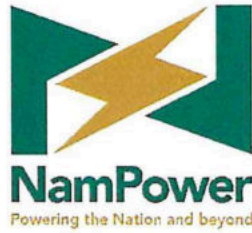


Confidential

Option to Lease: Portion 1 of Farm Sud Witputz No. 31:
Addendum Number 1



ADDENDUM NUMBER 1

TO

OPTION TO LEASE: PORTION 1 OF FARM SUD WITPUTZ NO. 31

BY AND BETWEEN

NAMIBIA POWER CORPORATION (PROPRIETARY) LIMITED

and

MR. EDIE SEBULON KOTZE

DATED

14 / 02 / 2023

**(Collectively hereinafter referred to as "the Parties" and singularly
hereinafter referred to as "the Party")**

KSHT


PREAMBLE:

This Addendum Number 1 to **OPTION TO LEASE: PORTION 1 OF FARM SUD WITPUTZ NO. 31** is made between:

- (1) **NAMIBIA POWER CORPORATION (PROPRIETARY) LIMITED**, a company incorporated in terms of the Namibian laws, with Company Reg. No. F/2051 (hereinafter referred to as "NamPower"), having its registered office at 15 Luther Street, Windhoek, Namibia, and herein represented by **Mr KS Haulofu** in his capacity as **Managing Director**, warranting to be duly authorised thereto.

Herein referred to as "Lessee"

And

- (2) **Mr. Edie Sebulon Kotze**, a major male and South African citizen, with identity number **470129 503 8086**, having his place of residence at **Erf 597, Kotze Street, Port Nolloth, South Africa, P.O. Box 505 Port Nolloth, South Africa**, and herein acting in his personal his capacity as the owner of the **Land**.

Herein referred to as "Lessor"

(together, the "**Parties**" and "**Party**" shall mean either of them).

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WHEREAS, the Parties executed an agreement in terms of which the Lessor would grant NamPower an exclusive and irrevocable option to lease the Site for the construction of a wind power project, in accordance with the terms as set out in the Agreement (the "Original Agreement");

WHEREAS, in terms of the Original Agreement, NamPower would exercise the option within twenty-four (24) months from date of signature of the Original Agreement;

WHEREAS, in terms of the Original Agreement NamPower had to exercise the option within twenty-four (24) months from date of signature of the Original Agreement;

WHEREAS, following development work conducted, NamPower has resolved to change the technology for the generation project from wind to solar PV, which change in technology requires the extension of the option to lease period;

NOW THEREFORE IN FURTHERANCE OF THE ABOVE THE PARTIES HERETO AGREE TO AMEND THE PROVISIONS OF THE ORIGINAL AGREEMENT AS FOLLOWS

1. AMENDMENTS TO THE AGREEMENT

The Parties agree to amend the following provisions of the Original Agreement:

PREAMBLE

Replace Clause 1 of the Preamble with the following new Clause 1:

- 1) The Lessor is the owner of land more specifically Portion 1 of Farm Sud Witputz No. 31, within which the Lessee has identified a portion as a conducive location for the construction of a **PV power plant and associated infrastructure (including battery energy storage) for power generation (herein referred to as "the Site")**.

Replace Clause 3 of the Preamble with the following new Clause 3:

- 3) The purpose for which the Site will be utilised during the lease period entails the developmental activities and construction activities to establish a PV power plant and associated infrastructure (including battery energy storage)

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for power generation of up to 100 MW_{ac} (herein referred to as "the Project"), which will consist of various infrastructure such as, PV modules, batteries, inverter stations and common amenities, more specifically a substation building, offices, internal roads, internal distribution lines, 66 kV transmission line, meteorological mast(s), workshop building and other amenities, as required for the operation of the PV power plant and associated infrastructure.

CLAUSE 1.2

Replace Clause 1.2 with the following new Clause 1.2:

1.2 The option to lease shall be binding upon the Parties for a period of 48 (forty-eight) months (hereinafter referred to as the "Option Period") from date of signature of this Addendum 1, during which period the option to lease may be exercised by NamPower. During the Option Period, the Lessor shall not lease or sell the Land on which the identified Site is located, to a third party.

CLAUSE 1.6.1

Update Clause 1.6.1 to read as follows:

1.6.1 Payment shall be made to the account nominated by the Lessor in the form of a lump sum upfront payment of N\$ 5,000,000.00, for the installation the PV power plant and associated infrastructure (including battery energy storage) of 100 MW_{ac}, for an initial term of 30 (thirty) years. The Lessee shall have the right to place the PV site of approximately 300Ha anywhere within Portion 1 of farm Sud Witputz no. 31 and which PV power plant and associated infrastructure (including battery energy storage) shall be fenced off.

2. General

- 2.1 This Addendum Number 1 shall become effective on the date on which the last Party to this Addendum signs this Addendum.
- 2.2 This Addendum Number 1 is governed by the laws of the Republic of Namibia.
- 2.3 This Addendum Number 1 constitutes the whole agreement entered into between the Parties hereto in relation to the subject matter hereof.
- 2.4 Save as expressly set forth herein, this Addendum Number 1 does not constitute an amendment to the Agreement and the remaining provisions of the Agreement remain of full force and effect.

Handwritten signatures and initials in black ink, including what appears to be 'KSH' and several stylized signatures.

- 2.5 This Addendum Number 1 may be executed in any number of counterparts by the Parties and once each Party has signed the counterpart, each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument.
- 2.6 Any capitalized terms that have not been defined in this Addendum Number 1 shall have the meaning ascribed to them in the Agreement.

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Handwritten signatures and initials, including 'KSH' and several stylized signatures.

IN WITNESS WHEREOF, the Parties hereto have caused this Addendum to be executed on the day, month and year indicated below.

