as the case may be;
- (17) **EPC Contract** means a contract for the engineering, procurement and construction of the major electricity generating equipment required for the Power Plant;
- (18) **Existing Access Roads** means the roads presently existing on the Property or on adjoining properties 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;
- (19) **Financier** means any financier of the Power Plant and/or the development of the Power Plant as will more fully appear in the Financing Documents;
- (20) **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;

- (21) **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 (without limitation) beyond the reasonable control of a party.
- (22) **Gross Revenues** means the aggregate total revenue actually received by the Lessee, during the applicable period of time from sales of electrical energy sold from the Lessee's Power Plant under the power purchase agreement concluded by the Lessee with the purchaser of same. Gross Revenues shall be calculated without offset for any costs of producing, gathering, storing, transporting, or otherwise making electricity ready for sale;
- (23) **Improvements** means the buildings, installations, fences, irrigation works, structures, dams and roads, together with any integral machinery, which form part of the foregoing on the Property or Power Plant Project Site, as the case may be, but excluding any Power Facilities , New Access Roads and Electricity Infrastructure;
- (24) **Interconnection Facilities** means all the interconnection facilities and all the connections and physical tie-ins to the Lessees' Power Facilities to enable Lessor to receive the electrical output, the make-up water output and the nitrogen output of the Plant in accordance with the Power Purchase Agreement.
- (25) **Lease Diagram** means a cadastral diagram of a piece of the Property or a component of the Project Site which has been framed by a land surveyor and approved by the Surveyor General in accordance with applicable law;
- (26) **Lease Period** means the period for which this Lease subsists, including any period for which it is renewed as contemplated in clause 5;
- (27) **Lease Year** means the 12-month period commencing on the Commissioning Date and each successive 12-month period thereafter during the Term;
- (28) **Leasehold Mortgage** means any mortgage encumbering this Lease;
- (29) **Leasehold Mortgagee** means any holder of a Leasehold Mortgage (and its successors and permitted assigns);
- (30) **month** means a calendar month, and more specifically
 - (a) 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
 - (b) 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;
- (31) **Necessary Approvals** means the approvals contemplated in clause 7.2;

- (32) **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 7 hereof;
- (33) **New Access Roads** means those areas of the Property, Power Plant Project Site or Non Power Plant Project Site on which roads are to be constructed by the Lessee as well as the roads constructed thereon together with all ancillary works including, without limitation, all passing places, bridges, cattle grids, culverts, drains, ditches, walls, fences and the like associated therewith;
- (34) **Non Power Plant Areas** means those portions of the Property other than the Power Plant Areas, which are not subject to this Lease;
- (35) **Operating Phase** means the period contemplated in clause 10 of this Agreement when electricity generated by the Power Facilities is sold;
- (36) **Power Facilities means** all electric plant and related physical structures as contemplated in clause 1.48;
- (37) **Power Plant** means land and Power Facilities established thereon for purposes of generating electricity for sale to third parties. The Power Plant may be located over the whole or a portion of any number of properties depending on the requirements of the Lessee to fulfil its obligations under the relevant power purchase agreement pursuant to which the Lessee sells the electricity generated by it. The Power Plant will thus not necessarily be confined to only the Property;
- (38) **Project Site** means those portions of the Property for which Lease Diagrams (and where applicable, servitude diagrams) have been framed and approved, as listed in Preamble D and constituting:
- (a) the Fuel Cell Stack Sites;
 - (b) the Electrical Sub-station Yard;
 - (c) A hydrogen reduction Plant; ;
 - (d) Interconnection Site
 - (e) Nitrogen buffer, gas cleaning and make-up water site
 - (f) A metering site
 - (g) Control Office Site;
 - (h) servitude areas to accommodate Electricity Infrastructure such as cables and wires, to the extent required,
 - (i) servitude areas to accommodate fluid and fuel reticulation, to the extent required
- substantially as depicted or referenced on the Lessee's SDP;
- (39) **Property** means the entire property described in preamble A to this Agreement;
- (40) **SDP** means the Lessee's site development plan showing layout of proposed Power Facilities , 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 7.2(4) 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 the like. A copy is annexed hereto marked Annexure B;

- (41) **Term** means a period of [twenty (20) years]
 - (42) **Termination Date** means the last day of the Term, and if this Lease is renewed, means the last day of any renewal term;
 - (43) **year** means a period of 12 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 hires the Power Plant Project Site on the terms of this Agreement.

