

Submission Opposing the Application by EPYC Pty Ltd

for Consent by the State of New South Wales

to a Project of State Significance,

Application ID – SSD 13_6277,

By Richard David Graham, a Party with Standing

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PART 2 of 2

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**Higher Resolution digital files are available
for all images shown in this document upon request.**

Attachments Annexure

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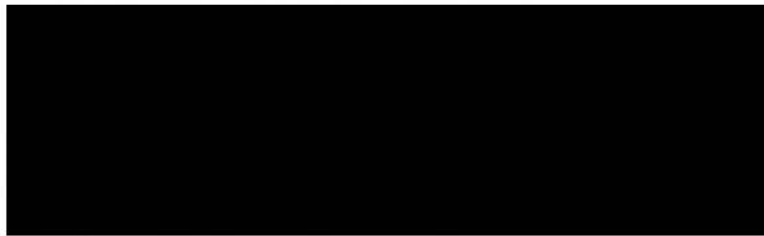
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Attachments Annexure

EPYC Landholder Lease

Attachments Annexure

Agreement for Lease



and

EPYC PTY LTD

ABN 11 145 377 448

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This Agreement for Lease

Is made on [REDACTED] between the following parties:

1.



As (Lessor)

2.

EPYC PTY LTD

ABN 11 145 377 448

Of Level 11, 153 Walker Street,

North Sydney, NSW, 2060 Australia

(EPYC) as (Lessee)

Recitals

- A. [REDACTED] is the registered proprietor of the land as defined in Annexure C.
- B. The Lessor and the Lessee wish to enter into this Agreement for Lease to provide for:
 - (i) The grant of a non-exclusive licence to enable the Lessee to access the land during the testing and construction phase of the project; and
 - (ii) The grant of the Lease to the Lessee, or a nominee of the Lessee, during the operational phase of the project.
- C. After completion of the construction works, the land will be surveyed to identify the Premises and the areas necessary for easements. Once the Deposited Plan has been registered the Lease will be granted.

This deed witnesses

That in consideration of, among other things, the mutual promises contained in this deed, the parties agree:

1 Definitions and Interpretation

1.1 Definitions

In this deed:

Authorisation includes:

- (a) Any consent, registration, filing, agreement, notice of non-objection, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a government agency or other relevant authority; and
- (b) in relation to anything which a government agency or other relevant authority may prohibit or restrict within a specific period, the expiry of that period without intervention or action or notice of intended intervention or action;

Authorisation Notice means notice referred to in clause 2.7;

Business Day means Monday to Friday, excluding the state public holidays;

Carriageway Easements has the meaning given in the Lease;

Commencing Date means the commencement date of the Lease determined in accordance with **clause 3.3**;

Construction Works means the construction works to be carried out on the Land for the purposes of the Project and includes the erection and construction of:

- (a) Turbines;
- (b) Foundations for the turbines, together with rock anchors or concrete piles which may be required to support the foundations;
- (c) Hardstandings, being cleared flat areas suitable for the temporary location of cranes and other construction and/or maintenance equipment;
- (d) Access tracks suitable for passage of large construction equipment, which will be used to erect the turbines and build other infrastructure and for passage of turbines and accessories;
- (e) Electrical or other cabling, which must be buried below the surface of the land where it is economically and technically viable to do so or otherwise may be overhead, for the purpose of connecting the turbines, substation and switchyard;
- (f) Substation with associated infrastructure and transmission lines;
- (g) Switchyards and control room housing the project controls and office equipment;
- (h) Temporary works which may include storage areas and site huts; and
- (i) Any other works which are necessary for the design, construction and operation of the Turbines for their intended purpose.

Deposited Plan means the deposited plan or plans prepared by the **Lessee's** consultant in accordance with **clause 3.1**;

Dispose means assign, transfer or otherwise dispose of or grant or permit or suffer the grant of any legal or equitable interest (either in whole or in part) whether by sale, lease, declaration or creation of a trust or otherwise;

Distribution Line Easements has the meaning given in the Lease;

Dollars and **\$** means the lawful currency of the Commonwealth of Australia;

Force Majeure Event means any of the following events provided that the event is outside the reasonable control of the **Lessee** and could not have been prevented or avoided by the **Lessee** taking all reasonable steps:

- (a) Act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest, drought or meteor;
- (b) War (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
- (c) Act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
- (d) Ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;
- (e) Confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government agency;
- (f) Strikes, blockades, lock out or other industrial disputes;
- (g) Any heritage issues including, but not limited to, the impact on significant aboriginal sites; or
- (h) Any other event which is beyond the reasonable control of the **Lessee**, and in the opinion of the **Lessee**, has the effect of making the Project no longer viable;

Government Agency means any government or any governmental semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity but, for the avoidance of doubt, does not include any party to this deed;

GST Act means A New Tax System (Goods and Services Tax) Act 1999;

Land means the Land as defined in **Annexure C**;

Lease means each of the leases in the form of **Annexure A**, or as otherwise amended or completed in accordance with this deed, to be entered into by the parties under **clause 4**;

Lessee means EPYC and includes, where the context permits, its agents, employees, invitees, licensees or subsidiaries;

Lessor means [REDACTED] and includes, where the context permits, his agents, employees, invitees and licensees;

Multi-Party Deed has the meaning given in the Lease;

Nomination Notice means a notice in the form of **Annexure B** which may be given by the **Lessee** to the **Lessor** under **clause 3.2(a)**;

Nominee means any party, nominated by the **Lessee** in a Nomination Notice, to be the "Lessee" under the Lease;

Noxious Substances means any radioactive, toxic or hazardous substance, which from time to time, may be defined by the authorities.

Other Relevant Authority means any agency other than a government agency;

Preliminary Works means inspections, surveys, soil tests, investigations and other works after the initial tests phase to be undertaken by the **Lessee** on the Land;

Premises means that part of the Land on which the turbines, the substation and improvements ancillary to the turbines and substation are, or will be, located that will be the subject of the Lease, as shown on the Deposited Plan;

Project means the development and operation of a wind farm project on both the Land and other lands leased for the purposes of the Project;

Rates include council rates, water rates, sewerage rates, and all other rates, assessments and fees;

Rent has the meaning given in the Lease;

Substation means a high voltage electrical substation which links the Project to the electricity power grid;

Taxes include the **Lessor's** land tax and any other property tax assessed on the Land;

Tests means the tests and investigations (including the erection of wind monitoring equipment) to be carried out by the **Lessee** on the Land in accordance with this deed in order to determine the suitability of the Land for the purpose of generating electricity by harnessing the wind and conveying that electricity to the power grid; and

Turbines means electrical generators rotated by the movement of wind over rotor blades which are to be erected on the land and on other lands leased for the purposes of the wind farm Project.

1.2 Application of Lease Provisions

The following **clauses** of the Lease apply to this deed as if expressly contained in this deed:

- (a) **clause 1.2** (Interpretation);
- (b) **clause 1.3** (Business Day)
- (c) **clause 5.4** (Obligations in respect to actions);
- (d) **clause 5.5** (Conduct of employees);
- (e) **clause 5.6** (Site Induction Procedure);
- (f) **clause 13** (Confidentiality);
- (g) **clause 14** (Dispute resolution);
- (h) **clause 15.3** (Governing law and jurisdiction);
- (i) **clause 15.4** (Variation);
- (j) **clause 15.6** (Severability);
- (k) **clause 15.7** (the **Lessor's** Consent or approval);
- (l) **clause 15.8** (No waiver);
- (m) **clause 15.9** (Relationship of parties); and
- (n) **clause 15.10** (Attorneys).

1.3 Extent of the Lessor's Obligations

The **Lessee** and the **Lessor** acknowledge and agree that, notwithstanding any other provision of this Agreement for Lease or the Lease; the obligations of the **Lessor** in respect of the Land and the granting of a Lease extend only to the Land as defined in **Annexure C**.

2 Licence

2.1 Grant of Licence

- (a) The **Lessor** grants the **Lessee** a non-exclusive licence, subject to the provisions of this **clause 2**, to enter onto the land and carry out the tests, preliminary works and the construction works,
- (b) The Licence granted under **clause 2.1** entitles the **Lessee**, notwithstanding **clause 2.1(c)** and **2.1 (d)**, to full and uninterrupted access to the land for the purpose of carrying out the tests and the preliminary works (as and from the date of this deed) and the construction works (following service of the notice referred to in **clause 2.3(f)**),
- (c) During the preliminary works the **Lessee** shall make reasonable endeavours to advise the **Lessor** 24 hours prior to entering, and activities being undertaken, on the Land, and such activity to be considered in the context of the **Lessor's** ongoing practises on the land,
- (d) During the construction works the **Lessor** shall be provided with direct and ongoing access to the site manager for the project, being the **Lessee's** primary representative on the site in respect of the project (**Site Manager**). The site manager shall be required to consult with the **Lessor** on an ongoing basis of the current and future activities on the Site. This shall include providing the **Lessor** with a minimum of one month's notice for significant construction activity,
- (e) Subject to the terms of this deed, the **Lessee** shall be entitled to determine the most appropriate location for the construction works on the land, but will do so in reasonable consultation with the **Lessor**, and act reasonably as a result of that consultation,
- (f) The **Lessor** must pay all Rates and Taxes assessed or levied on the land during the term of the licence granted under this **clause 2.1**, provided that the **Lessee** must pay any additional or increase in Rates and Taxes attributable to the construction works or the use of the land by the **Lessee** for the purposes of the project,
- (g) If the **Lessee** is required to pay any additional or increased Rates and Taxes referred to in **clause 2.1(f)** then the **Lessor** must:
 - (1) Make available to the **Lessee**, all information relating to the relevant Rate or Tax; and
 - (2) At the request of the **Lessee** acting reasonably, make representations or objections to the relevant government agency or other relevant authority in respect of the relevant Rate or Tax.
- (h) For the avoidance of doubt, the parties acknowledge and agree that during the period of the licence granted under this **clause 2.1**, subject to the provisions of this deed, the **Lessor** reserves all of their rights as owners of the land including the right to:
 - (1) Enter onto, live and work on the land; and
 - (2) Pass over the land at any time.