On behalf of the **Lessor** by the signatory who warrants that he/she is duly authorised:

Signed: [Signature] Name: E. S. KOTZE

Designation: Land Owner

Witness: [Signature] Name: T. R. THEUNISSEN

Designation: Witness

This 3rd day of February 2023

Signed at: Veldrift, Western Cape, South Africa

On behalf of the **Lessee** by the signatory who warrants that he/she is duly authorised:

Signed: [Signature] Name: KAHENGE S. HAYLOFU

Designation: MANAGING DIRECTOR

Witness: [Signature] Name: ZOE NAMBATU

Designation: CHIEF LEGAL ADVISOR

This 14 day of FEBRUARY 2023

Signed at: WINDHOEK

[Signature]

APPROVED

S. Akubia
for SURVEYOR-GENERAL

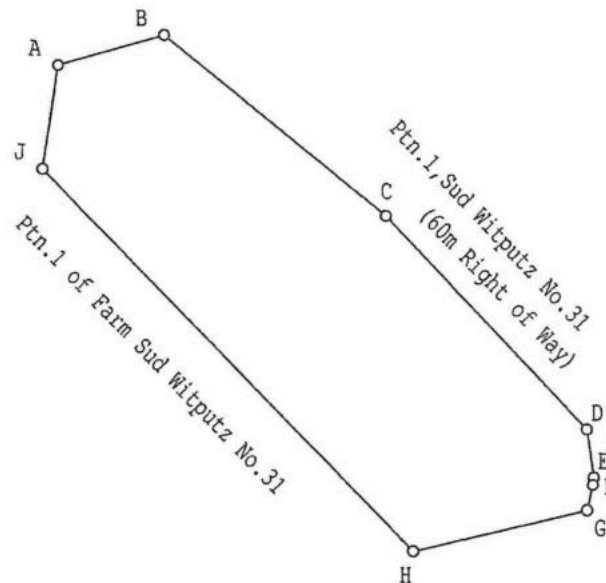
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2022-07-20

SIDES Metres		ANGLES OF DIRECTION		CO-ORDINATES Y System: Lo 22/17° X		Designation
		Constants:		± 0.00	± 0.00	
AB	1 543.72	254 16 17	A	+36 421.17	+623 157.26	RP10
BC	3 961.62	309 17 37	B	+34 935.25	+622 738.79	RP1
CD	4 054.15	316 52 57	C	+31 869.31	+625 247.66	NPj1
DE	673.48	352 18 30	D	+29 098.31	+628 207.00	NPj2
EF	100.22	8 52 50	E	+29 008.17	+628 874.42	RP11N
FG	358.24	12 31 40	F	+29 023.64	+628 973.44	RP12N
GH	2 475.89	76 46 49	G	+29 101.35	+629 323.15	RP5N
HJ	7 371.55	135 53 22	H	+31 511.62	+629 889.35	NPX2a
JA	1 456.26	188 44 39	J	+36 642.56	+624 596.59	NPX1
		T109	△	+35 183.19	+595 405.77	Reck
		T127	△	+26 896.42	+609 663.23	Swartpunt

Description of Beacons

A,B,C,D,E,F,G,H,J : 16mm Iron Peg in Cairn

The figure
representsA B C D E F G H J
2 427.2747 hectares

of land being

Lease Area 'A' over Ptn. 1 of Farm Sud Witputz No.31Registration Division 'N'
Karas Region
Republic of Namibia

S. Akubia
S. Akubia
Professional Land Surveyor

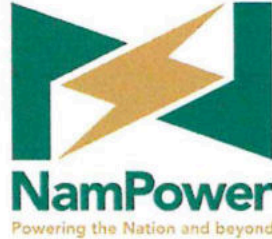
Surveyed in February 2022 by me

This diagram is annexed to	The original diagram is	S.R. No. E : 126/2022
No.	No. A : 457/52	Noting Plan : HP - S
d.d. :	Transfer No.: 162/1953	File No. : N31
Registrar of Deeds	d.d. 5.3.1953	Lat. : S Long. : E

KSH

[Handwritten signature]
ter

ANNEXURE B: LAND LEASE AGREEMENT (TO BE SIGNED ONCE OPTION TO LEASE IS EXERCISED)



CONFIDENTIAL

LAND LEASE AGREEMENT

between

NAMIBIA POWER CORPORATION (PROPRIETARY) LIMITED, a limited liability company (Registration Number: 2051) incorporated under the laws of Republic of Namibia and having its principal place of business at NamPower Centre, 15 Luther Street, Windhoek, Namibia and herein represented by KAHENGE SIMSON HAULOBU in his capacity as Managing Director duly authorized thereto.

(hereinafter called "the Lessee"), and

And

Mr. Edie Sebulon Kotze, ID No. 470129 503 8086 a major male Namibian, herein acting in his personal capacity as the owner of Farm Sud Witputz No. 31, Registration Division "N", Karas Region, held by original Deed of Transfer No T04761/1991, having his place of business at Erf 597, Kotze Street, Port Nolloth, South Africa.

(hereinafter called "the Lessor").

(Collectively hereinafter referred to as the "Parties" and Singularly hereinafter referred to as "the Party")

16/11/11
[Handwritten signatures and initials]

*I hereby certify that the original hereof, which now remains
filed in my protocol, bears stamps to the value of N\$5,00*

Company Name:

Attorneys Notaries & Conveyancers:
:Address:

Protocol No

NOTARIAL DEED OF LAND LEASE AGREEMENT

KNOW ALL MEN WHOM IT MAY CONCERN:

THAT on this _____ day of _____, _____ before me

[]

a Notary Public, duly sworn and admitted, residing and practicing at WINDHOEK, personally came and
appeared

(hereinafter called the "**Appearer**")

He/she being duly authorized by Powers of Attorney granted to him/her by _____.

KSA 

Mr. Edie Sebulon Kotze

Having its registered office at Kotze str, Port Nolloth, South Africa

(herein referred to as "the **LESSOR**")

by virtue of a Power of Attorney signed at _____

on the _____ day of _____, _____

which Power of Attorney has been exhibited to me and now remains filed in my Protocol;

AND

NAMIBIA POWER CORPORATION (PROPRIETARY) LIMITED
Company Number 2051

Having its registered office at NamPower Centre, 15 Luther street, Windhoek Namibia

(herein referred to as "the **LESSEE**")

by virtue of a Power of Attorney signed at _____

on the _____ day of _____, _____

which Power of Attorney has been exhibited to me and now remains filed in my Protocol;

(Hereinafter jointly referred to as "the **PARTIES**")




AND THE APPEARER DECLARED THAT:


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a) **DEFINITIONS**

In this Agreement the terms and expressions defined in this Clause shall bear the same meaning unless the context otherwise requires:

- i. **"Affected Party"** means a Party affected by a Force Majeure Event as contemplated in Clause 24;
- ii. **"Agreement"** means this lease agreement together with all Annexures thereto;
- iii. **"Consents"** means the permits, licenses, consents, authorisations, approvals, concessions, acknowledgements, exemptions or like or similar documentation required to be obtained by a Party in relation to it performing its obligations under this Agreement;
- iv. **"Contractors"** means any suppliers or contractors engaged by the Lessee in contracts relating to the design, engineering, procurement, construction or operation and maintenance of the PV Power Plant and associated infrastructure (including battery energy storage) including any sub-contractors under such contracts;
- v. **"Day"** means a calendar day;
- vi. **"Dispute"** means any dispute or disagreement of any kind whatsoever between the Parties arising under, in connection with, or relating to this Agreement;
- vii. **"Law"** means the Constitution of the Republic of Namibia, any statute, ordinance, treaty, decree, proclamation, 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 Namibia. For purposes of this definition, "customary law" means those customs and practices which, in terms of the common law, have gained the force of law in the Republic of Namibia;
- viii. **"Lessee"** means NAMIBIA POWER CORPORATION LIMITED;
- ix. **"Lessor"** means Mr. Edie Sebulon Kotze
- x. **"Parties"** means the Lessor and Lessee, and "Party" means either of them as the context requires;
- xi. **"Signature Date"** means the date on which the Parties hereto have executed and signed this Agreement;
- xii. **"Site"** means the leased area on the Land at the specified location in Farm as per Annexure A.
- xiii. **"PV Power Plant and associated infrastructure (including battery energy storage)"** means the PV power plant and associated infrastructure (including battery energy storage) located within the Site, including various infrastructure such as the PV modules, inverter stations and common amenities such as a substation building, offices, internal roads, internal distribution lines, 66 kV transmission line, meteorological mast(s), workshop building and other amenities as required for the operation of the PV power plant and associated infrastructure (including battery energy storage), from which energy will be generated by the Lessee, up to and including the Power Plant battery limit;
- xiv. **"the Project"** means the developmental activities and construction activities to establish a PV power plant and associated infrastructure (including battery energy storage) for power generation, which will consist of various infrastructure such as PV modules, batteries, inverter stations and common amenities such as a substation building, offices, internal roads, internal distribution lines, 66 kV transmission line, meteorological mast(s), workshop building and other amenities as required for the operation of the PV power plant and associated infrastructure (including battery energy storage).

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b) INTERPRETATION

- i. Any provision of this Agreement 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 everyone occupying, working or entering the Site through, under, by arrangement with, or at the invitation of, the Lessee, including (without limiting the generality of this provision) the employees, family, guests, consultant and agents of the Lessee and independent Contractors or workers engaged by the Lessee.
- ii. The headings of the Articles appears in this Agreement for purposes of reference only and shall not influence the interpretation of the subject matter.
- iii. The singular includes the plural and vice versa;
- iv. References to legislation and regulations made or licences issued thereunder are references to such legislation, regulations, and licences as they may be amended from time to time;
- v. References to other agreements or documents are, unless the context otherwise requires or states, references to those agreements or documents as they may be amended from time to time;
- vi. This Agreement shall be binding and enforceable on the permitted assigns, liquidators, or other legal successors of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party shall be deemed to include such permitted assigns, liquidators or other legal successor.
- vii. Where figures are in this Agreement described in numerals and in words, the words shall prevail in the event of any conflict between the two;
- viii. Any reference to a month shall mean a calendar month.
- ix. The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting or preparation of this Agreement shall not apply.

1. WHEREAS

The LESSOR is the owner of the following UNIMPROVED immovable property:




CERTAIN	Portion 1 of Farm Sud Witputz No. 31
SITUATE	Registration Division "[N]" Karas Region
MEASURING	[10 026.6352] Hectares
HELD	by original Deed of Transfer No T04761/1991

(hereinafter referred to as "the **LAND**")

The LESSOR has indicated its preparedness to make available the LAND for full use and enjoyment by the LESSEE, subject to the conditions hereinafter set out;

2. The LESSOR and the LESSEE have reached agreement as to the terms upon which such use of land shall be made.
3. The PARTIES have now agreed that it has become necessary to record their agreement of land use in writing (hereinafter referred to as this "**Agreement**").

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

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1 LAND USE AND OCCUPATION

- 1.1 The LESSOR hereby grants to the LESSEE the right to use, enjoyment and occupation of the area of land being Lease Area 'A' of Portion 1 of Farm Sud Witputz No. 31 (hereinafter referred to as the "**SITE**"), substantially as depicted on the diagram attached hereto as Annexure A and with extent (**2427.2747** hectares), for purposes of constructing, operating and maintaining a, PV power plant and associated infrastructure (including battery energy storage), (hereinafter referred to as the "Power Plant") and all associated infrastructure to be established to generate electricity. The Lessee shall have the right to place and position the PV site of approximately 300 Ha anywhere within the Lease Area 'A' of Portion 1 of Farm Sud Witputz no. 31 and which PV power plant and associated infrastructure (including battery energy storage) shall be fenced off.
- 1.2 Notwithstanding the provisions of Clause 1.1 of this agreement, the Lessee reserves the right to register servitudes on the Land as it may determine fit for road access to and within the PV Power Plant and associated infrastructure (including battery energy storage). Access routes shall be upon agreement with the Lessor, which agreement shall be not unreasonably withheld. The Lessor may use access roads as constructed by the Lessee for free access to the Land. Restricted or prohibited areas pertaining to high voltage infrastructure shall not be accessible to the Lessor.
- 1.3 The LESSEE shall construct, operate and maintain the PV Power Plant and associated infrastructure (including battery energy storage) and conduct the Project consisting of the use of the Site and the development of a PV power plant and associated infrastructure (including battery energy storage) comprising, inter alia, the design, development, construction, testing, commissioning, operation and maintenance of (i) the PV Power Plant and battery energy storage and (ii) the infrastructure required to connect the PV Power Plant and battery energy storage to the Namibian Transmission System.

2 COMMENCEMENT AND DURATION




- 2.1 This Agreement shall commence on the date on which the last Party to this Agreement signs this Agreement ("Signature Date").
- 2.2 This Agreement shall become effective from Signature Date and shall subsist for the initial term of **thirty (30) years** (the "Initial Term").

3 COMMENCEMENT OF CONSTRUCTION ON SITE

- 3.1 The LESSEE shall have right of access to the Site from Signature Date, whereby the LESSEE shall commence with construction of the Power Plant and the Connection Facilities at its own determination.

4 SUBSTITUTION OF DIAGRAMS AND REGISTRATION

- 4.1 This Agreement shall be executed in notarial form and registered against the title deeds of the Land. The LESSOR and the LESSEE undertake as a mutual undertaking to each other to grant a power of attorney to a notary public to execute this deed and to procure registration of this Agreement in the applicable deeds office, at the LESSOR's cost.
- 4.2 Registration will be attended to by the LESSEE's attorneys at its own cost.
- 4.3 The Parties agree and undertake to sign all documents and do all such things as may be necessary in the circumstances to give effect to the provisions of this Clause.