4 Use of the Project Site

- 4.1 The Lessor hereby leases the Project Site for the purpose of establishing thereon and conducting the business of a [*insert type of business e.g., fuel cell electricity generating power plant of eight megawatts (8 MW)*], and including, without limitation, the right to use the Project Site for:
 - (1) the construction of Power Plant Facilities and interconnection Facilities

- (2) the construction and operation of a facility for the conversion of chemical energy into electrical energy using the Power Plant Facilities.
- 4.2 In connection with such use, the Lessee shall have the right to construct and place on the Project Site and to operate: **Note: Delete those items that are not applicable**
- (1) one or more Solar Panels;
 - (2) On grid Inverter ,
 - (3) Electrical substations
 - (4) Interconnection Facilities
 - (5) Photovoltaic Switchgear
 - (6) Grid Operator
 - (7) Back up metering system
 - (8) foundations, concrete pads and footings;
 - (9) guy wires, support fixtures, anchors and fences;
 - (10) the associated Electric Cables and Wires and related surface and subsurface equipment;
 - (11) collection and transmission grid;
 - (12) power conditioning equipment;
 - (13) electrical transformers and energy storage facilities;
 - (14) electricity distribution and transmission towers and Electric Cables and Wires either above ground or underground;
 - (15) Electrical Sub-station Yards, substations or switching facilities for the purpose of connecting to the transmission grid;
 - (16) telecommunications equipment;
 - (17) facilities needed for operation and maintenance purposes and storage of related equipment;
 - (18) 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 Power Plant Power Plant.
- 4.3 The Lessee shall have the right of ingress to and egress from the Project Site via private roads (both Existing Access Roads and New Access Roads) providing access from public roads to the Project Site and whether or not such Existing Access Roads and New Access Roads are situated on the Property, Project Site or Non Power Plant Areas, over and across the Property and, if necessary, 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, whether located on the Property or elsewhere. To the extent that it is legally possible to do so and where required by the Lessee, the Lessor shall grant the Lessee such servitude rights as the Lessee may require in order to protect the foregoing rights of ingress to and egress from the Power Facilities and shall cooperate fully with and sign such documentation as is prepared by the Lessee for the implementation and registration of such servitude rights.

- 4.4 The Construction Areas are not intended to be formally included as part of the Power Plant Project Site. Notwithstanding the foregoing, the Lessor undertakes in favour of the Lessee that to the extent that the Construction Areas are required by the Lessee at any time for the purpose of conducting construction, maintenance or repairs to any part of the Power Facilities, the Construction Areas will be made available to the Lessee by the Lessor on a temporary basis for so long as required to complete such construction, maintenance or repairs – and at no expense to the Lessee. 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.
- 4.5 Electromagnetic interference
- (1) Subject to applicable law, the Lessee shall have the right with respect to the Leased 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 Power Plant project.
 - (2) In the event that there is any electromagnetic interference with the Lessor's equipment caused by the use of the Power Facilities, the Lessee and the Lessor undertake to liaise and cooperate with one another to eliminate the interference.

5 Duration

- 5.1 The Term of this Lease shall commence running on the Commencement Date for a period of **[20 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.
- 5.2 Renewal ***Note: To be considered and this clause may have to be redrafted pursuant to consultations with client***

The Lessee shall have an option to renew this Lease, on the same terms and conditions for a further period of up to **[•]** years, save for the rental which will be:

- (1) if there are Power Facilities 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 12.3 hereof, immediately prior to the commencement of the renewal period; or
- (2) if there are no Power Facilities 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 Business Days, at a market related rental determined by a professional valuer with not less than 10 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 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.

- 5.3 Should the Lessee fail to progress development of the Power Plant to the stage of the Construction Commencement Date within **[6 months]** of the Commencement Date (or such extended period as may be agreed in writing between the Lessor and the Lessee), 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.

