

# **OPTION TO LEASE AGREEMENT**

Between

**ESKOM HOLDINGS SOC LIMITED**

**(the "Grantor")**

And

**(the "Grantee")**

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## 1. Introduction

- 1.1. The Grantor is the registered owner of the Property.
- 1.2. The Grantee is a company involved in the development of Power Plant/s and has identified the Property as a potential site for a Power Plant project.
- 1.3. The Grantee wishes to develop a Power Plant for generation of electricity on the Property to sell the energy generated from such facility to third party purchaser/s.
- 1.4. The Grantee wishes to apply for Green Attribute certificates and/or carbon credits to be issued by Competent Authorities in respect of the Power Plant/s to be established.
- 1.5. Accordingly, the Grantor wishes to grant to the Grantee the option to lease the Property subject to the terms and conditions of this Agreement.

## 2. Interpretation

- 2.1. In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –
  - 2.1.1. "**Agreement**" means this option agreement, including the Annexes;
  - 2.1.2. "**Annexe[s]**" means the annexure[s] attached to this Agreement;
  - 2.1.3. "**Applicable Law**" means any constitution, statute, ordinance, treaty, decree, proclamation, notice, by-law, regulation, delegated or subordinated legislation or other legislative measure, 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 the Republic of South Africa or any other relevant jurisdiction;
  - 2.1.4. "**Beneficial Interest**" means as per the definition contained the Companies Act 71 of 2008 or any amendments thereto.
  - 2.1.5. "**Business Day**" means any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa;

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- 2.1.6. **"Change in Control"** means any change whatsoever in Control of the Grantee only, whether effected directly or indirectly, including any change of Control in respect of a company listed on a stock exchange;
- 2.1.7. **"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;
- 2.1.8. **"Control"** means the power to direct or cause the direction of the management and policies of the Grantee, 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;
- 2.1.9. **"CPI"** means the consumer price index as published by Statistics South Africa (or its equivalent successor entity), which is referred to as "Headline CPI – All urban areas" in Statistical Release P0141 from time to time (or equivalent successor index);
- 2.1.10. **"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;
- 2.1.11. **"EIA"** means the environmental impact assessment or basic assessment that must be carried out by the Grantee in respect of the Power Plant to be located on the Property;
- 2.1.12. **"Encumber" or "Encumbrance"** means conclusion or registration of any encumbrance over the Property including any mortgage, pledge, lien, deed of cession, assignment, hypothecation or security interest, servitude, lease (other than as contemplated in this Agreement), restrictive condition or any other agreement or other prejudicial registrations of whatever nature;
- 2.1.13. **"Environmental Authorisation"** means each environmental authorisation pursuant the National Environmental Management Act, No 107 of 1998 (NEMA) together with a favourable record of decision having been issued in respect of any EIA which the relevant Competent Authority might require the Grantee to conduct pursuant

to its application for environmental authorization under NEMA for the applicable Power Facilities;

- 2.1.14. **"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;
- 2.1.15. **"Grantee"** means \_\_\_\_\_, Registration number \_\_\_\_\_, a private company incorporated in accordance with the laws of South Africa;
- 2.1.16. **"Grantor"** Eskom Holdings SOC Limited, Registration Number 2002/015527/30;
- 2.1.17. **"Green Attributes"** means any and all credits, benefits, emission 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;
- 2.1.18. **"Interconnection Facilities"** means all the interconnection facilities and all the connections and physical tie-ins to the Grantee's Power Plant to enable the network operator to receive the electrical output of the Power Plant.
- 2.1.19. **"Lease Agreement"** means the notarial deed of lease to be concluded between the Parties, upon the Option being exercised in the form annexed hereto as Annexure "A."
- 2.1.20. **"Necessary Approvals"** means approvals or contractual arrangements between the Grantee and third parties that may be required for the establishment of the Power Plant/s,
- 2.1.21. **"Option"** means the right granted to the Grantee during the Option Period to enter into a Lease Agreement with the Grantor in respect of the Property.
- 2.1.22. **"Option Period"** means a period of 3 (three) years commencing on the Signature Date of this Agreement, or any other date agreed to by the Parties in writing;