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5 BENEFIT OF THE AGREEMENT

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

6 RENTAL FEES

- 6.1 During the currency of this Agreement, commencing from Signature Date, the LESSEE shall pay, upfront to the LESSOR, the amount in respect of its use, enjoyment and occupation as follows;
- 6.1.1 an upfront, once-off payment in an amount of **N\$ 5,000,000.00** for the duration of the lease.



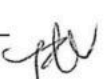
7 PAYMENT TO THE LESSOR

- 7.1 The compensation payable to the Lessor in terms of the Lease Agreement shall be in accordance with the following provisions:
- 7.1.1 The LESSEE shall, within 60 days after the signature date of the agreement, make payment to the account nominated by the LESSOR in the form of a lump sum upfront payment in an amount referred to in Clause 6.1.1 of this agreement, for the installation of a PV power plant and associated infrastructure (including battery energy storage) of 100MW_{ac} for an initial term of 30 (thirty) years.
- 7.1.2 The upfront payment includes provision of land for the construction and operation phases of the Project as well as other common amenities such as a substation building, offices, internal roads, internal distribution lines, 66 kV transmission line, meteorological mast(s), workshop building and other amenities as required for the operation of the PV Power Plant and associated infrastructure (including battery energy storage), but subject to the location and extent of the area of these amenities being specifically consented to by the LESSOR as indicatively depicted in Annexure A, which consent will not be unreasonably withheld.
- 7.1.3 All payments due by the LESSEE to the LESSOR under this Agreement shall be made free of any deductions or bank exchange charges to the Bank Account to be provided by the LESSOR.
- 7.1.4 Any amount due by the Lessee pursuant to this Agreement and remaining unpaid after the due date shall bear interest from the date when payment was due at a rate equivalent to the prime lending rate of the Bank of Namibia applicable from time to time. In the event of a dispute to the interest rate payable, a certificate signed by any manager, accountant or other relevant official of the Bank of Namibia shall be prima facie proof of such interest rate.

8 ADDITIONAL CHARGES AND USE OF WATER AND ELECTRICITY

- 8.1 The LESSEE shall at its cost use reasonable endeavours procure such that the consumption of water and electricity by the LESSEE and/or in relation to the Project on the Site be metered separately, if so required from a Third Party.
- 8.2 The LESSEE shall have the right to drill one or more boreholes on site for the purpose of water supply to the power plant. The Lessee shall not be charged for the consumption of water, in return, if a borehole is drilled on the Site and found suitable for use for the Project, the LESSEE shall in addition, drill one water-bearing borehole to a maximum depth of 100m at a location to be indicated by the Lessor, in the vicinity of the Lessor's farmhouse.

9 USE OF SITE

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- 9.1 With effect from the Date of Signature, the LESSOR grants to the LESSEE the exclusive right to pursue and perform all activities on the Land relating to conducting the Project.
- 9.2 Without derogating from the generality of Clause 9.1, the LESSEE (and/or its duly authorised representative(s) or agents) shall be entitled to:
- 9.2.1 conduct all the studies (including assessments and geological and other surveys) to be conducted by the LESSEE on the Property, which the LESSEE deems necessary and/or required;
 - 9.2.2 bring onto the Property, erect and use all equipment required for this purpose;
 - 9.2.3 construct, or allow NamPower, in its capacity as transmission licensee, to construct, any infrastructure required for the connection of the Power Plant to the Transmission System;
 - 9.2.4 dig trial pits;
 - 9.2.5 geo-technical studies with core drilling;
 - 9.2.6 construct any roads over the Site which, in the opinion of the LESSEE, are necessary and/or desirable for the successful commissioning and operation of the Power Plant on the Site;
 - 9.2.7 design and erect an appropriate connection to the Transmission System which may include the installation of transmission lines and the substation;
 - 9.2.8 install, erect or construct any other facility or equipment necessary for the successful commissioning, operation and protection of the Power Plant;
 - 9.2.9 construct any fencing on the Site necessary to protect the Power Plant or other equipment constructed, installed and/or erected by or on behalf of the LESSEE on the Site;
 - 9.2.10 erect signs on the Site, including signs advising that the LESSEE is erecting a Power Plant on the Site, and identifying the Power Plant;
 - 9.2.11 make any modifications and/or improvements to any of the items contemplated in Clauses 9.2.1 to 9.2.10, which the LESSEE may consider necessary;
 - 9.2.12 do such other things necessary or convenient for the proper enjoyment of the right to generate electricity on the Site and/or lead, convey or transmit electricity across the Site or Land;
 - 9.2.13 enter and exit the Site or Land as and when the LESSEE deems fit (provided that any representatives, employees, agents or sub-contractors of the LESSEE are clearly and visibly authorised by the LESSEE to enter the Site);
 - 9.2.14 carry out environmental, ecological, hydrogeological, archaeological and other surveys with respect to the Site;
 - 9.2.15 procure all consents and approvals and registrations to ensure that the Site has access to all the existing public road networks;
 - 9.2.16 undertake all or any of the works as is required for the due construction, establishment or operation of the Power Plant and connection of the Power Plant to the Transmission System;
 - 9.2.17 construct, erect, maintain and repair the Power Plant as well as buildings, structures or additions constructed and erected in terms of this Agreement which shall be done at the risk and expense of the LESSEE;
 - 9.2.18 remove from the Site all trees, bushes, rocks and other obstructions as in its sole and absolute discretion it may deem necessary or desirable for the exercise of its rights under this Agreement or at law.
- 9.3 Subject to Clause 16.4, all costs in connection with the activities contemplated in Clause 9.2 shall be borne by the LESSEE.
- 9.4 The LESSEE shall:
- 9.4.1 not use the Site for any purpose other than as permitted in terms of this Agreement;

- 9.4.2 ensure that all entrance gates to the Site or Land will be closed after use;
- 9.4.3 keep the LESSOR informed in relation to the erection of the Power Plant on the Site;
- 9.5 Upon the expiration and non-renewal of this Agreement, the LESSEE shall be entitled and obliged to within 24 (twenty-four) months at its own cost, decommission the Power Plant on the Site, demolish and remove all installations made or erected by the LESSEE on the Site and return the Site to the LESSOR in good order, fair wear and tear excepted, subject to the following:
- 9.5.1 the LESSEE may, in its discretion, elect to leave on the Site the electrical lines and all underground installations, provided that the LESSEE shall be obliged to remove all foundations up to a depth of at least one meter and to fill all excavations in such a way that the agricultural land use potential is restored and rehabilitated using only vegetation indigenous to the area concerned;
- 9.5.2 the LESSOR may notify the LESSEE in writing that it wishes to keep the access road structures or parts thereof for his own use after termination of this Agreement which election shall be communicated to the LESSEE in writing within 10 (ten) Business Days after termination, in which event the LESSEE shall not be obliged to remove the relevant access road structures and the LESSOR shall not have a claim against the LESSEE in this regard whatsoever.
- 9.6 Upon the cancellation of this Agreement by the LESSEE pursuant to a breach by the LESSOR, the LESSEE shall be entitled (but not obliged) to within 24 (twenty-four) months at its own cost decommission the Power Plant on the Site, and to demolish and remove all installations made or erected by the LESSEE on the Site.