6 Servitude Rights

- 6.1 Subject to the Lessee having obtained any consents referred to in clause 7.2(3) and 7.2(4), any servitude(s) that the Lessee may require over the Non Power Plant Areas in order to protect its rights of access to and egress from the Power Plant Project Site and the right to establish and operate Electricity Infrastructure on and over the Non Power Plant Areas and to conduct or transmit electricity across or over the Non Power Plant Areas, are hereby granted to the Lessee by the Lessor and shall simultaneously with the registration of this Lease be created in terms of formal notarial deed/s of servitude.
- 6.2 Save to the extent that such rights are separately established in terms of separate, substantive notarial deeds pursuant to clause 6.1 above, the Lessor hereby also agrees to grant the Lessee the following rights in respect of the Non-Power Plant Areas:
- (1) rights of way over all Existing Access Roads and New Access Roads to the extent that they are situated on any portion of the Non Power Plant Areas (including the right to upgrade any such road or right of way to the extent reasonably required by the Lessee);
 - (2) an option in favour of the Lessee to extend the area of the Project Site or to create new Power Plant Areas on any portion of the Non Power Plant Project Site on 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 having the right to veto any proposed use of portion of a Non Power Plant Area which the Lessor requires for its continued personal habitation or for the continuation of its farming operations which are in existence as at the Commencement Date;
 - (3) such servitude or other rights as may be required by the Lessee or the Network Operator in connection with the conveyance of electricity across the Non Power Plant Project Site to or from any portion of the Power Plant Areas;
 - (4) such servitude or other rights as may be required by the Lessee for [insert renewable resource e.g., Wind Turbine blades (if applicable) to oversail any portion of the Non-Power Plant Areas;
 - (5) the restrictive covenants or conditions contained in clauses 17.3 and 17.8(1) of this Agreement, on a basis acceptable to the Lessee.

7 Necessary Approvals Phase

- 7.1 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.
- 7.2 The approvals that the Lessee intends to obtain are the following:
- (1) To the extent required and if applicable, written approval of a rezoning application, split or spot zoning application, public service infrastructure zoning, consent use application or other form of land use authorisation that the Lessee may be advised to apply for to the relevant town planning authorities having jurisdiction over the Property for such land use rights as will permit Power Plant activities to be conducted thereon;
 - (2) To the extent required and if applicable, the granting of an environmental authorisation pursuant to Section 24 of the *National Environmental Management Act, 107 of 1998 (NEMA)* on terms which are acceptable to the Lessee for use of the Property, Power Plant Project Site or Non Power Plant Project Site Areas for Power Plant power generation;
 - (3) (to the extent required by law and by the parties), the framing of and approval of servitude diagrams in respect of those portions of the Non-Power Plant Project Site required by the Lessee for servitude purpose pursuant to clause 6;
 - (4) (to the extent required by the parties for the purposes of clause 7.2(3) 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 Non Power Plant Areas;
 - (5) 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 Power Plant approval;
 - (6) To the extent required and if applicable, approval of the application made by the Lessee (or its nominee) for an electricity generation licence in accordance with applicable law in respect of the Power Facilities to be established on the Power Plant Areas;
 - (7) approval of loan funding from Financier(s) for establishment of the Power Facilities on the Power Plant Areas, using this Lease as security.
- 7.3 As soon as the Lessee has received all of the Necessary Approvals it shall notify the Lessor thereof in writing.

8 Power of Attorney and Undertaking to Assist

- 8.1 So as 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), 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:

- (1) To the extent required and if applicable, conduct a public service infrastructure rezoning application or such appropriate rezoning in respect of the Power Plant Project Site with a view to securing the land use zoning contemplated in clause 7.2(1);
- (2) To the extent required and if applicable, make application in the name of the Lessor for environmental authorisation pursuant to Section 24 of the NEMA to conduct Power Plant Activities on the Power Plant Project Site and any other activities that may be requisite in the circumstances, including, without limitation, the conducting of an EIA in connection with securing of such environmental authorisation;
- (3) (where applicable) make application on behalf of the Lessor to the Surveyor General for the framing and approval of servitude diagrams in respect of the Non-Power Plant Project Site so as to enable effect to be given to the provisions of clause 6 hereof;
- (4) (where applicable) make application under the *Sub-division of Agricultural Land Act, 70 of 1970* on behalf of the Lessor for permission to seek approval of servitude diagrams referred to in clause (3) and clause 6 above;
- (5) make application for Civil Aviation Authority approval for construction of the Power Plant 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 Power Plant approval;

provided that all costs of doing so shall be for the account of the Lessee, and that the Lessee indemnifies the Lessor and keeps the Lessor indemnified against all such costs and against any claims, losses or demands which the Lessor may suffer as a result of the Lessee taking any action on behalf of the Lessor pursuant to the powers and authority granted in terms of the foregoing.

- 8.2 The Lessor undertakes to use all reasonable endeavours to cooperate with and assist the Lessee in obtaining all Necessary Approvals and any other consent or regulatory approval that may be required from any competent authority for the purpose of developing Power Plant Power Plant/s or Power Plant Activities on the Power Plant Project Site (and to procure that its employees, contractors and agents also do so), and the Lessor will sign all documentation furnished to it by the Lessee for these purposes, promptly when requested to do so. The Lessor further agrees to support the Lessee in any application made by the Lessee for purposes of development of the Power Plant Project Site for Power Plant Power Generation Activities and undertakes to refrain from directly or indirectly opposing any application made by the Lessee for such purpose.