- 2.1.23. **"Parties"** means the parties to this Agreement, being the Grantor and the Grantee;
- 2.1.24. **"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;
- 2.1.25. **"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 may 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 Grantee, which electricity will be transmitted to these third parties via the Eskom Grid. It shall include interconnection facilities, physical structures and infrastructure related thereto;
- 2.1.26. **"Project Site"** A portion of the Property which the Grantee wishes to establish a Power Plant/s
- 2.1.27. **"Property"** means
- 2.1.27.1. \_\_\_\_\_;
- 2.1.27.2. \_\_\_\_\_;
- 2.1.27.3. \_\_\_\_\_;
- 2.1.28. **"Renewable Energy"** means energy from a renewable source for example solar, wind or chemical energy;
- 2.1.29. **"Registration"** means registration of the Notarial Deed against the title deeds to the Property in the applicable Deeds Office;

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- 2.1.30. **"SALA"** means the Subdivision of Agricultural Land Act, (Act No. 70 of 1970) as amended from time to time;
  - 2.1.31. **"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;
  - 2.1.32. **"Signature Date"** means, when this Agreement has been signed by the Grantor and Grantee (whether or not in counterpart), the latest of the dates on which this Agreement (or any counterpart) was signed by the Grantor and Grantee in this Agreement;
  - 2.1.33. **"Servitude Agreement"** means a Notarial Deed of Servitude (Access, water and Infrastructure) containing rights granted over the Property in favour of the operator of the Power Plant, for the purpose of access and of interconnecting the Power Plant to the electricity distribution network of the Network Operator (to the extent required),
  - 2.1.34. **"Termination Date"** means the date on which this Agreement terminates for whatever reason;
  - 2.1.35. **"VAT"** means value added tax levied in terms of the Value-Added Tax Act, No. 81 of 1991;
  - 2.2. clause headings and the heading of the Agreement are for convenience only and are not to be used in its interpretation;
  - 2.3. an expression which denotes -
    - 2.3.1. any gender includes the other genders;
    - 2.3.2. a natural person includes a juristic person and vice versa;
    - 2.3.3. the singular includes the plural and vice versa;
    - 2.3.4. a reference to Grantor or Grantee includes a reference to the Grantor or Grantee's successors in title and assigns allowed at law; and

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- 2.3.5. a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last mentioned clauses.
- 2.4. Any reference in this Agreement to –
- 2.4.1. "business hours" shall be construed as being the hours between 08h30 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time;
- 2.4.2. "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 2.4.3. "laws" means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgements, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any Governmental Body; and the common law, and "law" shall have a similar meaning; and
- 2.4.4. "person" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality.
- 2.5. The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 2.6. Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 2 or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.
- 2.7. Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 2.8. Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.



- 2.9. A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
- 2.10. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 2.11. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 2.12. The rule of construction that this Agreement shall be interpreted against the party responsible for the drafting of this Agreement, shall not apply.
- 2.13. No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a party to this Agreement.
- 2.14. The use of any expression in this Agreement covering a process available under South African law, such as winding-up, shall, if either of the parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.
- 2.15. In this Agreement the words "**clause**" or "**clauses**" and "**annexure**" or "**annexures**" refer to clauses of and annexures to this Agreement.

### 3. Option

- 3.1. The Grantor grants the Grantee an irrevocable and exclusive option to lease the Property.
- 3.2. This Option may be exercised by the Grantee in writing at any point during the Option Period in accordance with the provisions of clause 6 and 8 below, provided that the Grantee may only exercise the Option if -
  - 3.2.1. the EIA conducted by the Grantee in respect of the Power Plant on the Property has received a positive Environmental Authorisation from the Department of Agriculture, Land Reform and Rural Development;
  - 3.2.2. the Surveyor General Lease Diagrams having been approved in terms of the provisions of the Subdivision of Agricultural Land Act 70 of 1970 (SALA), which consent shall be secured by the Grantee at its cost;