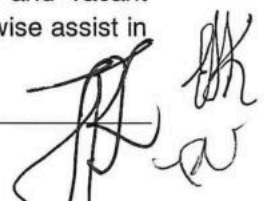
10 ACCESSION

- 10.1 All equipment and/or other installations brought onto the Site by the LESSEE is intended to remain on the Site only for so long as the Agreement is in force and shall not accede to the Land. Such equipment and/or other installations shall, notwithstanding that it may be fixed upon the Site in a manner which might, had it not been for this Clause 10, be regarded as a permanent fixture, at all times be regarded as movable. Ownership of such equipment and/or installations shall at all times remain vested in the LESSEE.
- 10.2 The LESSOR hereby irrevocably waives in favour of the LESSEE and/or any creditor of the LESSEE both the LESSOR's hypothec over the LESSEE's Land and the LESSOR's reliance thereon. The LESSOR acknowledges and agrees that it understands the meaning and effect of the waiver contemplated herein. The provisions of this Clause 10.2 shall constitute a *stipulatio alteri* in favour of any creditor of the LESSEE, the benefits of which may be accepted at any time and in any manner.

11 OCCUPATION

- 11.1 The LESSEE shall be given occupation of the Site on the Date of Signature.
- 11.2 The LESSEE, its officials, employees, labourers, contractors, agents or persons having business with the LESSEE, shall be given rights of access to, way over, and egress from the Site with effect from the Date of Signature.
- 11.3 The LESSEE shall be given vacant and exclusive occupation and possession of the Site with effect from the Date of Signature from which date all risk in and to the Site shall pass to the LESSEE.
- 11.4 The LESSEE shall be entitled to the exclusive use, occupation and possession of the Site during the currency of this Agreement and shall for those purposes be entitled to exercise all rights in respect thereof as contemplated in this Agreement.
- 11.5 It shall be the obligation of the LESSOR to procure for the LESSEE exclusive and vacant occupation and possession of the Site and to institute and pursue to finality or otherwise assist in

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proceedings to require any occupiers or possessors who seek to take occupation or possession of the Site, without the LESSEE's consent, after the Date of Signature, to relinquish it, and to which end the LESSEE shall in addition be entitled (but not obligated) to do so, and the LESSOR hereby (without detracting from the undertaking which it hereby itself gives to the LESSEE), assigns to the LESSEE any rights which it has in that regard to:

- 11.5.1 institute and prosecute to finality, at the cost of the LESSEE eviction proceedings (including any interlocutory or appeal proceedings) against any occupiers or possessors of the Site who refuse to vacate the Site after the Date of Signature; and
- 11.5.2 give all requisite written notices to occupiers and possessors of the Site, terminating any rights of occupation or possession which they have and to give them, the relevant local authority within whose jurisdiction the Site is situated, and relevant provincial or national departments, written notices of intention to obtain eviction orders.

12 COMPLIANCE

- 12.1 The LESSEE shall materially comply with all law, bylaw, ordinance, proclamation or statutory regulation or any condition of any license or permit relating to or affecting the occupation and use of the Site by the LESSEE, and any title deed conditions pertaining to the Site.

13 ASSIGNMENT

- 13.1 The LESSEE shall not be entitled to assign its rights in the Site (or any portion thereof) and in this Agreement to any third party except to the Lenders for the purpose of providing security under the Finance Documents.
- 13.2 The LESSOR warrants to the LESSEE that to the best of its knowledge and belief there are no leases, servitudes, usufructs, rights of use, habitation or occupation, restitution claims, or other rights or claims exist or will exist in respect of the Site which will conflict with, impede or prevent, the exercise by the LESSEE of the rights granted to it in this Land Use Agreement.

14 INSURANCE

- 14.1 The LESSEE shall, by no later than the commencement of construction of the Power Plant at the Site, take out fire and public liability insurance for, and pay all insurance premiums relating to, the Site and all improvements thereon for the full reimbursement value.
- 14.2 The LESSEE shall refrain from undertaking any activity that results in the insurance becoming void.

15 MAINTENANCE AND REPAIR OF THE SITE

- 15.1 The LESSEE shall be responsible for the maintenance of the Site including the maintenance of the Power Plant on the Site or any component thereof and the equipment installed or built by the LESSEE for purposes of the Project on the Site.

16 LESSOR'S FURTHER OBLIGATIONS

- 16.1 The LESSOR shall not be entitled to build, install, erect or alter any improvements on the leased area of land (the Site).
- 16.2 The LESSOR (and/or its duly authorised representative(s) or agents) shall not without the prior written consent of the LESSEE:
 - 16.2.1 perform any act which may potentially have the effect of reducing the Power Plants ability to generate electricity;



- 16.2.2 build, install or erect any improvements on the Site, which may potentially affect the undisturbed development, construction and/or operation of the Power Plant;
- 16.2.3 obstruct the construction of any works on the Site;
- 16.2.4 agree or grant any right or entitlement in or to the Site to any third party where such third party's activities may potentially be in conflict with the rights granted to the LESSEE in terms of this Agreement;
- 16.2.5 interfere with or damage the Power Plant and any component thereof.
- 16.3 The LESSOR shall provide all such reasonable assistance to, and carry out all such work as may be reasonably required by, the LESSEE in order for the LESSEE to utilise the Site for the purpose stated in Clause 9.
- 16.4 The LESSOR shall pay and continue to pay all property rates and taxes relating to the Land as and when they become due, except as provided for under Clause 17.3.
- 16.5 The LESSOR shall provide the LESSEE with any keys necessary to give access to or within the Site, and the LESSEE agrees to close and/or lock any gates or doors that the LESSEE opens in exercising its rights under this Agreement.
- 16.6 Without limiting the provisions of Clause 9 the LESSOR grants the LESSEE the right to gain access to the Site through any adjoining or abutting land of the LESSOR as is necessary for the LESSEE's use of the Site as contemplated in this Agreement.