9 Construction Phase

- 9.1 The Construction Phase of this Lease commences on the Construction Commencement Date and terminates on the Commissioning Date.
- 9.2 During this phase the Lessee shall procure construction of the Power Facilities.
- 9.3 The Lessee shall develop and submit to the Lessor written detailed designs, plans and specifications for the Power Plant and the Interconnection Facilities (Designs) no later than thirty (30) days following the Commencement Date; and
- 9.4 written operating procedures for the Plant (Operating Procedures) no later than thirty (30) days prior to the Commercial Operation Date.

10 Operating Phase

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

11 Lessee's Right to Terminate

- 11.1 Provided the consent of the Leasehold Mortgagees has first been obtained, subject to the provisions of clause 19 and –
- (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);
 - (2) as an alternative to terminating the entire Lease, the Lessee may terminate the Lease in relation to a specific Power Plant Power Plant Area or Power Plant Power Plant Areas, only, in the Lessee's discretion.
- 11.2 If the Lessee has terminated this Lease in accordance with the provisions of clause 11.1, or partially in accordance with clause 11.1(2) it shall cease and terminate without prejudice to any rights or remedies which 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.

12 Rent

- 12.1 *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 current market value of the property assessed by a registered valuator excluding VAT, which shall be paid in cash monthly in arrears 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. The rental aforementioned shall escalate by CPI on the first anniversary of the Commencement Date and on every anniversary of that date, until the Construction Commencement Date.
- 12.2 *Construction Phase:* The rental payable during the Construction Phase shall be equivalent to 50% of the current market value of the property assessed by a registered valuator (**Construction Phase Rental**), excluding VAT which shall be paid in cash 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. The rental aforementioned shall escalate by CPI on the first anniversary of the Construction Commencement Date and on every anniversary of that date, until the Commissioning Date.
- 12.3 *Operating Phase:* In respect of the Operating Phase, the Lessee shall pay to the Lessor an annual rental payment of [Insert amount] for the leased areas.

13 Power Facilities

- 13.1 The Power Facilities 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.
- 13.2 The Lessee shall at all times retain the exclusive right of use and enjoyment of the Power Facilities, and the Lessor shall have no ownership or other interest in any Power Facilities installed on the Power Plant Areas (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 or other Wind Power Facilities.
- 13.3 The Lessor hereby expressly waives any statutory or common law landlord's lien to which the Lessor might be entitled.
- 13.4 Upon the termination of this Lease for any reason or in the event that the Lessee removes any portion of the Solar /Wind Power 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.

14 Limitation of liability

- 14.1 The Lessor shall not be held liable for any indirect or consequential damages that may arise or be claimable under this Agreement by any party.
- 14.2 Where ordinary damages are payable by one party to another as a result of any act or omission on the part of such party, its employees, contractors or agents (and whether arising out of contract or delict), such damages shall in no case exceed the Rentals payable under this Agreement.

15 Property Rates and Taxes

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 Facilities . To receive reimbursement under this Section, 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.

16 Lessee's Representations, Warranties and Covenants

- 16.1 *Construction of Power Facilities* : Prior to the Lessee's construction of the Power Facilities , 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 Facilities . The Lessee will obtain the Lessor's approval as to disposition of excavated materials on the Non Power Plant Project Site (if applicable). All topsoil will be reserved and replaced on the Power Plant Project Site unless otherwise agreed in advance by the parties. The Lessor shall not unreasonably withhold or delay any required approvals.

- 16.2 *Insurance and Indemnity:* The Lessee shall maintain liability insurance insuring the Lessee against loss caused by the Lessee's use of the Power Plant 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. 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. This indemnity does not cover losses of rent, business opportunities, crop production, profits and the like that may result from the Lessor's loss of use of the Property. This indemnity also does not extend to, and the Lessor expressly waives and releases any claims for:
- (1) property damage or personal injuries attributable to risks of dangers reasonably unknown to the Lessee associated with electrical generating facilities; or
 - (2) claims of nuisance based on the construction, operation, maintenance or removal of the Power Facilities .
- 16.3 *Requirements of applicable law and Governmental Agencies:* The Lessee shall comply in all material respects with valid laws applicable to the Power Facilities , 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 Power Plant Project Site or the Power Facilities 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.
- 16.4 *Contractor's Liens:* The Lessee shall not permit any contractor's or other liens arising out of the Lessee's use (or use by the Lessee's contractors) of the Power Plant Project Site pursuant to this Lease to arise over the Power Plant Project Site and shall wherever applicable obtain a suitable written waiver of lien from the contractor concerned.
- 16.5 *Hazardous Materials:* The Lessee shall indemnify the Lessor against the Lessee's material violation on the Power Plant 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.