2.2 Period of Licence

The licence described in **clause 2.1** is for the period from the date of this deed until the earlier of:

- (a) Termination of this deed pursuant to **clause 8**; or
- (b) The commencing date of the Lease.

2.3 Commencement of Construction Works

- (a) Subject to **clause 2.3 (b)**, the **Lessee** will, within two years from the commencement date of this deed undertake and complete tests in order to determine the suitability of the wind in the land for the wind farm project.
- (b) The **Lessee** may extend the period for conducting the tests referred to in **clause 2.3 (a)** by giving notice in writing to the **Lessor** at least 7 days prior to the end of such period.
- (c) At the conclusion of the tests, the **Lessee** will, within 28 days, provide a written notice to the **Lessor** advising either:
 - (1) That it is satisfied that the wind in the land is suitable for the project and that the **Lessee** wishes to proceed with the necessary works to obtain the necessary approvals and authorisations for the project (**Test Notice**); or
 - (2) That the wind in the land is not suitable for the project in which case the notice would be notice of termination under **clause 8.2(b)**.
- (d) The **Lessee** will be entitled to determine the number and position of the turbines to be erected on the land but will do so in reasonable consultation with the **Lessor**, and act reasonably as a result of that consultation.
- (e) The **Lessee** will endeavour to obtain all necessary authorisations and approvals for the construction works within 18 months from the date of issue of the Test Notice, or such longer period required as is advised in writing by the **Lessee** to the **Lessor** at least 7 days prior to the end of such period. When the **Lessee** obtains all the relevant approvals, it will issue an **Authorisation Notice**.
- (f) Within 180 days of service of an Authorisation Notice referred to in **clause 2.7(b)**, the **Lessee** must serve on the **Lessor** a notice stating:
 - (1) The date upon which the construction works will commence; and
 - (2) The number of turbines that the **Lessee** intends to erect on the land based on approvals (**Windmill Notice**).
- (g) Without prejudice to **clauses 2.3(i)** and **2.3(j)** if, at any time, before or during the carrying out of the construction works, the **Lessee** decide to alter the number of turbines set out in the Windmill Notice then, as soon as possible after the **Lessee** determines that the relevant information has changed, the **Lessee** must advise the **Lessor** of the change.
- (h) If the **Lessee** issues a Test Notice and a Windmill Notice, the **Lessee** must use its best endeavours to:
 - (1) Complete the construction works within 18 months of the date of service of the Windmill Notice, or such other date as agreed between the parties in writing; and
 - (2) While carrying out the construction works, cause as little disruption to the **Lessor** as is reasonably possible (including any communication services

used by the **Lessor**) having regard to the nature of the construction works.

- (i) Subject to **clause 2.3(j)** the **Lessee** must use its best endeavours to maximise the Number of turbines installed on the land.
- (j) The **Lessor** acknowledges and agrees that in order to obtain the necessary authorisations for the tests, the preliminary works and the construction works, or to comply with all laws in carrying out the tests, preliminary works and the construction works, it may be necessary for the **Lessee** to change the design of the project.
- (k) Notwithstanding any other provision of this deed, the **Lessee** acknowledges and agrees that its right to carry out the construction works is limited to the extent that no turbines, substations or site offices are to be constructed, without the **Lessor's** consent, which may be granted or withheld in the **Lessor's** absolute discretion, within 500 metres of the residences located on the Land as at the date of this deed.
- (l) In determining extension to the time periods set out in this **clause 2.3**, the parties must act reasonably and have regard to the long term nature of the project.
- (m) For the avoidance of doubt, and notwithstanding any other provision of this deed, the parties confirm that the **Lessee** is under no obligation to proceed with the project and if it decides not to proceed, it must serve an appropriate termination notice in accordance with **clause 8**.

2.4 Licence Fee

- (a) Upon execution of this deed the **Lessee** must pay to the **Lessor** a licence fee in the amount of \$10.
- (b) If, on the earlier of:
 - (1) The date that the **Lessee** determines that the construction works have been completed; or
 - (2) The date which is 18 months after the date of service of the Windmill Notice, or if such other date has been agreed between the **Lessor** and the **Lessee** in writing under **clause 2.3(h)**, then such other agreed date, (the **Relevant Date**),

The commencing date of the Lease has not occurred, then the **Lessee** must pay, or if Nomination Notice has been served under **clause 3.2(a)**, the **Lessee** must procure the Nominee to pay, an additional licence fee which is equivalent, on a pro-rata basis, to the rent which would have been payable under the Lease for the period from the relevant date to the commencing date of the Lease.

- (c) Any additional licence fee payable under **clause 2.4(b)** must be paid monthly in arrears.
- (d) If an additional licence fee becomes payable pursuant to **clause 2.4(b)(2)** in circumstances where the construction works have not yet been completed, then the fee payable will be calculated based on the number of turbines and substations which will be located on the land once the construction works have been completed, and not the number of turbines and substations which have been completed at the time the additional licence fee becomes payable.

2.5 The Lessee Releases and Indemnifies the Lessor

The **Lessee** releases and indemnifies and keeps indemnified the **Lessor** against any and all claims, liabilities, costs and expenses of whatsoever nature and kind arising out of any proceedings by a third party against the **Lessor**, which arise as a result of the **Lessee's** use and occupation of the land, except:

- (a) To the extent that liabilities, costs, claims, expenses or proceedings are caused or contributed to by the **Lessor**; or
- (b) where the liabilities, costs, claims, expenses or proceedings are in respect of or arising from the **Lessor** granting or purporting to grant rights inconsistent with the rights granted to the **Lessee** under this deed.

2.6 The Lessor Releases and Indemnifies the Lessee

The **Lessor** releases and indemnifies and agrees to keep the **Lessee** indemnified against any and all actions, claims, demands, liabilities, costs and expenses of whatsoever nature and kind arising out of the **Lessor's** use or occupation of the Land, except to the extent the proceedings are caused or contributed to by the **Lessee**.

2.7 Compliance with Law and Authorisations

- (a) At its own cost the **Lessee** must obtain any authorisation necessary for the tests, preliminary works and the construction works and must comply with all laws in carrying out the tests, preliminary works and the construction works.
- (b) Once the **Lessee** has obtained all necessary authorisations for the construction works to its satisfaction, it must provide written notice to the **Lessor** within 20 business days of receiving the authorisations, indicating that the authorisations have been obtained (**Authorisation Notice**).
- (c) Should the **Lessee** determine, acting reasonably, that it will not be possible to obtain the relevant authorisations within a reasonable time, or at all, it may serve a notice of termination as provided for in **clause 8.2**.

2.8 Ownership of the Works

Despite any other rule at law or in equity, the construction works, and any other infrastructure brought onto the land by the **Lessee** for the purpose of designing, constructing or operating the turbines, will not be deemed to become fixtures, but will remain the **Lessee's** property.

2.9 Intellectual Property

All results, data, information or other intellectual property concerning the Project will be and remain the property of the **Lessee**.

2.10 Provision of Wind Data to the Lessor

The **Lessor** is entitled to access data resulting from tests within 14 days of providing a written request to the **Lessee** detailing the specific data sought provided always that any data provided to the **Lessor** shall be treated as confidential and shall not be disclosed by the **Lessor** to any other persons other than their advisors.

2.11 Insurance

During the period of the licence granted under **clause 2.1** the **Lessee** must maintain an insurance policy covering public liability arising from the **Lessee's** use or occupation of the land for an amount not less than \$20,000,000.

2.12 Safety

The **Lessee** must ensure that the construction works are carried out competently and safely so as to minimise the risk of harm to people and property.

3 Deposited Plan

3.1 Preparation of Plan

- (a) Within 14 days after the **Lessee** determine that the construction works have been completed, the **Lessee** must engage a surveyor to prepare the Deposited Plan.
- (b) The Deposited Plan must be a plan headed "Plan for the purposes of Windmill Generating Turbines" and must identify:
 - (1) The Premises; and
 - (2) The Carriageway Easements and the Distribution Line Easements.
- (c) As soon as practicable after it is prepared, the **Lessee** must serve a copy of the Deposited Plan on the **Lessor**. The **Lessor** must then do all things reasonably necessary to enable the plan to be lodged by the **Lessee** for registration, including but not limited to providing consent to the lodgement of the plan and obtaining the consent of any mortgagees.

3.2 Nominations

- (a) At the same time the **Lessee** serves a copy of the Deposited Plan on the **Lessor** under **clause 3.1(c)**, the **Lessee** may also elect to serve on the **Lessor** a Nomination Notice.
- (b) If a Nomination Notice is served under **clause 3.2(a)** the **Lessor** will have a period of 20 business days within which to object to the nominee set out in the Nomination Notice. The **Lessor** may only object to the nomination if it can demonstrate, to the reasonable satisfaction of the **Lessee** that the nominee is:
 - (1) Not respectable, responsible and solvent;
 - (2) Unable to make the payments required by the Lease on time; or
 - (3) Not able to comply with the other obligations of the **Lessee** under the Lease.