17 LESSEE'S FURTHER OBLIGATIONS

- 17.1 The Lessee shall provide a 16kVA single phase power supply point to the Lessor's farmhouse at the agreed location (27°41'2.20"S, 16°42'58.26"E); That, the Lessee shall bear the installation cost of the supply point as well as the fixed monthly charges.
- 17.2 That the Lessor shall be responsible for the costs of the units of electricity consumed, which costs shall be invoiced by the Lessee on a monthly basis.
- 17.3 The Lessee shall pay the annual land tax for the Land on behalf of the Lessor during the tenure of the Lease. Invoices for payment of the land tax shall be provided to the Lessee 30 (thirty) days before payment date.
 - 17.3.1 The Lessee shall not be liable for payment of increases in land tax due to possible subsequent improvements by the Lessor. For purposes of certainty, it is agreed that the land tax to be paid by the Lessee will be in respect of both the Sud Witputz Farm No.31 and West Witputz Farm No. 86, as the Farms are registered under one Title Deed.

18 LESSEE'S WARRANTIES AND REPRESENTATIONS

- 18.1 The LESSEE hereby warrants and represents to and in favour of the LESSEE, as at the Date of Signature, that:
 - 18.1.1 the LESSEE is duly authorised and empowered to enter into this Agreement;
 - 18.1.2 to the best of its knowledge, no fact or circumstance exists which may have the effect that the terms of this Agreement are not capable of being fully enforced or that the rights set out in this Agreement are not capable of being exercised by the parties;
 - 18.1.3 to the best of its knowledge, there are no pending actions, suits, claim, disputes or other proceedings against the LESSEE;
 - 18.1.4 the LESSEE will not be in breach of any other agreement or obligation as a result of the entering into and carrying out of its obligations in terms of this Agreement;

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19 LESSOR'S WARRANTIES AND REPRESENTATIONS

- 19.1 The LESSOR hereby warrants and represents to and in favour of the LESSEE, as at the Date of Signature, that:
- 19.1.1 the LESSOR is duly authorised and empowered to enter into this Agreement;
 - 19.1.2 to the best of its knowledge, no fact or circumstance exists which may have the effect that the terms of this Agreement are not capable of being fully enforced or that the rights set out in this Agreement are not capable of being exercised by the parties;
 - 19.1.3 there are no options or encumbrances in favour of any person in respect of the Site, including (but not limited to) options or encumbrances which may prevent the LESSOR from utilising the Site in accordance with this Agreement or which may otherwise limit the rights of the LESSEE in terms of this Agreement, or any mortgages registered against the title deed of the Land;
 - 19.1.4 there are no title deed endorsements or title conditions that would negatively impact on the Project;
 - 19.1.5 to the best of its knowledge, there are no pending actions, suits, claim, disputes or other proceedings affecting the Land or any part of it;
 - 19.1.6 the LESSEE will not be in breach of any other agreement or obligation as a result of the entering into and carrying out of its obligations in terms of this Agreement;
 - 19.1.7 there are no existing informal rights to the Land as provided for in the Flexible Land Tenure Act (No 4 of 2012);
 - 19.1.8 there are no claims for expropriation of the Land;
 - 19.1.9 there are no squatters on the Land;
 - 19.1.10 there are no claims or potential claims against the LESSOR in respect of the Land in terms of the Environmental Management Act (No 7 of 2007);
 - 19.1.11 there have not been any findings of archaeological nature on the Site; and
 - 19.1.12 the LESSOR is authorized to make available the Site to the LESSEE and on Effective Date, the LESSEE will have a valid title to the Site.


20 RELATIONSHIP OF PARTIES

- 20.1 The parties to this Agreement are independent of one another and nothing in this Agreement should be construed as constituting a joint venture or partnership between them.

21 LIMITATION OF LIABILITY

- 21.1 Neither party to this Agreement (the "**Defaulting Party**") shall be responsible for any loss, damage or injury which the other party (the "**Aggrieved Party**"), its employees, agents, customers or invitees may directly or indirectly suffer (save for where such loss, damage or injury is caused through the negligent or willful act or omission of the defaulting party, the defaulting party's employees, agents or sub-contractors) by reason of any cause either wholly or partly beyond the defaulting party's control.
- 21.2 Notwithstanding anything to the contrary contained in this Agreement, but save for such provisions of this Agreement which specifically provide for the payment of such losses and/or damages, neither party shall be liable to the other party under any circumstances for any indirect or consequential losses and/or damages of whatsoever nature and howsoever arising out of or in connection with this Agreement including, without limitation, such damages arising out of the negligence of either party or its employees.

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22 BREACH OF AGREEMENT

- 22.1 A Party commits a material breach of this Agreement if it fails to remedy a breach within 90 (ninety) days after having received a written notice from the other Party to remedy such breach.
- 22.2 In the case of the LESSEE, should the LESSEE fail to pay any amount due by it in terms of this Agreement within thirty (30) days after such payment was due and fails to remedy such breach within 7 (seven) days after the giving of written notice to that effect by the LESSOR;

23 HOLDING OVER

- 23.1 Should the LESSEE at any time dispute the LESSOR's right to cancel this Agreement and remain in occupation of the Site pending the determination of such dispute, then:
- 23.1.1 the LESSEE shall continue to pay all amounts due to the LESSOR in terms of this Agreement on the due dates of same;
- 23.1.2 the LESSOR shall be entitled to recover and accept those payments;
- 23.1.3 the acceptance by the LESSOR of those payments shall be without prejudice to and shall not in any manner whatsoever affect the LESSOR's claim to cancellation of this Agreement or for damages.
- 23.2 Should the dispute between the LESSOR and the LESSEE be determined in favour of the LESSOR in terms of this Clause 23, any amounts paid by the LESSEE shall be regarded as amounts paid on account of the loss and/or damages sustained by the LESSOR as a result of the holding over by the LESSEE of the Site.

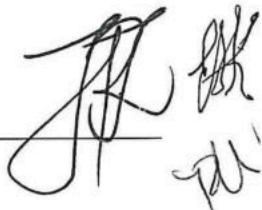
24 DAMAGE AND DESTRUCTION OF THE SITE

- 24.1 If the Site is totally or substantially destroyed or rendered untenable (the date of such occurrence being hereinafter referred to as the "**Destruction Date**"), this Agreement shall not be cancelled and the parties hereto shall have the right, within 15 Business Days after the Destruction Date, to elect whether to terminate it or to continue it.
- 24.2 If either of the parties elects to terminate this Agreement, or makes no election within the aforesaid period, this Agreement shall be deemed to have terminated on the Destruction Date. If this Agreement is terminated then either party may retain the other's performance to the extent performance has taken place; and if a party elects or is required to retain the other's performance, the parties shall make such financial adjustment between them as may be equitable.
- 24.3 If the parties elect to continue this Agreement:
- 24.3.1 the LESSOR shall reinstate the Site within a reasonable time; and
- 24.3.2 the LESSEE shall rebuild the Power Plant within a reasonable time.