17 **Lessor's Representations, Warranties and Covenants**

The Lessor hereby represents warrants and covenants as follows:

- 17.1 *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.
- 17.2 *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 Power Plant Project Site, and no notice contemplated in Section 11(1) of the Restitution Act has been published in the Government Gazette in respect of the Power Plant Project Site.
- 17.3 *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 Power Plant Project Site or Non Power Plant Project Site or elsewhere, shall not, now or in the future, interfere in any way with the Lessee's use of the Power Plant Project Site or

the rights granted under this Lease. The Lessor shall not interfere with the power generation activities on the Power Plant Project Site by engaging in any activity on the Power Plant Project Site or elsewhere that might cause a decrease in the output or efficiency of the Power Facilities . 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 Power Plant Areas, except that the Lessor must consult with and obtain the Lessee's prior written approval as to the location and dimensions of all structures.

- 17.4 *Documentation:* The Lessor shall provide the Lessee with a copy of the title deeds of the Property should the Lessee require them.
- 17.5 *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 Facilities .
- 17.6 *Indemnity:* 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 arising out of or caused by the operations or activities of the Lessor or its invitees, employees, agents, contractors or other tenants.
- 17.7 *Hazardous Materials:* The Lessor hereby represents and warrants to the Lessee that, to the best of the Lessor's knowledge:
- (1) there are no abandoned wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks located on the Power Plant Areas;
 - (1) the Power Plant Project Site do not contain levels of petroleum or hazardous substances which require remediation; and
 - (2) the Power Plant Project Site is not subject to any judicial or administrative action, investigation or order under any applicable environmental laws or regulations.

The Lessor warrants that it has done nothing to contaminate the Power Plant Project Site 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 Power Plant Power Plant.

17.8 **Negative Covenants:**

- (1) The Lessor shall not grant, convey, assign or provide any servitude, license, permit, lease or other right for access across the Property, or 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. 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 6.2(3).
- (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 underlying property over which this Lease is registered (i.e. the Property), 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. 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) or between the Lessor and any children of the Lessor or trusts created for such children, as the case may be. 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), and 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.

- (3) 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.

18 Assignment and Subletting by Lessee; Servitudes and Licenses

- 18.1 The Lessee may not assign this Lease or sublet all or any part of the Power Plant Project Site or the Power Facilities without obtaining the consent of the Lessor (provided that any consents required by law for doing so have been obtained). In the event of an assignment of the Lessee's entire interest in this Lease, the Lessee shall be released of all further liability under this Lease.
- 18.2 The Lessee also shall 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 Power Plant Project Site) over the Non Power Plant Project Site which are reasonably required for use of the Power Plant Project Site as a Power Plant /s, to one or more persons or entities, provided that any consent required by law for doing so, has first been obtained and on the understanding that there shall be consultation between the Lessor and the Lessee in regard to the physical location of such servitudes, licences or similar rights in a manner which will be least detrimental to the continued habitation and farming activities of the Lessor whilst at the same time ensuring that there is no interference with the use of the Power Plant Project Site for Power Plant Activities.

19 Leasehold Financing

- 19.1 Mortgage by Lessee:
 - (1) The Lessee may, from time to time, mortgage this Lease and to the extent permitted by law, hypothecate, mortgage, pledge or alienate the Power Facilities .
 - (2) The Lessor hereby agrees that –
 - (a) the Leasehold Mortgagee shall, subject to the Finance Documents, at all times be entitled to take possession of and operate the Power Plant Project Site and/or the Power Facilities with the view to securing its interests under the Finance Documents;

- (b) the Lessor will, if requested by the Lessee, execute a Direct Agreement or other agreement in relation to the rights of the Lessee under this Lease, permitting any Financier or financiers of the Lessee to exercise against the Lessor and any rights the Lessee has under this Lease; and
- (c) the Lessor shall not Dispose or agree to Dispose of all or any of the Lessor's right, title and interest in and to any Power Plant Project Site 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.