- 3.2.3. The Grantee having received a public service infrastructure rezoning consent or such appropriate rezoning approval in respect of the Property with a view to securing the land use zoning for the purposes of establishing and operating a Power Plant; and
  - 3.2.4. cost estimate letter having been issued to the Grantee by the Grantor.
- 3.3. Promptly following the Signature Date and in any event within 90 days of the Signature Date, Eskom will conduct a due diligence investigation on the intended Grantee to determine if there are any adverse findings from an anti-bribery and corruption perspective against the Grantee, its direct shareholders and/or any holder of a direct Beneficial Interest in such Grantee .
- 3.4. If the Grantee has exercised its rights to cede and delegate this Option to a party as contemplated in clause 11, Eskom will conduct a due diligence investigation on the intended transferee to determine if there are any adverse findings from an anti-bribery and corruption perspective against such transferee, its direct shareholders and/or any holder of a direct Beneficial Interest in such transferee in accordance with the time periods stipulated in clause 11.
- 3.5. Notwithstanding that the Option Period lapses after expiry of 3 (three) years as contemplated in this Agreement, the Grantee undertakes to give notice of termination of the Option to the Grantor as soon as (and if) it becomes clear that the Grantee is not in a position to obtain the SALA or a Rezoning consent or an Environmental Authorization, or the cost estimation letter as indicated in clause 3.2.1 or 3.2.2; or 3.2.3, or 3.2.4 above, resulting in the Property not being viable for the purposes of establishing a Power Plant.

#### **4. Power of Attorney for Necessary Approvals**

- 4.1. To facilitate the Grantee 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 Grantor by its signature hereto hereby irrevocably appoints the Grantee (with power of substitution) as the Grantor's attorney and agent to, in the Grantor's name and on the Grantor's behalf -
  - 4.1.1. to make application, on behalf of and in the name of the Grantee , to the Minister for the requisite consent pursuant to SALA to register a long term lease over the Property and in respect of any servitudes that may be required by the Grantee 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 Grantor; and

- 4.1.2. instruct a registered surveyor to prepare diagrams of the Property (and where applicable, servitude diagrams) and to have those diagrams approved by the Surveyor General;
- 4.1.3. to the extent required and if applicable, conduct a public service infrastructure rezoning application or such appropriate rezoning in respect of the Property with a view to securing the land use zoning for purposes of establishing and operating a Power Plant on the Property;
- 4.1.4. to the extent required and if applicable, make application for Environmental Authorisation/s pursuant to Section 24 of the NEMA to conduct Power Plant activities on the Property 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; and
- 4.1.5. 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).
- 4.1.6. To the extent required and if applicable, Civil Aviation Authority approval for construction of the Power Plant, any Water Use License that the Grantee may require under the provisions of the National Water Act, 36 of 1998 and any other consent or permit that the Grantee may require for the establishment and operation of the Power Plant.
- 4.1.7. To the extent required and if applicable, approval of the application made by the Grantee (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;
- 4.1.8. To the extent required and if applicable, application to a Competent Authority for a Green Attribute certificate and/or carbon credits to be issued in respect of the Power Plant/s to be established and;
- 4.1.9. any other consents, licenses, approvals, permits, concessions, acknowledgements, exemptions or other authorisations which are required in terms of law.

- 4.2. All costs of and incidental to the application to the Minister for the consents as envisaged in clause 3 and 4 above, shall be borne and paid for by the Grantee.

## **5. Rights of the Grantee**

- 5.1. With effect from the Signature Date and for the duration of the Option Period, the Grantor hereby grants the Grantee, its agents, contractors, directors, employees, officials, and invitees the right during the Option Period to -

- 5.1.1. other than as specifically provided for in this Option and the Tripartite Agreement, the exclusive, unencumbered and unrestricted access rights to enter into and egress from the Property for the purpose of furthering its interests in developing, constructing, maintaining and operating the Power Plant on the Property and conducting the EIA;
- 5.1.2. submit planning and surveying applications to the relevant Competent Authority that have jurisdiction over the Property to change the zoning to industrial purposes or dual use or such other zoning that will permit the development of the Power Plant on the Property;
- 5.1.3. undertake general permitting and specific surveys in order to obtain all necessary Approvals and framing of diagrams and other measurements of the Property;
- 5.1.4. to apply for the consents required in terms of SALA;
- 5.1.5. conduct resource studies and bring onto the Property, erect and use all equipment required for this purpose;
- 5.1.6. design an appropriate linkage of the Power Plant to the national electricity grid which will include the installation of distribution or transmission lines and which may include the erection of an electricity substation and switching station, a metering facility, a control room, admin building and storage facility; and
- 5.1.7. bring onto the Property all and any equipment deemed necessary by the Grantee for the development of the Power Facilities, and to remove any such equipment from the Property.

## 6. Termination of Option

- 6.1. This Option will terminate upon the Option not being exercised within the Option Period of 3 (three) years, unless otherwise agreed between the Grantor and Grantee. Notwithstanding the above, the Grantee undertakes to give notice of termination of the Option to the Grantor as soon as (and if) it becomes clear that the Grantee is not in a position to obtain the SALA consent, Rezoning Approval or an Environmental Authorization or the Cost Estimate Letter as indicated in clause 3 above.