25 TERMINATION

- 25.1 This Agreement shall subject to the provisions of a Direct Agreement, in the event applicable, terminate on the earliest of:
- 25.1.1 where a Party commits at least four (4) non-cured material and continuous breach within a calendar year, of which breach notices to remedy has been sent to the breaching Party;
- 25.1.2 termination of the Power Purchase Agreement ("PPA") in the event applicable and subject to the LESSOR electing to terminate on account of termination of the PPA, or
- 25.1.3 due to effluxion of time.

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- 25.2 In the event the Lessee wishes to have the agreement extended, the LESSEE shall provide to the LESSOR 6 (six) months' notice prior to the expiry of the Initial Term, of its intention to exercise the option to extend the term of the lease based on the principles captured in this agreement. The LESSEE shall also have the first right of refusal to buy the Land, should the Lessor wish to sell the Land or a portion thereof after the Initial Term.
- 25.3 Upon termination of this Agreement, both Parties shall be excused and relieved of all obligations and liabilities under this Agreement, except for payment of all amounts due as well as liabilities resulting from any action, inaction or event occurring before the termination.
- 25.4 Should either party justifiably terminate this Agreement in accordance with this Clause 25, the other party shall have no claims of whatsoever nature against the terminating party as a result of such termination.
- 25.5 The parties agree that the termination of this Agreement for whatsoever reasons as provided for in this Agreement, shall not affect any of their rights which vested prior to such termination.

26 CONFIDENTIALITY

- 26.1 Each Party shall treat any and all information and data disclosed to it by the other Party in connection with this Agreement in any form whatsoever, and this Agreement itself (the "Confidential Information") as confidential and proprietary, shall preserve the secrecy of the Confidential Information and shall not use the Confidential Information for any purpose other than in connection with this Agreement.
- 26.2 Duty to maintain Confidentiality
- 26.3 Each Party will use the same means as it uses to protect its own Confidential Information, but in no event less than reasonable means, to prevent the disclosure and to protect the confidentiality of such information. No information referred to in this Agreement will be disclosed by the recipient Party, its agents, representatives or employees without the prior written consent of the other Party (other than to its advisers and the Lenders and their advisers).
- 26.4 Exclusions
- These provisions shall not apply to information which is:
- 26.4.1 publicly known or has become publicly known through no unauthorised act of the recipient Party;
- 26.4.2 rightfully received by the recipient Party from a third party;
- 26.4.3 independently developed by the recipient Party without use of the other Party's information;
- 26.4.4 disclosed by the other Party to a third party without similar restrictions;
- 26.4.5 required to be disclosed pursuant to a requirement of a Competent Authority (as it may be defined in this agreement) or any applicable law, so long as the Party required to disclose the information gives the other Party prior notice of such disclosure; or
- 26.4.6 publicly disclosed with the other Party's written consent.
- 26.5 Disclosure
- 26.5.1 All media releases, public announcements and public disclosures by any Party or their respective employees or agents relating to this Agreement or its subject matter, including without limitation promotional marketing material, shall be coordinated with and approved by each Party prior to the release thereof. The foregoing will not apply to any announcement intended solely for internal

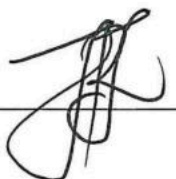

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distribution by any Party or to any disclosure required by legal, accounting or regulatory requirements beyond the reasonable control of the Party in question.

27 ARBITRATION

- 27.1 Except where otherwise specifically provided for, any dispute at any time between the Parties or any failure by them to reach agreement in regard to any matter arising out of or in connection with this Agreement or its interpretation or effect, or arising in any way out of the termination or failure of any of them, shall be submitted to arbitration pursuant to the AFSA Rules .
- 27.2 If any Dispute is submitted to arbitration in accordance with Clause 27.1, then the Parties agree that any related disputes in or arising from any of the Project Documents shall be simultaneously submitted to arbitration.
- 27.3 The decision of the arbitrators shall be given in writing as soon as reasonably possible after the dispute has been referred to the arbitrators but no later than six weeks from the date on which the hearing, including argument was concluded. The decision shall be final and binding upon those Parties to the Project Documents taking part in the Arbitration and shall not be subject to appeal to any court or tribunal of any kind unless manifestly unlawful or unjust, provided however that any Party may take action in any court of competent jurisdiction to enforce the arbitrators' decision, including its award in respect of the costs of arbitration.
- 27.4 Each Party shall bear its own costs, and the costs of arbitration shall be borne equally by the Parties, unless the arbitrators decide otherwise.
- 27.5 Arbitration shall be held in Windhoek before three (3) arbitrators. Each Party shall nominate an arbitrator and the two Party-appointed arbitrators shall jointly nominate the third arbitrator (who shall be the chairperson) within thirty (30) days after the confirmation of the second arbitrator, failing which the chairman shall be appointed by the President of AFSA. In any event the arbitration shall be conducted in the English language.
- 27.6 The Parties may be legally represented and may present evidence by independent experts or as otherwise permitted by the arbitrators. The aforesaid notwithstanding, any Party shall be entitled to approach any competent court having jurisdiction for urgent relief on an interim basis, pending the finalisation of the resolution of the dispute in terms of this Clause 27. The Parties agree that this Clause 27 constitutes an arbitration agreement and a submission to arbitration within the meaning of the AFSA Rules.
- 27.7 Obligations during disputes
- 27.7.1 While a dispute is continuing, the Parties are required to continue to perform their respective obligations under this Agreement until such dispute has been fully and finally resolved.
- 27.7.2 Where a dispute has been referred for resolution by arbitration in accordance with the AFSA rules, then neither of the Parties shall be entitled to exercise any rights or election arising in consequence of any alleged default by the other arising out of the subject matter of the dispute until the dispute has been resolved by the decision of the arbitrators.
- 27.8 Related Disputes
- 27.8.1 The Parties agree that where a dispute under this Agreement raises issues which are substantially the same as or connected with issues between the Seller and any other contractor employed by Seller in respect of the Project and/or any third party ("**Other Entity**"), including any counterparty under the Project Documents ("**Related Dispute**"), such Related Disputes shall, with the consent of the Other Entities as may be required in Law, be consolidated and resolved with the dispute under this Agreement and, if such Other Entities agree for such disputes to be consolidated, the Parties agree that any order and/or awards made by the appropriate court and/or tribunal in respect of such consolidated disputes shall be binding upon the Parties.