19.2 Rights of Leasehold Mortgagees:

(1) Termination of Lease

- (a) This Lease shall not be cancelled or amended in any manner, whether in consequence of default by either the Lessor or the Lessee, or otherwise howsoever, other than by operation of law in circumstances which are beyond the control of the Lessor and the Lessee, without the prior written consent in writing of the Leasehold Mortgagee, which consent shall not be unreasonably withheld.
- (b) When giving notice to the Lessee of the Lessee's default under this Lease, the Lessor shall concurrently with such notice pertaining to the default also serve a copy of such notice upon the Leasehold Mortgagee.
- (c) Should the Lessee default in the performance of any of its obligations under this Lease and such breach not be remedied within the Default Notice Period, the Lessor shall be obliged to give the Leasehold Mortgagee a second written notice of such pending and continuing default and the Leasehold Mortgagee shall have the right, within 30 days after the expiration of the Default Notice Period ("Mortgagee Cure Period") to cure such default and the Lessor shall accept such performance as though the same had been done or performed by the Lessee.
- (d) The Lessor shall not be entitled to terminate this Lease or take any action to terminate this Lease in consequence of default by the Lessee unless such default shall have continued beyond the Default Notice Period and then only after the expiration of the Mortgagee Cure Period plus an additional 30 (thirty) days, during which period the Leasehold Mortgagee may elect –
 - (i) to commence and diligently proceed to cure such default, if such default can be cured by the Leasehold Mortgagee without obtaining possession of the Power Plant Power Plant; or
 - (ii) to commence and diligently proceed to obtain possession of the Power Plant Project Site (including possession by a trustee, liquidator or curator, as the case may be) in order to cure such default, in the case of a default which can be cured only after the Leasehold Mortgagee has obtained possession of the Power Plant Power Plant; or
 - (iii) to institute and diligently pursue foreclosure proceedings against the Lessee or otherwise proceed to acquire the Lessee's interest under this Lease. A Leasehold Mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if the default which prompted the service of such notice shall have been cured. A Leasehold Mortgagee shall have no obligation to cure any default in the payment of money which has occurred more than 60 days before its receipt of notice of such default, in order to preserve

its interest under its mortgage or to exercise any of the rights granted to it under this Lease. A Leasehold Mortgagee shall have no obligation to cure any default which is not reasonably susceptible of being cured by the Leasehold Mortgagee.

- (e) Subject to the provisions of clause 19(5)(a) below, should the Leasehold Mortgagee not have taken any step or steps as referred to in clause 19.2(1)(d), the Leasehold Mortgagee shall be deemed to have consented to the termination of this Lease as contemplated in clause 19.2(1)(a) above. However, should the Leasehold Mortgagee have taken any step or steps as referred to in clause 19.2(1)(d) above, the Lessor shall not be entitled to terminate this Lease or take any action to terminate this Lease.
- (f) As long as there is a Leasehold Mortgage, neither the bankruptcy nor the insolvency of the Lessee shall operate to terminate, nor permit the Lessor to terminate, this Lease.

(2) Option to Lease

- (a) In the event that this Lease is cancelled or terminates, whether in consequence of default by either Party or otherwise howsoever, the Leasehold Mortgagee shall, forthwith upon such cancellation or termination, acquire an option to lease the Power Plant Areas from the Lessor.
- (b) The option to lease the Power Plant Project Site contemplated in clause (a) above shall be open for exercise by the Leasehold Mortgagee for a period of 45 (forty five) business days from the date of receipt by the Leasehold Mortgagee of notice from the Lessor informing the Leasehold Mortgagee that a cancellation or termination of this Lease as contemplated in clause (a) above has occurred.
- (c) The Leasehold Mortgagee shall be entitled, at any time prior to the exercise of the option, to cede and assign its rights, title and interest in and to the option to any third party, or to nominate any third party to exercise the option in its place and stead.

(3) Exercise of the Option to Lease

- (a) An exercise of the option contemplated in clause (2)(a) above shall be effected by notice in writing to the Lessor.
- (b) In the event that the option is exercised, the resultant lease will be –
 - (i) for the total Term less the period for which this Lease has run up to the date of exercise of the option; and
 - (ii) upon the terms and conditions contained in this Lease, which shall apply thereto *mutatis mutandis*.

(4) Notarial Execution and Registration

- (a) The Leasehold Mortgagee or its nominee shall, as soon as is reasonably possible after the exercise of the option contemplated in clause (3) above, cause the resultant lease to be reduced to writing and notarially executed and registered against the title deed(s) of the Property. The Lessor undertakes to co-operate fully with the Leasehold Mortgagee in the provision of information and the signature of any documentation prepared by the Leasehold Mortgagee for this purpose.

- (b) The Leasehold Mortgagee shall, bear all reasonable costs of preparation and registration of the resultant lease.