If the **Lessor** does not object to the Nominee within 20 business days of the Nomination Notice being served then the **Lessor** is deemed to have consented to the nomination of the nominee.

3.3 Registration of Plan

- (a) The date of registration of the Deposited Plan will be deemed to be the Commencing Date of the Lease.

- (b) Once the **Lessee** has received notice of registration of the Deposited Plan, it must serve a copy of this notice on the **Lessor**.
- (c) Within 30 business days of receipt of the notice referred to in **clause 3.3(b)**, the **Lessor** must advise the **Lessee** of the council rates, water charges and land tax which is assessed or levied on the land for the relevant rating or taxation period which includes the Commencing Date and must provide such verification of this information as is reasonably required by the **Lessee**.

3.4 Areas Forming the Premises

- (a) The Premises will comprise those parts of the land on which the turbines, the substation and improvements ancillary to the turbines and substation are located. Subject to **clause 2.3(k)**, the **Lessee** shall be entitled to determine the location of the premises, but will do so in reasonable consultation with the **Lessor**, and act reasonably as a result of that consultation.
- (b) The Carriageway Easements will be located on those parts of the land that the **Lessee** reasonably determines are required for ingress to and egress from the turbines, substation and associated infrastructure.
- (c) The Distribution Line Easements will be located on those parts of the Land that the **Lessee** reasonably determine are required for distributing energy produced by the turbines.

4 Lease

4.1 Grant and Acceptance of Lease

On the Commencing Date of the Lease, the **Lessor** must grant the Lease to:

- (a) The **Lessee**; or
 - (b) If a Nomination Notice has been served under **clause 3.2(a)**, to the Nominee,
- Or a combination of the above.

And the **Lessee** or, if a Nomination Notice has been served under **clause 3.2(a)** the **Lessee** must procure the Nominee to accept the grant of the Lease of the premises. Each Lease is to commence on, or be treated as commencing on, the Commencing Date, and on that date the **Lessor** and the **Lessee** or Nominee, as the case may be, become bound as if the Lease had been duly completed, executed, delivered, stamped and registered on that date.

4.2 The Lessor Warranties

The **Lessor** warrants that they:

- (a) Have the legal right to lease the land;
- (b) Are not aware of any proceedings which may render the Lease void, voidable or capable of being set aside;
- (c) Are not aware of any adverse possession of the land or a claim by any person to any part of the Land by adverse possession; and
- (d) Have not previously sold the land or granted an option to purchase or lease the Land or granted a pre-emptive right over the land under a document that is still current and that is inconsistent with the rights granted under this deed.

4.3 GST

- (a) Unless expressly included, the consideration for any supply under or in connection with this deed or the Lease does not include GST.
- (b) To the extent that any supply made under or in connection with this deed is a taxable supply, the **Lessee** must pay, in addition to the consideration to be provided under this deed for that supply (unless it expressly includes GST), an amount (**additional amount**) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. The **Lessee** must pay the additional amount in the same manner and at the same time as the consideration to which it is referable is payable.
- (c) If any party is entitled under this deed to be reimbursed or indemnified by any other party for a cost or expense incurred by the first party, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the party being reimbursed or indemnified, or its representative member.
- (d) The **Lessor** must issue a tax invoice to the **Lessee** in respect of each payment by the **Lessee** under **clause 4.3(b)** no later than 5 business days following payment of the GST inclusive consideration for that supply.
- (e) Terms used in this **clause** which are defined in the GST Act have the same meaning in this **clause**.

4.4 Completion of Lease

- (a) The **Lessor** and the **Lessee** must:
 - (1) Insert sufficient details to complete any items or blanks in each Lease in conformity with this deed including:
 - (A) Information provided by the **Lessor** under **clause 3.3(c)** as Item 14 of the Lease;
 - (B) Completion of the definition of "Related Lease" by inserting the details of each lease granted by the **Lessor** in respect of land used for the purposes of the Wind farm Project, and
 - (2) Make any other additions or alterations to each Lease, which are necessary to enable registration of the Leases and to give effect to this deed.
- (b) The **Lessor** irrevocably authorises the **Lessee's** solicitors to complete the Leases in good faith and make any additions or alterations to the Leases required under **clauses 4.4(a)**.

4.5 Execution

The **Lessor** must execute the Leases and deliver them to the **Lessee** or nominee if a Nomination Notice has been served within 20 business days after receiving them from the **Lessee** or within such other times as agreed by the **Lessee** in writing.

4.6 Possession of Premises

On the Commencing Date the **Lessee** or Nominee if a Nomination Notice has been served must take possession of the Premises under the Leases.

5 The Lessor's Obligations and Acknowledgments

5.1 The Lessor's Obligations

The **Lessor** must:

- (a) Not sell, agree to sell or grant an option to any other person to buy the land without the prior written consent of the **Lessee** which consent will not be unreasonably withheld if the intended purchaser or grantee executes an agreement for lease on identical terms to this deed;
- (b) Not erect or agree to erect any habitable buildings on the land or subdivide the land without the prior written consent of the **Lessee**, such consent not to be unreasonably withheld; and
- (c) Not mortgage, charge, lease, licence or otherwise encumber or deal with the land in any way which is inconsistent with the rights granted under this deed.

The **Lessee** agree that, for the purposes of **clause 5.1(b)**, it would be unreasonable for the **Lessee** to withhold its consent to a proposal by the **Lessor** which involves the erection of habitable buildings or a subdivision in circumstances where the relevant proposal will not obstruct or interfere with the flow of wind to or across the Land in such a way so as to have any negative effect on the Project.

5.2 Caveat

The **Lessor** acknowledges that the **Lessee** may lodge a caveat on the Certificates of Title to the land at Land and Property Information New South Wales to secure the **Lessor's** obligations to the **Lessee** under this deed. The **Lessor** must not object to, or seek the removal of, a caveat lodged by the **Lessee** to protect that interest. The **Lessee** may not obstruct the **Lessor's** dealings with the Land where those dealings are consistent with this Deed.

Once all the structures have been removed as a result of termination, the Caveat will be removed from the title by the **Lessee**.

5.3 No Obstruction

The **Lessor** must not, without the prior written consent of the **Lessee**, such consent not to be unreasonably withheld:

- (a) Obstruct or interfere in any way with the flow of wind to or across the land; or
- (b) Erect any device to convert wind energy for commercial purposes on the land.

The **Lessee** acknowledges that, for the purposes of this **subclause 5.3**, the **Lessor's** undertaking of normal cropping, pasture and grazing practises involving vegetation to a maximum height of 2 metres, but not including plantation of windrows, shall not be construed as obstructing or interfering with flow of the wind.

5.4 Exclusivity

The **Lessor** must not, without the prior written consent of the **Lessee** permit any other person, third party or company to install any wind-monitoring equipment or wind-generated electricity plant on the land.

5.5 No Objection

The **Lessor** must:

- (a) Not object directly or indirectly to any development application made by or on behalf of the **Lessee** in relation to any development on the land for the purposes of the wind farm Project;
- (b) If required by the **Lessee**, execute (and procure execution by any mortgagees or chargees) any development approvals or other documents required in connection with the grant of development approval or any Authorisation required for the development of the Project on the land; and
- (c) Not take any steps inconsistent with any development approval or authorisation granted for the development of the project.

5.6 Multi-Party Deed

- (a) The **Lessor** acknowledges that the **Lessee** intends to obtain project finance from one or more financiers in respect of the project, and that these financiers may require the **Lessor** and the **Lessee** or the Nominee, as the case may be, to enter into a Multi-Party Deed.
- (b) The **Lessor** agrees that it will:
 - (1) If requested by the **Lessee** or the Nominee, as the case may be, execute a Multi-Party Deed; and
 - (2) Not dispose of the land or any part of it unless the assignee or transferee covenants to be bound by the Multi-Party Deed.
- (c) The Multi-Party Deed shall not place the land or the **Lessor's** properties as security against any project finance. The intent of the Multi-Party Deed is to demonstrate to the financiers that the **Lessor** is aware of financing being obtained for equipment to be installed on the land. In the event of a default, the financier shall be eligible to take control of the **Lessee's** properties, but such action must comply with the terms of the current deed.

5.7 Consent of Mortgagee

The **Lessor** must obtain any consent of any mortgagee, chargee or the beneficiary of any other encumbrance of the land to this deed.

6 Assignment

6.1 The Lessee may assign

- (a) Subject to **clause 6.1(c)**, the **Lessee** must obtain the **Lessor's** written consent before the **Lessee** deals with its interest under this deed.
- (b) The **Lessor** must provide their consent if the **Lessee**:
 - (1) Prove to the reasonable satisfaction of the **Lessor** that the new assignee or transferee is respectable, responsible and solvent and able to comply with the **Lessee's** obligations under this deed; and
 - (2) Is not in breach of this deed
- (c) Despite **clause 6.1(a)**, the **Lessee** does not require the consent of the **Lessor** to either:
 - (1) Grant security over this deed or the Lease;

- (2) Assign rights under this deed or the Lease to financiers; or
- (3) Assign the rights under this deed or the lease to a company in which the **Lessee**, or any related body corporate of the **Lessee**, is a shareholder; or
- (4) Facilitate the withdrawal of a **Lessee** and the consequent assumption of liabilities by the remaining **Lessee** or a third party.