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- 27.8.2 Subject to the agreement of the Other Entities in respect to which a Related Dispute relates, either Party to this Agreement may apply to the arbitrator for an order that any arbitral proceeding arising out of a Related Dispute be consolidated with the arbitral proceeding under this Agreement, on the ground that: (i) a common question of law or fact arises in two or more of the arbitral proceedings, (ii) the rights to relief claimed in those arbitral proceedings are in respect of, or arise out of the Project, or (iii) for some other reason specified in the application, it is desirable that the arbitral proceedings be consolidated.
- 27.8.3 Subject to the agreement of the Other Entities in respect to which a Related Dispute relates, the arbitrator shall have power to make the following orders in relation to an application made under Clause 27.8.2:
- a) the arbitral proceedings be consolidated on terms specified in the order,
 - b) the arbitral proceedings be heard at the same time or in a sequence specified in the order, or
 - c) any of the arbitral proceedings be stayed pending the determination of any other of the arbitral proceedings.
- 27.8.4 Where an application has been made under Clause 27.8.3 in relation to two or more arbitral proceedings ("Related Proceedings") and the Other Entities in respect to which a Related Dispute relates agrees to consolidate proceedings, the following provisions shall have effect:
- d) If all the Related Proceedings are being heard by the same arbitrator, the arbitrator may make such order as it thinks fit in relation to those Related Proceedings and, if such an order is made, the Related Proceedings will be dealt with in accordance with the order.
 - e) If two or more arbitrators are hearing the Related Proceedings: (i) the arbitrator that received the application will communicate the substance of the application to the other arbitrators concerned and (ii) the arbitrators will, as soon as practicable, deliberate jointly on the application.
- 27.8.5 Where the arbitrators agree, after deliberation on the application, that a particular order should be made in relation to the Related Proceedings: (i) the arbitrators must jointly make the order and such order as to costs or wasted costs as may be appropriate, (ii) the Related Proceedings must be dealt with in accordance with the order and (iii) if the order is that the Related Proceedings be consolidated, the identity of the arbitrator or arbitrators, for the purposes of the consolidated proceedings, shall be agreed by the arbitrators and, if the arbitrators are unable to agree upon the identity of the arbitrator or arbitrators the arbitrator or arbitrators shall be appointed on the application of any party in terms of the Namibian Arbitration Act, 1965 or by the Chair of the Arbitration Foundation of South Africa, the decision of whom as to the identity of the arbitrator(s) will be final and binding on the Parties.

28 ADDRESSES

- 28.1 Each party to this Agreement chooses the address set out opposite its name below as its address at which all notices, legal processes and other communications must be delivered for the purpose of this Agreement:
- 28.1.1 as to the LESSEE:

Namibia Power Corporation (Pty) Ltd
 NamPower Centre
 15 Luther Street
 Windhoek

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Namibia

legal@nampower.com.na

28.1.2 as to the LESSOR:

Name: Edie Sebulon Kotze
Postal Address: PO Box 505, Port Nolloth, South Africa
Address: Erf 597, Kotze Street, Port Nolloth, South Africa
Mobile No: +27 82 467 2038
E-mail Address: sybiekotze.bmw@gmail.com

- 28.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing and it shall only be competent to give that notice by hand delivery or e-mail.
- 28.3 Either party to this Agreement may give written notice to the other party to change its chosen address or e-mail address to another physical address, e-mail address in Namibia, provided that the change shall become effective on the 10th Business Day after the receipt of the notice by the addressee in respect of that party's physical address and on the dates set out in such notice in respect of that party's e-mail address.
- 28.4 Any notice to a party contained in the correctly addressed envelope and delivered by hand to a responsible person, being a representative of such party, during ordinary business hours at its chosen address shall be deemed to have been received. Any notice sent by e-mail to a party shall be deemed to have been received on the day following transmission of the e-mail.
- 28.5 Notwithstanding anything to the contrary contained in this Clause 28, a written notice or communication actually received by a party shall be an adequate notice or communication to it notwithstanding that it was not sent or delivered as provided for in this Clause 28.

29 ENTIRE AGREEMENT

- 29.1 This Agreement contains all the express 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.

30 NO STIPULATION FOR THE BENEFIT OF A THIRD PERSON

- 30.1 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.

31 NO REPRESENTATIONS

- 31.1 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.

32 VARIATION, CANCELLATION AND WAIVER

- 32.1 No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless: (i) it is reduced to writing; (ii) it is in notarial form; (iii) it is signed by or on behalf of the parties; and (iv) it is registered in the deeds registry.

33 INDULGENCES

- 33.1 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.

34 APPLICABLE LAW

- 34.1 This Agreement is to be governed, interpreted and implemented in accordance with the laws of the Republic of Namibia.

35 JURISDICTION OF NAMIBIAN COURTS

- 35.1 The parties consent to the non-exclusive jurisdiction of the High Court of Namibia Main Division, Windhoek, for any proceedings arising out of or in connection with this Agreement.

36 COSTS

- 36.1 Each party shall bear that party's own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.
- 36.2 Any costs, including all legal costs on an attorney and own client basis and value-added tax, incurred by a party arising out of or in connection with a breach by another party shall be borne by the party in breach.

37 INDEPENDENT ADVICE

- 37.1 Each of the parties hereby respectively agrees and acknowledges that:
- 37.1.1 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
- 37.1.2 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.

38 CO-OPERATION

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


39 GOOD FAITH

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

40 WAIVER OF SOVEREIGN IMMUNITY

- 40.1 The Parties hereby unconditionally and irrevocably agree that the entry into and performance of this Agreement by the Parties constitute private and commercial acts and neither of the Parties nor

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any of their assets is entitled to immunity from arbitration or legal process or jurisdiction on grounds of sovereignty or otherwise.

- 40.2 The landlord shall further not be responsible or any damage or inconvenience, which the tenant may suffer owing to any difficulties experienced from time to time in the supply of electric current, water or other amenities, nor shall the tenant be entitled to any abatement of rent in respect of such occurrence.

Dated and signed on behalf of the Lessor:

.....
at this day of 20.

Witnesses

.....
Name Signature

.....
Name Signature

Dated and signed on behalf of the Lessee, Namibia Power Corporation (Pty) Ltd

.....
at this day of 20.

Witnesses

.....
Name Signature

.....
Name Signature

QUOD ATTESTOR

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