(5) Default and/or Insolvency

- (a) The time available to a Leasehold Mortgagee to initiate foreclosure proceedings shall, to the extent applicable, be extended by the number of days of delay occasioned by judicial restriction against such initiation or occasioned by other circumstances beyond such Leasehold Mortgagee's control.
- (b) During the period that a Leasehold Mortgagee shall be in possession of the Power Plant Project Site and/or during the pendency of any foreclosure proceedings instituted by a Leasehold Mortgagee against the Lessee, the Leasehold Mortgagee shall pay or cause to be paid all rent and other charges payable by the Lessee which have accrued during said period and are unpaid.
- (c) Following the acquisition of the Lessee's leasehold estate by the Leasehold Mortgagee or its designee, either as a result of foreclosure or acceptance of an assignment in lieu of foreclosure, the Leasehold Mortgagee or party acquiring title to the Lessee's leasehold estate shall commence performing all of the Lessee's obligations under this Lease thereafter arising, whereon the Lessor's right to terminate this Lease based upon the default in question shall be deemed waived.
- (d) Any default not susceptible of being cured by the Leasehold Mortgagee or party acquiring title to the Lessee's leasehold estate shall be, and shall be deemed to have been, waived by the Lessor upon completion of the foreclosure proceedings or acquisition of the Lessee's interest in this Lease by any purchaser (who may, but need not be, the Leasehold Mortgagee) at the foreclosure sale, or who otherwise acquires the Lessee's interest from the Leasehold Mortgagee or by virtue of a Leasehold Mortgagee's exercise of its remedies. No such purchaser, or successor to such purchaser, shall be liable to perform the obligations imposed on the Lessee by this Lease incurred or accruing before such purchaser or successor has ownership of the leasehold estate or possession of the Power Plant Power Plant.
- (e) In the event that –
 - (i) 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 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
 - (ii) 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.

(6) General

- (a) If two or more Leasehold Mortgagees exercise their rights hereunder and there is a conflict which renders it impossible to comply with all such requests, then the Leasehold Mortgagee whose Leasehold Mortgage would be senior in priority if there were a foreclosure shall prevail. If any Leasehold Mortgagee pays any rental or other sums due hereunder which relate to

periods other than during its actual ownership of the Leasehold Estate, such Leasehold Mortgagee shall be subrogated to any and all rights which may be asserted against the Lessor with respect to such period of time.

- (b) Upon the reasonable request of any Leasehold Mortgagee (or Financier who contemplates becoming a Leasehold Mortgagee), the Lessor and the Lessee shall amend this Lease to include any provision reasonably requested by such Leasehold Mortgagee to implement the protective provisions contained in this Lease for the benefit of such Leasehold Mortgagee or to allow such Leasehold Mortgagee reasonable means to better protect or preserve its rights under its Leasehold Mortgage on the occurrence of a default under this Lease (for example, through the entering into of a Direct Agreement); provided, however, that the Lessor shall not be required to amend this Lease in any way which would affect the Term or rental hereunder or otherwise in any respect adversely affect any material rights of the Lessor under this Lease.
- (c) The foregoing provisions of clause 19.2 are stipulated as between the Lessor and the Lessee as *stipulatio alterii* for the benefit of any third party who becomes a Leasehold mortgagee in relation to this Lease, and who may in writing accept the benefit of such stipulations, at any stage.

20 Default and Termination

20.1 Remedies Upon Lessee's Default:

- (1) The Lessee shall be in default under this Lease if:
 - (a) 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
 - (b) 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.
- (2) If the Lessee shall be 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 Power Plant Project Site and take possession thereof (subject, however, to the rights of sublessees pursuant to clause 18 and Leasehold Mortgagees pursuant to clause 19) or, so long as the Lessor does not terminate the Lessee's right to possession of the Power Plant Power Plant, 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 Power Plant Project Site to the Lessor. Upon the termination of this Lease, the Lessee shall as soon as reasonably practicable thereafter, remove all Power Facilities from the Power Plant Project Site in accordance with the requirements of clause 13.4. If the Lessee fails to remove the Power Facilities 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.

20.2 Remedies Upon Lessor's Default:

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:

- (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
- (2) to terminate this Lease upon 30 days' written notice to the Lessor (subject, however, to the rights of Leasehold Mortgagees pursuant to clause 19).

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

21 Termination by death or insolvency

21.1 This Lease shall not terminate with the death of either the Lessor or the Lessee.

21.2 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 19 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.

22 Force Majeure

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

- (1) which is beyond the reasonable control (direct or indirect) of the Affected Party;
- (2) which was not foreseeable or, if foreseeable, could not have been prevented or avoided or overcome by the Affected Party;
- (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
- (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.