6.2 Notice of Assignment

If the **Lessee** assigns the benefit of this deed in accordance with **clause 6.1**, the assignment is not effective against the **Lessor** unless:

- (a) The **Lessor** receives a notice of the assignment within 15 business days after the date of the assignment; and
- (b) The notice has been executed by the **Lessee** and by the assignee.

6.3 Assignment of Income by the Lessor

- (a) The **Lessor's** right to receive any licence fee payable under **clause 2.4** may be assigned without the consent of the **Lessee** provided that the **Lessee** will not be required to pay any amount to an assignee which is otherwise payable to the **Lessor** until the **Lessee** receive a written payment direction from the **Lessor** and, for the avoidance of doubt, payments by the **Lessee** in accordance with a written payment direction will be in full satisfaction of the **Lessee's** liability to the **Lessor** with respect to that payment.
- (b) For the avoidance of doubt, the right of the **Lessor** to assign their right to receive a licence fee under this deed does not extend to the granting of any security in respect of the land other than in accordance with **clause 5.1(c)**.

7 Default

7.1 Events of Default

It is a default under this deed if:

- (a) A party fails to perform any of its obligations under this deed and:
 - (1) Does not rectify such failure within 30 Business Days after receipt of written notice from another party requiring rectification; or
 - (2) Having implemented an appropriate rectification program (such program to be approved by the other parties to this deed, acting reasonably) within 30 business days of written notice from another party requiring rectification, the breaching party then subsequently fails to rectify such failure within a reasonable time following the implementation of the rectification program (having regard to the nature and extent of the breach but in any event within 3 months after implementing the program); or
- (b) In respect of any party, an order is made or a resolution is passed to wind up that party.

8 Termination

8.1 Rights after Default

If a party defaults under **clause 7**, the non-defaulting party may:

- (a) Serve a notice of termination on the defaulting party; or
- (b) Waive or excuse the default under this deed by written notice to the defaulting party.

8.2 Termination by the Lessee

If the **Lessee**:

- (a) During the period prior to the service of a Windmill Notice under **clause 2.3(f)**, is unable to obtain any development approval or other Authorisation it requires in connection with the Project; or
 - (1) During the period prior to the service of a Windmill Notice under **clause 2.3(f)**, forms the reasonable opinion that it will not be possible to obtain a required Authorisation within a reasonable time, or at all; or
- (b) During the period prior to the service of a Windmill Notice under **clause 2.3(f)**, forms the reasonable opinion that the land is not suitable for the project; or
- (c) Determines that it does not wish to proceed with the project; or
- (d) Determines that a Force Majeure Event has occurred,

Then the **Lessee** may serve a notice of termination on the **Lessor**.

8.3 Notice of Termination

A notice of termination given under **clause 8.1(a)** or **clause 8.2** will have the effect of terminating this deed 5 business days following service of the notice of termination on the relevant party.

8.4 Consequences of Termination

- (a) If the **Lessee** serves a notice of termination under **clause 8.1(a)**, as a consequence of a default arising under **clause 7.1(a)** or **7.1(b)**, the **Lessee** may, at the same time, serve notice on the **Lessor** electing to remove all or part of the construction works from the land provided that the **Lessee** must repair any damage caused by that removal.
- (b) If:
 - (1) The **Lessee** serves a notice of termination under **clause 8.2**, or under **clause 8.1(a)** as a consequence of a default arising under **clause 7.1**; or
 - (2) The **Lessor** serves a termination notice under **clause 8.1(a)**.

Then the **Lessee** must remove all of the construction works from the land within 6 months and repair any damage caused by that removal.

- (c) Without prejudice to any obligations under **clause 8.4(a)** or **8.4(b)**, once this deed has been terminated the **Lessee** is absolutely discharged from all future obligations under this deed, provided that, if the **Lessee** has an obligation under **clause 8.4(b)** to remove the construction works from the land and repair any damage caused by that removal, or the **Lessee** elects to remove the construction

works from the land under **clause 8.4(a)**, then, if an additional licence fee is payable by the **Lessee** under **clause 2.4(b)**, the **Lessee** must continue to pay the additional licence fee until the relevant construction works have been removed and the land has been repaired.

9 General

9.1 Notices

- (a) Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party to this deed:

(1) Must be in legible writing and in English addressed as shown below:

(A)



(B) If to **EPYC**:

Address:



Attention:



Facsimile:



Or as specified to the sender by any party by notice;

- (2) Where the sender is a company, must be signed by an officer or under the common seal of the sender;
- (3) Is regarded as being given by the sender and received by the addressee:
- (A) If by delivery in person, when delivered to the addressee;
- (B) If by post, 3 business days from and including the date of postage;
or
- (C) If by facsimile transmission, whether or not legibly received,
when transmitted to the addressee.

But if the delivery or receipt is on a day which is not a business day or is after 4.00 pm (addressee's time) it is regarded as received at 9.00 am on the following business day; and

- (4) Can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.

- (b) A facsimile transmission is regarded as legible unless the addressee telephones the sender within 24 hours after transmission is received or regarded as received under **clause 9.1(a)(3)** and informs the sender that it is not legible.
- (c) In this **clause 9.1**, a reference to an addressee includes a reference to an addressee's officers, agents or employees or any person reasonably believed by the sender to be an officer, agent or employee of the addressee.

9.2 Costs and Stamp Duty

- (a) Each party must bear its own legal costs or any incidental costs associated with the preparation, completion and stamping of this deed.
- (b) The **Lessee** must pay the stamp duty on this deed.

9.3 Whole Agreement

This Agreement for Lease and the Lease comprise the whole agreement between the parties.

Executed as a deed:

SIGNED SEALED AND DELIVERED by
[REDACTED] in the
presence of:

Signature of Witness

Signature of [REDACTED]

Name of Witness (Block Letters)

Executed by EPYC PTY LTD

ABN 11 145 377 448 in accordance with section

137 of the Corporations Act 2001

Signature Director

Name of Director in Full
(Block Letters)

Name of Director/Secretary in Full
(Block Letters)

Annexure A – Lease

Form: 07L
Licence:
Licensee:

LEASE
New South Wales
Real Property Act 1900

Leave this space clear. Affix additional
pages to the top left-hand corner.

PRIVACY NOTE: this information is legally required and will become part of the public record

STAMP DUTY

Office of State Revenue use only

(A) **TORRENS TITLE**

Property leased; if appropriate, specify the part or premises

Item 1 Land

Land:

Item 2 Premises

Premises: as shown on the Deposited Plan at the NSW Titles Office
and that part of the Land hatched black on Annexure C

(B) **LODGED BY**

Delivery
Box

Name, Address or DX and Telephone

CODE

L

Reference (optional):

(C) **LESSOR**

Item 3

(D)

The **Lessor** leases to the **Lessee** the property referred to above.

Encumbrances (if applicable): 1.

2.

3.

(E) **The LESSEE**

Item 4

(F)

TENANCY:

(G) **Item 5: TERM** 30 years

Item 6: COMMENCING DATE

Item 7: TERMINATING DATE

Item 8: With an **OPTION TO RENEW** for a period of 30 years set out in **clause 11**

Item 9: With an **OPTION TO PURCHASE** set out in Not applicable.....

Item 10: Together with and reserving the **RIGHTS** set out in Annexure A.....

Item 11: Incorporates the provisions or additional material set out in **ANNEXURE(S) A**..... hereto.

Item 12: Incorporates the provisions set out in **MEMORANDUM** filed at Land and Property Information New South Wales as
No. Not applicable.....

Item 13: The **RENT** is set out in **clause 3** and **Schedule 1** of **Annexure A**.....

Item 14: BASE BUILDING COSTS:

(a) **Council rates:**

(b) **Water charges:**

(c) **Land tax:**

(d) **Management fee:** Not applicable

Item 15: GUARANTEED SUM: Not applicable.....

Item 16: PARKING FEE: Not applicable

Item 17: COVENANTOR: Not applicable

Item 18: CLEANING CHARGE: Not applicable.....

Item 19: REVIEW DATES: As set out in **clause 3** and Schedule 1 of Annexure A.....

(a) Market:

(b) CPI:

Item 20: PERMITTED USE: As defined in **clause 1.1** of Annexure A

Item 21: PUBLIC LIABILITY INSURANCE: As set out in **clause 6.1** of Annexure A

Item 22: The LESSEE'S PERCENTAGE OF BUILDING COSTS: Not applicable

DATE / /

 dd mm yyyy

(H) I certify that the **Lessor**, with whom I am personally acquainted or as to
Whose identity I am otherwise satisfied, signed this lease in my presence.

Signature of witness:

Name of witness:

Address of witness:

Certified correct for the purposes of the Real
Property Act 1900 by the **Lessor**.

Signature of the **Lessor**:

*Note: where applicable, the Lessor must
complete the statutory declaration below.*

I certify that the **Lessor**, with whom I am personally acquainted or as to
Whose identity I am otherwise satisfied, signed this lease in my presence.

Signature of witness:

Name of witness:

Address of witness:

Certified correct for the purposes of the Real
Property Act 1900 by the **Lessor**.