## 7. Consideration

- 7.1. The Option Fee payable by the Grantee to the Grantor in terms of this Agreement shall be equivalent to 1,5 % of the tendered value of the property excluding VAT, which shall be paid on signature of this agreement and every year thereafter.

IPP	Parcels	Property description	Extent (ha)	Price tendered /ha/ annum

## 8. Exercise of Option

- 8.1. Provided that the consents, as indicated in clause 3.2 above, have been obtained beforehand, the Grantee may exercise the Option at any time during the Option Period by notifying the Grantor in writing thereof of their intention to exercise the Option.
- 8.2. Upon the exercise of the Option, the Grantor and the Grantee shall enter into an Agreement of Lease and (to the extent required) Servitude Agreement /s which documents will be notari ally executed.
- 8.3. The Grantee shall be entitled to partially exercise the Option, so as to enter into the Agreement/s of Lease for each Property independently, whereupon the Option shall remain in

full force and effect in respect of the remaining Property in accordance with the provisions of this Agreement.

## **9. Grid Access**

The Grantee shall provide indicative capacities (megawatt's) for the different Power Plant/s to the Grantor within 30 days of signature of the Option Agreement.

## **10. Green Attributes and Carbon Emissions**

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

## **11. Execution of Notarial Deed of Lease and Servitude Agreement**

- 11.1. If the Option is exercised by the Grantee, the Grantor and a representative of the Grantee (or their duly authorized agents), shall within 14 days of being asked to do so sign powers of attorney authorizing a member of the staff of the Notary to execute the Notarial Deed of Lease and the Servitude Agreement/s (if required) before the Notary.
- 11.2. The Grantee shall procure that each Notarial Deed, once executed, is registered by the Notary against the title deeds to the Property in the applicable Deeds Office.
- 11.3. The Grantee shall be liable for the Notary's fees and disbursements for executing the Notarial Deed and procuring Registration.
- 11.4. The Grantor undertakes to:
  - 11.4.1. furnish all title deeds relating to the Property which may be required for the purposes of Registration, to the Notary; and
  - 11.4.2. render such assistance (including procuring the consent of any holders of mortgage bonds or other hypothecations over the Property) as may be reasonably required by the Notary to procure Registration.

## 12. Successors and Assigns

- 12.1. The Grantee may, subject to the prior written consent of the Grantor, which consent cannot to be unreasonably withheld, assign any or all of its rights and obligations under this Agreement to one or more of its direct or indirect wholly-owned subsidiaries for purposes of developing the individual projects. The Grantor undertakes to approve or deny this application for a consent by the Grantee within 90 (ninety) days of receipt of such an application.
- 12.2. This Option shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, and legal representatives.

## 13. Alienation of the Property

- 13.1. The Option is binding and enforceable against the Grantor, its successors in title, heirs, executors, administrators and assigns.
- 13.2. The Grantor shall not sell, mortgage, hypothecate or otherwise alienate or dispose of the whole or any portion of the Property to any person (**Third Party**), unless the Grantor shall have:
- 13.2.1. informed the Third Party in writing of the Grantee's rights in terms of this Agreement; and
- 13.2.2. delivered to the Grantee a written acknowledgement by the Third Party that he or she, in his or her capacity as owner of the Property (or any part thereof or any rights in respect of it, as the case may be), have so been informed and will be bound by the terms and conditions of this Agreement, the Notarial Deed of Lease and Servitude Agreements relating to any access or electricity transmission infrastructure, contemplated in this Agreement, once executed.
- 13.3. In the event of the Grantor negotiating with a third party or receiving an offer for the sale of the Property, or wishing to alienate the Property in any manner (the "**intended sale**"), prior to the acceptance of any offer –
- 13.3.1. it shall give the Grantee written notice of the intended sale or alienation
- 13.3.2. the notice contemplated in clause 13.3.1 shall be regarded as an offer by the Grantor to the Grantee to enter into the intended sale with the Grantor, which offer shall be open for acceptance by the Grantee for 30 (thirty) days after receipt of the offer by the Grantee;

- 13.3.3. in the event of the Grantee accepting the offer within the period set out in clause 13.3.2 (or as may have been extended as per agreement between the parties) the Property shall be sold to the Grantee on the terms and conditions contained in the offer.
- 13.3.4. in the event of the Grantee not accepting the offer within the period set out in clause 13.3.2 (or as may be extended as per agreement between the parties) the Grantor shall be entitled to enter into the intended sale with the third party, provided that the terms and conditions of such agreement shall not be more favourable to the third party than those contained in the notice contemplated in clause 13.3.1 (as amplified in terms of clause 13.3.2).