22.2 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:

- (1) (The:
 - (a) negligence or intentional action, errors or omissions;
 - (b) failure to comply with any Laws; or
 - (c) 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;
 - (2) the economic hardship of the Affected Party or changes in market conditions;
 - (3) normal wear and tear or inherent flaws in materials and equipment or breakdowns of equipment;
 - (4) inability to obtain or maintain adequate funding;
 - (5) the failure of the technology or equipment comprising and incorporated into the Plant or Purchaser Facility to perform as anticipated, expected or guaranteed; or
 - (6) 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.
- 22.3 A Force Majeure Event that affects a Contractor, vendor and/or supplier, will entitle Seller to claim that its performance has been affected by a Force Majeure Event, provided that Seller and any such Contractor, vendor and/or supplier has complied with its duty to mitigate in accordance with Clause 14.4(d).

22.4 Notification and obligation to remedy

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

- (1) as soon as reasonably practicable notify the other Party in writing of such Force Majeure Event;
- (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;
- (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;
- (4) use all reasonable endeavours to remedy its inability to perform and to resume full performance hereunder as soon as practicable;
- (5) keep such other Party apprised of such efforts on a continuous basis;
- (f) provide written notice of the cessation of the Force Majeure Event as soon as practicable; and
- (g) 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.

22.5 Consequences of Force Majeure Event

- (1) Subject to delivery of notice as required by Clause 14.4(a), 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.
- (2) Notwithstanding Clause 14.5(a):
 - (a) no relief shall be granted to the Affected Party pursuant to this Clause 14.5 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
 - (b) either Party may terminate this Agreement upon thirty (30) days' written notice if a Force Majeure Event:
 - (i) 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
 - (ii) 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 15.3(a) shall apply.

23 Miscellaneous

- 23.1 *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 Facilities, 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.
- 23.2 *Successors and Assigns:* This Lease shall burden the Power Plant Project Site 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.
- 23.3 *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 in clauses 23.3(1) and 23.3(2) 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.

(1) Lessor:

(2) Lessee:

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.

23.4 *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.

23.5 *Legal Matters*: This Lease shall be governed by and interpreted in accordance with the law of South Africa. Save for claims for recovery of any liquidated sum owing or payable pursuant to this Agreement, or 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:

- (1) the interpretation of;
- (2) the effect of;
- (3) the parties' respective rights and obligations under;
- (4) a breach of;
- (5) any matter arising out of;

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

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

- (1) at Johannesburg;
- (2) informally;
- (3) otherwise in accordance with the provisions of the *Arbitration Act, 1965* and the rules of the Arbitration Foundation of South Africa (**AFSA**);

it being the intention that if possible it shall be held and concluded within 21 Business Days after it has been demanded.

23.7 The arbitrator shall be if the question in issue is:

- (1) primarily an accounting matter an independent accountant agreed upon between the parties;
 - (2) primarily a legal matter, a practising senior advocate with no less than 10 years' standing agreed upon between the parties;
 - (3) any other matter an independent person agreed upon between the parties.
- 23.8 If the parties cannot agree upon a particular arbitrator under the provisions of clause 23.7 above within seven Business Days after the arbitration has been demanded, the nomination in terms of clauses 23.7(1) and 23.7(2), as the case may be, shall be made by the Secretariat of AFSA within seven days after the parties have so failed to agree, upon the application of any one of them.
- 23.9 The parties irrevocably agree that the decision in these arbitration proceedings:
- (3) shall (subject to the provisions of clause 23.10) be binding on them,
 - (4) shall be carried into effect,
- may be made an order of any Court of competent jurisdiction.
- 23.10 The parties irrevocably agree that the submission of any dispute to arbitration pursuant to this clause 22 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 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 five Business Days, shall be appointed by AFSA for this purpose. The parties irrevocably agree that on expiry of the 20 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 (3).
- 23.11 The provisions of this clause 22 will continue to be binding on the parties notwithstanding any prior termination or lapsing of this Agreement.
- 23.12 *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.
- 23.13 *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 Power Plant Project Site for the Term of this Lease, and any extension thereof, without any hindrance or molestation. The Lessor shall defend title to the Power Plant Project Site and the use and occupancy of the 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 Power Plant Project Site, or otherwise affect the Power Plant Project Site, or the rights and/or obligations of the Lessee, without first obtaining the prior written consent of the Lessee.

- 23.14 *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.

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 A

Lease Diagrams

Draft

Annexure B

Site Development Plan (SDP)

Draft