Signature of the **Lessor**:

*Note: where applicable, the Lessor must
complete the statutory declaration below.*

I certify that the **Lessee**, with whom I am personally acquainted or as to
W

Signature of witness:

Name of witness:

Address of witness:

Certified correct for the purposes of the Real
Property Act 1900 by the **Lessee**.

Signature of the **Lessee**:

(I) **STATUTORY DECLARATION**

I
solemnly and sincerely declare that-

1. The time for the exercise of option to renew in expired lease No. has ended;
2. The **Lessee** under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900.

Made and subscribed at in the State of

on in the presence of-

Signature of witness:

Signature of **Lessor**:

Name of witness:

Address of witness:

Qualification of witness:

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Annexure "A" to a Lease dated / /

The Lessor:

The Lessee:

Premises:

1 Definitions and Interpretation

1.1 Definitions

In this lease:

Agreement for Lease means the agreement for lease entered into between
[REDACTED]
in respect of the Premises;

API means the Australian Property Institute (New South Wales Division);

Authorisation includes:

- (a) any consent, registration, filing, agreement, notice of non-objection, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Government Agency or Other Relevant Authority; and
- (b) in relation to anything which a Government Agency or Other Relevant Authority may prohibit or restrict within a specific period, the expiry of that period without intervention or action or notice of intended intervention or action;

Cables mean the cables wires and fibre optic cables necessary for the Permitted Use;

Carriageway Easements means easements granted to the Lessee by the Lessor over the Carriageway Land to permit:

- (a) Unrestricted access to and egress from the Premises with or without vehicles at all times throughout the Term; and
- (b) Entry onto the Carriageway Land to lay, use, inspect, maintain, repair, renew, remove and replace the Service Roads;

Carriageway Land means those parts of the Land identified on the plan attached to this lease as encumbered by easements for carriageway purposes;

Commencing Date means the date in **Item 6**;

Confidential Information means any information regarding:

- (a) The Project; and
- (b) This lease and the transaction contemplated by it;

CPI means the All Groups Consumer Price Index for the City of Sydney published by the Australian Bureau of Statistics. If that index no longer exists, or if the basis of calculating it changes, it means an index that the President of the API decides reflects changes in the cost of living in Sydney;

Dispose means assign, transfer or otherwise dispose of or grant or permit or suffer the grant of any legal or equitable interest (either in whole or in part) whether by sale, lease, declaration or creation of a trust or otherwise;

Distribution Line Easements means those rights granted to the **Lessee** by the **Lessor** to allow the distribution of the electricity produced from the Turbines (if any) along the Cables and associated Electrical Plant and for these purposes to:

- (a) Install, operate, maintain, repair, renew, replace, remove and use the Cables and associated Electrical Plant in, on or under the Distribution Line Land;
- (b) Have unrestricted access to and egress from the Distribution Line Land with or without vehicles at all reasonable times during the Term; and
- (c) Dig up the Distribution Line Land and allow soil and other material excavated from the Distribution Line Land to remain on or near the Distribution Line Land subject to reinstatement of and rectification of any damage to the surface of the Land on completion of excavation works;

Distribution Line Land means those parts of the land identified on the plan attached to this lease as encumbered by easements for electricity distribution purposes;

Electrical Plant means such plant and equipment as is required to render the output of Turbines suitable for export to the high voltage transmission system of the relevant electricity distribution or transmission company or other owner of such system;

Force Majeure Event means any of the following events provided that they are outside the reasonable control of the **Lessee** and could not have been prevented or avoided by the **Lessee** taking all reasonable steps:

- (a) act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest, drought or meteor;
- (b) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
- (c) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
- (d) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;
- (e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any Government or Government Agency;
- (f) strikes, blockades, lock out or other industrial disputes;
- (g) any heritage issues, including but not limited to, the impact on significant aboriginal sites; or
- (h) any other event which is beyond the reasonable control of the **Lessee**, and in the opinion of the **Lessee**, has the effect of making the Project no longer viable;

Further Lease Option means the option, granted to the **Lessee** under **clause 12.1**, to lease any part of the Land (excluding that part of the Land which is within 500 metres of the primary residence located on the land as at Commencing Date)

for the purposes of the Project which, at the time the Further Lease Option Notice is served, is not already the subject of a lease to the **Lessee**;

Further Lease Option Notice means a notice, which may be given by the **Lessee** to the **Lessor** pursuant to **clause 12.3(a)**, containing details of the approximate location and area of the Land which the **Lessee** proposes to lease, together with details of the proposed Project-related use to which the relevant areas of land are intended to be put;

Further Lease Option Period means the period from the Commencing Date to the Terminating Date including any options to renew granted under this lease;

Government Agency means any government or any governmental semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;

GST Act means A New Tax System (Goods and Services Tax) Act 1999;

Hardstandings means the hardstandings constructed as part of the works under or adjacent to the turbines for the purpose of the construction or installation of the turbines, the electrical plant and for any future renewal, replacement, repair, and maintenance of the turbines and electrical plant including for access by heavy vehicles and machinery to such areas;

Improvements means any buildings, structures and other works and items that are constructed on the land by the **Lessee** including the hardstandings, the permanent foundations, the electrical plant and any turbines and associated infrastructure;

Item means an item in the panel form at the front of this lease;

Land means the land in **Item 1**;

Lessee means the person named in **Item 4** and includes, where the context permits, its agents, employees, invitees and licensees;

Lessor means the person named in **Item 3** and includes, where the context permits, its agents, employees, invitees and licensees;

Multi-Party Deed means a deed, between the **Lessor**, the **Lessee** and one or more financiers to the project, which grants the financier or financiers certain rights in respect of the project, on terms which are reasonably required by the financiers and which are in line with usual industry practice;

Noxious Substances means any radioactive, toxic or hazardous substance, together with any noxious weed as defined by the NSW Department of Primary Industries (NSW Agriculture);

Other Relevant Authority means any agency other than the Governmental and Semi-Governmental Agencies;

Permanent Foundations means concrete and aggregate plinths of dimensions and depths adequate to secure the stability of the turbine construction including, for the avoidance of doubt, rock anchors;

Permitted Use means any use in connection with the project;

Premises means the premises leased to the **Lessee** specified in **Item 2** and shown on the plan attached to this Lease as **Annexure C**;

Project means the development and operation of a wind farm project on the land and on other land leased for the purposes of the Project;

Rates include council rates, water rates, sewerage rates, and all other rates, assessments and fees;

Related Lease means each of the following leases:



Rent means the annual rent ascertained in accordance with the provisions of **Schedule 1**;

Rights means rights granted over the land by the **Lessor** to the **Lessee** including:

- (a) The right and licence to use an area of the land approved by the **Lessor** (such approval not to be unreasonably withheld) for a short period of time as a temporary compound for the storage of contractors' plant equipment and materials in connection with the project;
- (b) subject to any agreement by the **Lessee** and the **Lessor** to the contrary, all existing rights of support, free and unobstructed passage of air and wind all other easements and quasi-easements rights and privileges now and belonging to or to be enjoyed by the Land including without limitation all rights enjoyed over the land;
- (c) The right to install, operate, and maintain on the land towers, anemometers and any wind-monitoring equipment;
- (d) The right to install, operate and maintain such security systems on the land as the **Lessee** shall reasonably require for the protection of the electrical plant and the safety of the public;
- (e) Unrestricted access to the Land for the purposes of:
 - (1) Operating, maintaining, repairing, renewing, removing and replacing the turbines and the housing of electrical plant and associated equipment;
 - (2) Conducting wind measurement and other tests; and
 - (3) Doing all things reasonably necessary and desirable to maintain the commercial production of electricity from the land;

Service Roads mean the roads on the land to be constructed as part of the **Lessee's** works suitable for construction traffic and servicing vehicles in connection with the turbines and electrical plant;

Taxes include the **Lessor's** land tax and any other property tax assessed on the land;

Term means the term of this lease as set out in **Item 5**;

Terminating Date means the date in **Item 7**;

Turbines mean electrical generators rotated by the movement of wind over rotor blades;

Valuer means a valuer who is a member of the API with a minimum of 10 years' experience in valuation of rural and commercial real estate in New South Wales; and

Works means the construction works undertaken by the **Lessee** under the Agreement for Lease.

1.2 Interpretation

In this lease, headings and bolds are for convenience only and do not affect the interpretation of this lease and, unless the context otherwise requires:

- (a) Words importing the singular include the plural and vice versa;
- (b) Words importing a gender include any gender;
- (c) Other parts of speech and grammatical forms of a word or phrase defined in this lease have a corresponding meaning;
- (d) An expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency;
- (e) A reference to anything (including, but not limited to, any right) includes a part of that thing but nothing in this **clause 1.2(e)** implies that performance of part of an obligation constitutes performance of the obligation;
- (f) A reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this lease and a reference to this lease includes any annexure, exhibit and schedule;
- (g) A reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another government agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (h) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (i) A reference to a party to a document includes that party's successors and permitted assigns;
- (j) No provision of this lease will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this lease or that provision;
- (k) A reference to an agreement other than this lease includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (l) A reference to an asset includes all property of any nature, including, but not limited to, a business and all rights, revenue and benefits;
- (m) A reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind; and
- (n) A reference to a body not being a party to this lease (including, without limitation, an institute, association or authority), whether statutory or not:
 - (1) Which ceases to exist; or
 - (2) Whose powers or functions are transferred to another body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

1.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

2 Obligations of the Lessor

2.1 Grant

The **Lessor** grants to the **Lessee**, a lease of the Premises. In addition the **Lessor** grants to the **Lessee** the Carriageway Easements, the Distribution Line Easements and the Rights.