#### **14. Accession**

All equipment brought onto the Property by the Grantee is intended to remain on the Property only for the Option Period and shall not accede to the Property. Such equipment shall, notwithstanding that it may be fixed upon the land in a manner which might, had it not been for this clause, be regarded as a permanent fixture, at all times be regarded as movable. Ownership of such equipment shall at all times remain vested in the Grantee.

#### **15. Maintenance of the Property**

The Grantor shall be responsible for the maintenance of the Property, and the cost of maintenance of the Property, excluding maintenance of the Grantee's equipment, during the Option Period.

#### **16. Encumbrance**

- 16.1. The Grantor undertakes and agrees for the duration of the Option Period -
  - 16.1.1. not to Encumber or otherwise deal with the Property or Lease Area, as the case may be, without the prior written notification to the Grantee; and
  - 16.1.2. not to amend, alter or replace any existing servitude or Encumbrance in respect of the Property or Lease Area without the prior written notification to the Grantee.
- 16.2. If after the Signature Date, the Grantor receives any requirement, notice, requisition or order at the instance of any Competent Authority that is or may become prejudicial or a hindrance to the full exercise and enjoyment of the rights granted to the Grantee under this Agreement or the Lease Agreement, the Grantor shall provide the Grantee with copies of such notices within 30 (thirty) business days.



## 17. Representation and Warranties

- 17.1. As at Signature Date and throughout the Option Period each of Grantor and Grantee represents and warrants to the other that -
- 17.1.1. it is duly organised, validly existing and in good standing under Applicable Laws; and
  - 17.1.2. it has the capacity and authority to enter into this Agreement and to carry out and fulfil the obligations in terms of this Agreement and that the execution, delivery and performance of this Agreement by it has been duly authorised by all necessary corporate and regulatory action, and this Agreement constitutes valid, binding and enforceable obligations in accordance with its terms.
- 17.2. As at Signature Date and throughout the Option Period the Grantor represents and warrants to the Grantee that -
- 17.2.1. it is the beneficial and registered owner of the Property;
  - 17.2.2. the Property or any portion thereof is presently/ may be subject to a lease agreement between the Grantor and a third party (tenant/s), where the business of conducting farming is being undertaken by the tenant;
  - 17.2.3. the Property is not subject to any servitude, lease or restrictive condition, save as provided for in the conditions of title or in any endorsements against the title deeds; and the farming activities conducted by tenants as indicated in clause 16.2.2. above;
  - 17.2.4. to the extent any farming activities are being conducted on the Property by the Grantor or it's tenants during the Option Period, such rights shall be and remain restricted in accordance with the tripartite agreement and any such activities shall not interfere with nor delay the activities of the Grantee in any manner whatsoever;
  - 17.2.5. a tripartite agreement shall be concluded by such tenant, the Grantor and the Grantee to regulate the rights and obligations of the parties to utilize the property.
  - 17.2.6. no dispute exists and no legal proceedings have been instituted which relate to the Property or in terms of which the Property may be attached. The Grantor has no knowledge of any fact, matter or circumstance which may give rise to any such dispute or legal proceedings;

- 17.2.7. it has no knowledge of any fact or circumstance likely to unduly delay registration of the Lease Agreement against the title deed at the relevant deeds office;
- 17.2.8. no person will occupy or have the right to occupy the Property, the buildings thereon or any part thereof other than as contemplated in this Agreement;
- 17.2.9. no claim or potential claim will lie in respect of the Property in terms of NEMA or any other environmental contamination or damage;
- 17.2.10. the Property is not subject to any, mineral rights, mining rights, prospecting rights or prospecting applications in terms of the Minerals and Petroleum Resources Development Act 28 of 2002 or otherwise;
- 17.2.11. there are no Informal Settlements situate on the Property as envisaged in the Prevention of Illegal Eviction from an Unlawful Occupation of Land Act; and.
- 17.2.12. there are no existing land claims on the Property as envisaged in the Restitution of Land Rights Act 22 of 1994.

## **18. Liability of Grantee**

- 18.1. Each party shall be responsible for any loss, damage or injury caused during the period of this Option Agreement to the other Party, its tenants, servants, agents, customers or invitees who may suffer losses, whether such loss, damage or injury is caused through the act or omission of the responsible Party, its servants, agents or sub-contractors.
- 18.2. In the event that a tripartite agreement is concluded between the Grantor, the Grantee and the existing tenant, the liability of the Parties will be determined according to the terms of the Tripartite Agreement.

## **19. Confidentiality**

- 19.1. In the course of this Agreement, the Grantor and Grantee may disclose to one another certain confidential information. Each Party agrees that the disclosing party remains the owner of that information.
- 19.2. The party to whom any such information is disclosed must -

- 19.2.1. preserve the confidentiality of such information by using the same care it could reasonably be expected to use to protect similar information of its own;
  - 19.2.2. use the information only to meet its rights and obligations under this Agreement;
  - 19.2.3. obtain the disclosing party's prior written consent to disclose the information to a third party.
- 19.3. The parties shall maintain the confidentiality of each other's confidential information in exchange in terms of this Agreement. No such information or records may be disclosed without the consent of the party concerned – unless the then prevailing law allows or requires it. This confidentiality provision will remain in effect after this Agreement has ended.

## 20. Breach

- 20.1. If a party ("**the Defaulting Party**") breaches any provision of this Agreement and remains in breach for 30 (thirty) days after written notice from the other party ("**the Aggrieved Party**") requiring it to rectify such material breach, the Aggrieved Party shall be entitled, at its option:
- 20.1.1. to sue for immediate specific performance of any of the Defaulting Party's obligations under this Agreement, including payment of any amount falling due under this Agreement by the Defaulting Party; or
  - 20.1.2. only in the case of a breach which cannot be remedied by payment of a monetary amount, to cancel this Agreement, in which case written notice of the cancellation shall be given to the Defaulting Party, and the cancellation shall take effect on the giving of the notice.
- 20.2. The Aggrieved Party's remedies in terms of this clause 19 are without prejudice to any other remedies to which the Aggrieved Party may be entitled in law, including, without limitation, the right to claim damages.

## 21. Miscellaneous Matters

- 21.1. **Address for service of legal documents**
- 21.1.1. The Parties choose the following physical addresses at which documents in legal proceedings in connection with this Agreement may be served (i.e their *domicilia citandi et executandi*) -

21.1.1.1. in the case of the Grantor to -

address:

e-mail:

Tel no.

21.1.1.2. in the case of the Grantee:

address:

e-mail:

Tel no.

21.1.2. A party may change that party's address for this purpose to another physical address in the Republic of South Africa by notice in writing to the other party such change to be effective only on and with effect from the 7th Business Day after the giving of such notice.

21.1.3. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party shall be an adequate service of such written notice or communication to that party notwithstanding that it was not sent to or delivered or served at that party's chosen domicilium citandi et executandi.

## 21.2. Entire Contract

This Agreement contains all the provisions agreed on by the parties with regard to the subject matter of the Agreement and the parties waive the right to rely on any alleged provision not expressly contained in this Agreement.

## 21.3. No Stipulation for the benefit of a third person

Save as is expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third person (ie a stipulatio alteri) which, if accepted by the person, would bind any party in favour of that person.

## 21.4. No Representations

A party may not rely on any representation which allegedly induced that party to enter into this Agreement, unless the representation is recorded in this Agreement.

**21.5. Variation, Cancellation and Waiver**

No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties.

**21.6. Indulgences**

The grant of any indulgence, extension of time or relaxation of any provision by a party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

**21.7. Governing Law**

This Agreement is to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.

**21.8. Jurisdiction of South African courts**

The Parties consent to the non-exclusive jurisdiction of the High Court in Johannesburg (South Gauteng Local Division), for any proceedings arising out of or in connection with this agreement.

**21.9. Signature in counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

**21.10. Independent Advice**

Each of the parties hereby respectively agrees and acknowledges that:

- 21.10.1. 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; and
- 21.10.2. each provision of this Agreement (and each provision of the Annexes) is fair and reasonable in all the circumstances and is part of the overall intention of the parties in connection with this Agreement.

**21.11. Severability of Terms**

If any provision of this Option 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 Option Agreement, which shall continue in full force and effect.