2.2 Quiet Enjoyment by the Lessee

The **Lessee** may occupy and use the Premises without being disturbed by the **Lessor** (or any person claiming through the **Lessor**), except as permitted by this lease.

2.3 Use of Land for the Purposes of Easements

During the term, the **Lessee** may use the distribution line land in accordance with the terms of the distribution line easements (as set out in the definition of Distribution Line Easements) and the carriageway land in accordance with the terms of the carriageway easements (as set out in the definition of Carriageway Easements).

2.4 Services Provided by Authorities

The **Lessor** must use its reasonable endeavours to ensure that any water and electricity supplies, drainage, sewerage and telephone services which supply the premises as at the commencing date are maintained by the relevant authority where appropriate.

2.5 The Lessee's Access

The **Lessee** may enter and use the premises, the distribution line land and the carriageway land at any time, subject to this lease, the law and the requirements of statutory authorities.

2.6 Further Easements

- (a) If at any time during the term, the **Lessee** reasonably requires further easements to be granted for the purposes of the project, then the **Lessee** may serve written notice on the **Lessor** setting out details of the further easement it requires.
- (b) Upon receipt of a notice referred to in **clause 2.6(a)**, the **Lessor** will then have 20 Business Days within which to raise any reasonable objections to the grant of the further easement. If the **Lessor** makes a reasonable objection within the specified time period, then the **Lessee** must make the

necessary amendments to the easement in order to deal with the reasonable objection submitted by the **Lessor**.

- (d) If the parties cannot agree:
 - (1) Whether an objection made under **clause 2.6(b)** is reasonable; or
 - (2) On the amendments required to deal with the relevant objection,
Within 20 Business Days of the objection being made then the matter must be referred to a mediator under **clause 14.2** and the **Lessor** and the **Lessee** agree to be bound by the determination of the mediator as contemplated by **clause 14.2(f)**.
- (e) Once the details of the easement have been agreed, the **Lessor** must do all things reasonably necessary to enable it to be lodged by the **Lessee** for registration, including but not limited to providing consent to the lodgement of the easement and obtaining the consent of any mortgagee.

3 Payments by the Lessee

3.1 Rent

The **Lessee** must pay to the **Lessor** the Rent:

- (a) Whether or not the **Lessor** demands payment;
- (b) In annual instalments; and
- (c) In advance on the commencing date and on each anniversary of the commencing date during the term.

3.2 Method of Payment

The **Lessee** must pay all money owed to the **Lessor** under this lease:

- (a) Within 15 Business Days after demand, unless otherwise specified in this lease; and
- (b) Without deduction or set off.

3.3 Rent Review

The Rent will be reviewed every five years on the relevant anniversary of the commencing date (each a **Market Review Date**) during the term including during any extension of the term under **clause 11**, as follows:

- (a) Not less than 90 days prior to the relevant market review date the **Lessor** will notify the **Lessee** of the amount in writing (the **Lessor's Amount**)

which it considers should be the current market rent as from the market review date (the **Lessor's Notice**); and

- (b) If the **Lessee** does not agree to the **Lessor's Amount**, the **Lessee** must advise the **Lessor** in writing of its objection (the **Lessee's Notice**) within 30 days of receiving the **Lessor's Notice**, that the **Lessee** disputes the **Lessor's Amount**. The **Lessee's Notice** must set out an alternative sum which the **Lessee** considers should be the current market rent as from the market review date.

3.4 Valuer's Determination

- (a) If the **Lessor** and the **Lessee** cannot agree on the current market rent within 30 days after receiving the **Lessee's Notice**, the current market rent will be determined by a Valuer appointed by the President of the API at the request of either the **Lessor** or the **Lessee**.
- (b) The Valuer will determine the Rent that will be payable from the market review date. Information shall be made available to the Valuer as is required to undertake their task. The determination will be final and binding on the parties.
- (c) In determining the current market rent the Valuer must:
 - (1) Act as an expert and not as an arbitrator;
 - (2) Have regard to;
 - (A) The length of the Term;
 - (B) The provisions of this Lease with the **Lessee** in possession of the Leasehold;and must disregard:
 - (C) The value of the **Lessee's Improvements**; and
 - (D) Any failure by the **Lessee** to comply with the provisions contained in this Lease.
- (d) The costs incurred by the Valuer will be shared equally between the **Lessor** and the **Lessee**. Before the resolution and determination of the Rent the **Lessee** must continue to pay the Rent payable immediately before the relevant market review date. Within 30 days of the determination of the Rent any adjustment must be made between the parties.

3.5 Minimum Rent

If the current market rent is determined by the Valuer to be less than the Rent which was payable during the period immediately prior to the market review date, then the Rent will not decrease but rather shall be calculated as per Schedule 1.

4 Other Financial Obligations

4.1 Rates and Taxes

- (a) The **Lessor** must pay all Rates and Taxes assessed or levied on the land, provided that the **Lessee** must pay any additional or increase in Rates and

Taxes attributable to the use of the land by the **Lessee** for the purposes of the project.

- (b) If the **Lessee** is required to pay any additional or increased Rates and Taxes referred to in **clause 4.1(a)** then the **Lessor** must:
 - (1) Make available to the **Lessee**, all information relating to the relevant Rate or Tax; and
 - (2) At the request of the **Lessee** acting reasonably, make representations or objections to the relevant government agency in respect of the relevant Rate or Tax

4.2 Cost of Lease and Stamp Duty

- (a) Each party must pay its own costs (if any) of or incidental to the preparation, negotiation, completion, stamping and registration of this lease, including the costs associated with obtaining the consent of its mortgagee.
- (b) The **Lessee** must pay the stamp duty on this lease and any other document arising from this lease (if applicable) and the costs of registering this lease.

4.3 Adjustments and Errors

- (a) If the **Lessor** has to calculate any amount the **Lessee** owes by using a time period, and this lease starts or ends during that time period, the **Lessor** must make the necessary proportional adjustment. The adjustment must be based on the proportion that the number of days that the **Lessee** is the tenant bears to the number of days during the time period.
- (b) If either the **Lessee** or the **Lessor** proves an error in any calculation, the parties must correct it and any necessary adjusting payment must be made as soon as possible.

4.4 GST

- (a) Unless expressly included, the consideration for any supply under or in connection with this lease does not include GST.
- (b) To the extent that any supply made under or in connection with this lease is a taxable supply, the **Lessee** must pay, in addition to the consideration to be provided under this lease for that supply (unless it expressly includes GST), an amount (**additional amount**) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. The **Lessee** must pay the additional amount in the same manner and at the same time as the consideration to which it is referable is payable.
- (c) If either party is entitled under this lease to be reimbursed or indemnified by the other for a cost or expense incurred by the first party, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the party being reimbursed or indemnified, or its representative member.

- (d) The **Lessor** must issue a tax invoice to the **Lessee** in respect of each payment by the **Lessee** under **clause 4.4(b)** no later than 5 Business Days following payment of the GST inclusive consideration for that supply.
- (e) Terms used in this **clause** which are defined in the GST Act have the same meaning in this **clause**.

5 The Lessee's General Rights and Obligations

5.1 Use

The **Lessee** may use the Premises for the Permitted Use.

5.2 Quiet Enjoyment by the Lessor


The **Lessor** may occupy and use the land without being disturbed by the **Lessee**, or any person claiming through the **Lessee**, except as permitted by this lease. For the purpose of this **clause** the **Lessee** acknowledges the **Lessor's** intention to continue agricultural practises on the Land during the operation of the wind farm.

5.3 The Lessee must observe Law and Rules

The **Lessee** must comply with the law, any Authorisation and any notice from any authority that requires the **Lessee** to do or not do anything concerning the premises, the **Lessee's** use of the premises, or this lease (for example, laws relating to occupational health and safety and environmental matters).

5.4 Obligations in Respect to Actions

The **Lessee** must:

- (a) Keep the **Lessor** informed of the ongoing activities associated with the project being undertaken on and in the vicinity of the land, such as would affect the **Lessor's** ongoing occupation of, and practises on, the land.
 - (b) Not carry out any works on the Land, other in respect of the permitted use, without the consent of the **Lessor** (which consent must not be unreasonably withheld);
 - (c) Not damage or remove any existing vegetation, other than in respect of the permitted use, without the **Lessor's** consent;
 - (d) Rectify any damage and replace any livestock damaged or destroyed which the **Lessor** can establish, to the **Lessee's** reasonable satisfaction, was caused by the **Lessees** entering and remaining on the land, in respect of the permitted use, or in exercising their rights, having regard to the nature and extent of the project;
- 

5.5 Conduct of Employees

The **Lessee** is responsible for the conduct of all of its consultants and employees that enter onto the land.

5.6 Site Induction Procedure

- (a) The **Lessee** is obliged to create and enforce a Site Induction Procedure in relation to its actions, and the actions of its employees and consultants. This Procedure shall be revised as the project moves between the various phases of activity being development, construction and operation.
- (b) The Site Induction Procedure shall be created and revised in consultation with the **Lessor**, and shall cover the following issues:
 - (1) Site access protocol and site security;
 - (2) Conduct of employees and contractors; and
 - (3) Items not to be brought onto the land.