**21.12. Good faith**

The parties shall at all times act in good faith towards each other and shall not bring any of the other parties into disrepute.

**21.13. Co-operation**

Each of the parties always undertakes to do all such things, perform all such acts and take all such steps, and to procure the doing of all such things, within its power and control, as may be open to it and necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.

**21.14. Costs**

The Grantee shall bear its own costs of and incidental to the negotiation and signature of this Agreement, and all costs of registering any servitude contemplated in this Agreement and of exercising of the Option including the notarial execution and registration of the Lease against the title deeds of the Property after the exercise of the Option.

**21.15. Resolution of Disputes**

Save for claims 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:

- 21.15.1. the interpretation of;
- 21.15.2. the effect of;
- 21.15.3. the parties' respective rights and obligations under;
- 21.15.4. a breach of;
- 21.15.5. any matter arising out of;

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

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

21.16.1. It will be held at Johannesburg;

21.16.2. otherwise in accordance with the provisions of the Arbitration Act, 1965 and the rules of the Arbitration Foundation of South Africa (AFSA);

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

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

21.17.1. primarily an accounting matter, an independent accountant agreed upon between the parties;

21.17.2. primarily a legal matter, a practising senior advocate with no less than 10 (ten) years' standing agreed upon between the parties;

21.17.3. any other matter an independent person agreed upon between the parties.

21.18. If the parties cannot agree upon a particular arbitrator under the provisions of clause 20.17 above within 7 (seven) Business Days after the arbitration has been demanded, the nomination in terms of clauses 20.17 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.

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

21.19.1. shall (subject to the provisions of clause 20.20) be binding on them,

21.19.2. shall be carried into effect, and

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

21.20. The parties irrevocably agree that the submission of any dispute to arbitration pursuant to this clause 20.15 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 20.19.1.

## **22. Change in Control of Grantee**

- 22.1. Unless a cession, nomination, assignment or disposal is affected pursuant to clause 11, should the Grantee cede, nominate, assign or dispose of this Option Agreement in any manner to another third party, or should the Grantee be, a limited liability company, close corporation, trading trust, or any other entity then in such event the Grantor 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 Option Agreement, where applicable.
- 22.2. No change in Control to such an entity or in the constitution of its shareholders shall be of effect vis-a-vis the Grantor unless the Grantor's written consent was first had and obtained, failing which the Grantee shall be deemed to have committed a material breach entitling the Grantor to cancel this Agreement and claim such relief as may be available to the Grantor either in terms of this Agreement or at Law.
- 22.3. The Grantee shall conduct an investigation and verification of the party to whom the Grantee wishes to dispose, cede, assign this Option Agreement or sub-let the Property or any of its rights or obligations in terms of this Option 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 Grantor, prior to such a dispossession, cession, assignment or sub-lease. The Grantee shall be deemed to have committed a material breach entitling the Grantor to cancel this Agreement and claim such relief as may be available to the Grantor either in terms of this Agreement or at Law, should this clause not be complied with.
- 22.4. No change in the holding of a direct Beneficial Interest in the Grantee shall be of effect unless the Grantor's written consent was first obtained, failing which the Grantee shall be deemed to have committed a material breach entitling the Grantor to cancel this Agreement and claim such relief as may be available to the Grantor either in terms of this Agreement or at Law. The Grantor shall provide its consent contemplated in this clause promptly and in any event within 90 (ninety) days of the application for such consent if no adverse findings are established from an anti-bribery and corruption perspective against this Grantee.



Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

For and on behalf of:  
**Eskom Holdings SOC Ltd**

\_\_\_\_\_  
Name:  
Capacity:  
who warrants that he / she is duly authorised thereto

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

For and on behalf of:

\_\_\_\_\_  
Name:  
Capacity:  
who warrants that he / she is duly authorised thereto

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## **Annexure A : Lease Agreement**

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**Annexure B : Diagrams**

**Annexure 1 : OPTION RESPONSE**

[DATE]

ESKOM

Dear

**NOTICE TO EXERCISE OPTION TO LEASE**

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I the undersigned:

duly authorized by

the directors of

elect to exercise the option to enter into a lease agreement with Eskom for the establishment and operation of a Power Plant over the property described as:

Kindly acknowledge receipt and acceptance of this notice.

Yours faithfully

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone no: \_\_\_\_\_

E-mail: \_\_\_\_\_