5.7 Ownership of Improvements

Despite any other rule at law or in equity, the Improvements and any other infrastructure the **Lessee** brings onto the Land for the purposes of designing, constructing or operating the project, will not be deemed to become fixtures and vest in the **Lessor**, but will remain the **Lessee's** property.

5.8 Repair and Safety

The **Lessee** must maintain the improvements (including the Service Roads) in good and substantial repair and must ensure that the project is operated competently and safely so as to minimise the risk of harm to people and property.

5.9 Lighting

The **Lessee** must ensure that the lighting which is placed on the improvements is limited to that which is:

- (a) Required by law;
- (b) Required in order to comply with an authorisation;
- (c) Required for insurance purposes; or
- (d) Reasonably necessary for the protection of people or property.

5.10 Repair of Non-permanent Construction Works

The **Lessee** must ensure that pasture disturbed in relation to non-permanent construction works is returned to a similar state of comparable pasture on the land.

5.11 Rectification to communications problems

- (a) The **Lessee** must, within 6 months of the commencement date undertake an assessment of the transmission or reception of TV, radio and other communications signals on the land.
- (b) Should there be found any transmission or reception problem attributable to the use of the Leasehold by the **Lessee**, the **Lessee** must undertake all

reasonably necessary and feasible mitigation measures to rectify the problems.

- (c) The **Lessee** will be responsible for all associated costs.

6 Insurance and Risk

6.1 The Lessee's Insurance

- (a) The **Lessee** must have current insurance policies covering:
 - (1) Public liability arising out of its use or occupation of the Premises for an amount which is agreed between the **Lessee** and **Lessor**, both parties acting reasonably; and
 - (2) Industrial special risks in relation to the **Lessee's** improvements for their full insurable value against all usual risks.
- (b) The **Lessee** must ensure that the insurances:
 - (1) Are in the name of the **Lessee**, not the **Lessor** (and any mortgagee of the **Lessor**) as insured and insure each of their relevant insurable interests; and
 - (2) Are taken out with a reputable insurer who has been agreed between the parties, such agreement not to be unreasonably withheld.
- (c) The **Lessee** must provide the **Lessor** with copies of the policies of insurance referred to in **clause 6.1(a)** if requested by the **Lessor**.

6.2 The Lessee Releases and Indemnifies the Lessor

The **Lessee** releases and indemnifies the **Lessor** against any and all claims, liabilities, costs and expenses of whatsoever nature and kind arising out of any proceedings by a third party against the **Lessor**, which arise as a result of the **Lessee's** use or occupation of the premises, distribution and carriageway easements, except to the extent the proceedings are caused or contributed to by the **Lessor**.

6.3 The Lessor Releases and Indemnifies the Lessee

The **Lessor** releases and indemnifies the **Lessee** against any and all claims, liabilities, costs and expenses of whatsoever nature and kind arising out of any proceedings by a third party against the **Lessee**, which arise as a result of the **Lessor's** use or occupation of the Land, except to the extent the proceedings are caused or contributed to by the **Lessee**.

7 The Lessor's Rights and Obligations

7.1 The Lessor may Enter Premises

- (a) The **Lessor** reserves the following rights over the Premises for the benefit of that part of the land which is not the subject of this lease:

- (1) the right (whilst accompanied by a representative of the **Lessee**) to enter onto any enclosed areas by prior appointment and on reasonable prior notice (except in the case of emergency) so far as may be necessary to verify the **Lessee's** compliance with its covenants in this lease and subject always to supervision by the **Lessee** and observance of the **Lessee's** safety and security requirements;
 - (2) the right to access and use for agricultural purposes (provided the grant of these rights do not conflict with the **Lessee's** use and occupation of the premises under this lease) the ground and soil above the upper surface of the permanent foundations, the distribution line land and the carriageway land, subject to the **Lessee's** approval which shall not be unreasonably withheld; and
 - (3) the right of free passage of water and soil and any other services through any drains or conduits now or during the Term situated in or under the premises or the land (other than any drain or conduit installed by the **Lessee** for the permitted use) and reasonable rights of access for repair and maintenance of the same.
- (b) For the avoidance of doubt, the parties acknowledge and agree that during the Term of this lease the **Lessor** retains all of its rights as a land owner in respect of that part of the land which is not the subject of this lease, subject to the terms of this lease, including the right to:
- (1) Enter onto, live and work on the Land (excluding the premises); and
 - (2) Pass over the Land (excluding the premises) at any time.

7.2 Conditions of Entry

When the **Lessor** has entered the premises under **clause 7.1**, the **Lessor** must not interfere with the **Lessee's** use of the premises;

7.3 The Lessor's Title

- (a) The **Lessor** warrants that they have good title to the land and it has full power and authority to grant this lease.
- (b) The **Lessor** must obtain the consent of any mortgagees, chargee or the beneficiary of any other encumbrance of the land to this lease.

7.4 Dealings with Land

- (a) The **Lessor** must not:
 - (1) Sell, agree to sell or grant an option to any other person to buy the Land without the **Lessee's** prior written consent which consent will not be unreasonably withheld if the purchaser or grantee executes a deed on the terms set out in **clause 7.4(b)**;
 - (2) Erect or agree to erect any habitable buildings on the Land or subdivide the Land without the **Lessee's** consent which will not be unreasonably withheld;

- (3) Mortgage, charge, lease, licence or otherwise encumber or deal with the land in any way which is inconsistent with the rights granted under this lease.

The **Lessee** agrees that, for the purposes of **clause 7.4(a)(2)**, it would be unreasonable for the **Lessee** to withhold its consent to a proposal by the **Lessor** which involves the erection of habitable buildings or a subdivision in circumstances where the relevant proposal will not obstruct or interfere with the flow of wind to or across the Land in such a way so as to have any negative effect on the project.

- (b) Subject to **clause 7.4(a)**, if at any time during the term the **Lessor** sells or otherwise dispose of the interest or create any interest (other than any legal charge) whether leasehold or otherwise in respect of the land or any part thereof to or in favour of a third party (the "**Purchaser**") the **Lessor** must procure (at the **Lessor**' cost) that:
 - (1) the **Purchaser** enters into a deed with the **Lessee** (in a form reasonably required by the **Lessee**) whereby the **Purchaser** covenants with the **Lessee** to comply with all of the obligations of the **Lessor** in this lease in so far as they relate to the land and permits the **Lessee** to exercise the rights granted to it under the lease (including rights granted over the Land under **clause 2.1**);
 - (2) If required by the **Lessee**, the **Purchaser** enters into a Multi-Party Deed; and
 - (3) The deed and the Multi-Party Deed (if required) be executed by the **Purchaser** and delivered to the **Lessee** on or before the completion of the sale or any other dealing.
- (c) In the event of the disposal (including the grant of a lease of the land or any part of it by the **Lessor**) the **Lessor** must procure that the disposal is made expressly subject to the rights granted in this lease and that the purchaser covenants with the **Lessee** to observe and perform the obligations of the **Lessor** in this lease in so far as such obligations relate to the property the subject of the disposal.
- (d) The **Lessor**:
 - (1) Consent to the **Lessee** lodging a caveat on the title to the land in respect of the **Lessee**'s interest under this lease prior to registration of this lease; and
 - (2) Agree not to seek the withdrawal of that caveat until such time as this lease is registered on title.

The **Lessee** agrees that it may not obstruct the **Lessor**'s dealings with the land where those dealings are consistent with this deed.

7.5 No Obstruction

The **Lessor** must not, without the prior written consent of the **Lessee**, such consent not to be unreasonably withheld:

- (a) Obstruct or interfere in any way with the flow of wind to and over the premises;

- (b) Erect any device to convert wind energy for commercial purposes on the land; and
- (c) Without prejudice to the generality of the foregoing, plant on the land any plantation timber or erect any building or structures of any kind which may in any way interfere with the flow of wind to the premises.

The **Lessee** acknowledges that, for the purposes of this **clause 7.5**, the **Lessor's** undertaking of normal cropping, pasture and grazing practises involving vegetation to a maximum height of 2 metres, but not including plantation of windrows, shall not be construed as obstructing or interfering with flow of the wind.

7.6 Interference with Works

The **Lessor** must not interfere with, obstruct or damage the works.

7.7 Exclusivity

The **Lessor** must not, without the prior written consent of the **Lessee** during the term permit any person or company to install any wind-monitoring equipment or wind generated electricity plant on the land.

7.8 Lease Registration

The **Lessor** must use its best endeavours to assist in the registration of the lease, including:

- (a) Making the Certificate of Title available at Land and Property Information New South Wales; and
- (b) Signing any documents or doing anything reasonably required to enable registration of the lease.

7.9 Multi-Party Deed

- (a) The **Lessor** acknowledges that the **Lessee** intends to obtain project finance from one or more financiers in respect of the Project, and that these financiers may require the **Lessor** and the **Lessee** to enter into a Multi-Party Deed.
- (b) The **Lessor** agrees that it will:
 - (1) If requested by the **Lessee**, execute a Multi-Party Deed;
 - (2) Not dispose of the whole or any part of the land unless the assignee or transferee covenants to be bound by a Multi-Party Deed.

7.10 No Objection

The **Lessor** must:

- (a) Not object directly or indirectly to any development application made by or on behalf of the **Lessee** in relation to any development on the land or in respect of the permitted use;
- (b) Take all reasonable steps (at the expense of the **Lessee**) to assist the **Lessee** to obtain development approval for any future development of the premises for the permitted use;

- (c) If so required by the **Lessee**, execute any development approvals required in connection with the grant of development approval for the development of the land (and procure execution by any mortgagee or chargee of the **Lessor** in relation to the same);
- (d) Not take any steps inconsistent with any development approval.

8 Assignment by the Lessee

8.1 Dealing with Land by the Lessee

- (a) Subject to **clause 8.2**, the **Lessee** must obtain the **Lessor's** written consent before the **Lessee** deals with the **Lessee's** interest in the land.
- (b) The **Lessor** must provide its consent if the **Lessee**:
 - (1) proves to the reasonable satisfaction of the **Lessor** that the new assignee or transferee is respectable, responsible and solvent and able to make the payments required by this lease on time, and able to comply with the **Lessee's** other obligations; and
 - (2) is not in breach of this lease.

8.2 Where Consent not Required

- (a) The **Lessee** does not require the **Lessor's** consent to either:
 - (1) Grant security of any kind over this lease to its financiers; or
 - (2) Assign its rights under the lease to its financiers.
- (b) The **Lessor's** consent is not required for an assignment of the benefit of this lease to a company which is a related body corporate of the **Lessee** within the meaning of the Corporations Act 2001 (Cth).

8.3 Assignment of Income by the Lessor

- (a) The **Lessor's** right to receive any money under this lease may be assigned without the consent of the **Lessee** provided that the **Lessee** will not be required to pay any amount to an assignee which is otherwise payable to the **Lessor** until the **Lessee** receive a written payment direction from the **Lessor** and, for the avoidance of doubt, payments by the **Lessee** in accordance with a written payment direction will be in full satisfaction of the **Lessee's** liability to the **Lessor** with respect to that payment.
- (b) For the avoidance of doubt, the right of the **Lessor** to assign its right to receive moneys does not extend to the granting of any security in respect of the Land, other than in accordance with **clause 7.4(a)(3)**.

9 Default

9.1 Events of Default

It is a default under this lease if:

- (a) A party fails to perform any of its obligations under this lease and:

- (1) Does not rectify such failure within 30 business days after receipt of written notice from the other party requiring rectification; or
 - (2) Having implemented an appropriate rectification program (such program to be approved by the other party to this lease, acting reasonably) within 30 business days of written notice from the other party requiring rectification, the breaching party then subsequently fails to rectify such failure within a reasonable time following the implementation of the rectification program (having regard to the nature and extent of the breach but in any event within 3 months after implementing the program); or
- (b) In respect of any party, an order is made or a resolution is passed to wind up that party; or
 - (c) In respect of the **Lessor**, a default occurs under any related lease other than as a result of a breach by the "**Lessee**" under that related lease.

9.2 Copy of Default Notice

If a notice is served by a party under **clause 9.1(a)** then the party serving the notice must ensure that a copy of the notice is also served on all other parties to the related leases.

10 Termination

10.1 Rights after Default

If a party defaults under **clause 9**, the non-defaulting party may:

- (a) Serve a notice of termination on the defaulting party; or
- (b) Waive or excuse the default under this lease by written notice to the defaulting party.

10.2 Termination by the Lessee

If the **Lessee**:

- (a) Determines that it does not wish to proceed with the Project; or
- (b) Determines that a Force Majeure Event has occurred,

Then the **Lessee** may serve a notice of termination on the **Lessor**.

10.3 Notice of Termination

A notice of termination given under **clause 10.1(a)** or **clause 10.2** will have the effect of terminating this lease 5 business days following service of the notice of termination on the relevant party.

For the avoidance of doubt, the parties agree that if a notice of termination is served under **clause 10.1(a)** as a consequence of default arising under **clause 9.1(c)**, then this lease does not terminate until the relevant related lease is terminated, the relevant related lease being the one under which the default occurred causing the default under this lease.

10.4 Consequences of Termination or Expiry

- (a) If the **Lessee** serves a notice of termination under **clause 10.1(a)** as a consequence of a default arising under **clause 9.1(a)** or **9.1(b)**, the **Lessee** may, at the same time, serve notice on the **Lessor** electing to remove all or part of the Improvements from the Premises provided that the **Lessee** must repair any damage caused by that removal.
- (b) If:
 - (1) The **Lessee** serves a notice of termination under **clause 10.2** or under **clause 10.1(a)** as a consequence of a default arising under **clause 9.1(c)**;
 - (2) The **Lessor** serve a termination notice under **clause 10.1(a)**; or
 - (3) This lease expires through the effluxion,Then the **Lessee** must promptly remove all of the improvements from the premises and reinstate the premises to the standard referred to in **clause 10.5**, and extinguish any easements on the land.
- (c) Without prejudice to any obligations under **clause 10.4(a)** or **10.4(b)**, once this lease has been terminated the **Lessee** is absolutely discharged from its future obligations under this lease, provided that, if the **Lessee** has an obligation under **clause 10.4(b)** to remove all improvements from the land and repair any damage caused by that removal, or the **Lessee** elects to remove improvements from the land under **clause 10.4(a)**, then the **Lessee** must continue to pay rent until the relevant improvements has been removed and the land has been repaired.

10.5 Handing Back Premises

In addition to any obligations the **Lessee** may have under **clause 10.4**, in 6 months of the end of this lease or any other dates as agreed between the **Lessor** and the **Lessee** in writing, the **Lessee** must give back the Premises to the **Lessor** in a condition consistent with the **Lessee's** obligations under this lease, to the reasonable satisfaction of the **Lessor**, except for fair wear and tear.

11 The Lessee's Option for Further Term

11.1 Renewing Lease

- (a) If the **Lessee** notifies the **Lessor** at any time, provided it is not longer than 3 months before the terminating date, that it wants to renew this lease, the **Lessor** must grant a new lease for the further term specified in **Item 8**.
- (b) The **Lessee** loses the right to renew this lease if:
 - (1) The **Lessee** does not give the notice within time; or
 - (2) Either at the date of the notice or at the date of expiration of this lease, the **Lessee** has not remedied a breach of this lease of which the **Lessor** have given notice.

11.2 Provisions of New Lease

The new lease will commence on the day after this lease ends and will be on the same terms as this lease, except that:

- (a) There will be no right to renew the new lease and the appropriate change must be made in the new lease to remove or amend inapplicable **clauses** after the first term;
- (b) The appropriate changes must be made to the panel form.

11.3 Rent Payable under New Lease

The rent payable at the start of the new lease is the rent payable at the end of this lease.

12 Option for Additional Leased Area

12.1 Grant of Option

The **Lessor** grants to the **Lessee** the further lease option.

12.2 Option Period

The further lease option may be exercised by the **Lessee** at any time during the further lease option period.

12.3 Exercising the Option

- (a) To exercise the further lease option, the **Lessee** must deliver to the **Lessor**, during the further lease option period, an executed further lease option notice.
- (b) As soon as possible after the service of a further lease option notice, the **Lessee** must engage a surveyor to prepare a deposited plan identifying the additional areas of the land required to be leased by the **Lessee** together with any necessary easements.
- (c) As soon as practicable after it is prepared, the **Lessee** must serve a copy of the deposited plan referred to in **clause 12.3(b)** on the **Lessor**. The **Lessor** will then have 10 business days within which to raise any reasonable objections to the areas to be leased as shown on the deposited plan. If the **Lessor** makes a reasonable objection within the specified time period, then the **Lessee** must make the necessary amendments to the plan in order to deal with the reasonable objection submitted by the **Lessor**.
- (d) The parties agree that, for the purposes of **clause 12.3(c)**, it will be reasonable for the **Lessor** to object to a deposited plan which would have the effect of materially altering the nature of the land in such a way so as to make wind farming the predominant use to which the land would be put, which in turn would materially restrict the ability of the **Lessor** to use the land for agricultural purposes or which would materially interfere with the continued use of the existing improvements on the land.
- (e) If the parties cannot agree:

- (1) Whether an objection made under **clause 12.3(c)** is reasonable; or
- (2) On the amendments to the deposited plan which are required to deal with the relevant objection,

Within 20 business days of the objection being made then the matter must be referred to a mediator under **clause 14.2** and the **Lessor** and the **Lessee** agree to be bound by the determination of the mediator as contemplated by **clause 14.2(f)**.

- (f) Once the plan has been agreed, the **Lessor** must do all things reasonably necessary to enable it to be lodged by the **Lessee** for registration, including but not limited to providing consent to the lodgement of the plan and obtaining the consent of any mortgagees.
- (g) The day upon which the plan is registered will be deemed to be the commencing date of the additional lease.
- (h) Once the **Lessee** has received notice of registration of the deposited plan, it must serve a copy of this notice on the **Lessor**.

12.4 Provisions of Additional Lease

Any additional lease referred to in **clause 12.3** will be on the same terms as this lease, except that:

- (a) The term of any additional lease will end on the terminating date of this lease; and
- (b) The appropriate changes must be made to the panel form.

13 Confidentiality

13.1 Confidentiality

Subject to **clause 13.2**, a party must not:

- (a) Disclose any confidential information; or
- (b) Use any confidential information in any manner which may cause or be calculated to cause loss to the other party,

And each party must use its best endeavours to ensure that none of its auditors, officers, employees or agents:

- (c) Disclose any confidential information; or
- (d) Use any confidential information in any manner which may cause or be calculated to cause loss to the other parties.

13.2 Permitted Disclosure

A party may disclose, and may permit its auditors, officers, employees and agents to disclose, any confidential information:

- (a) With the prior written consent of the other party;
If it is required to do so by law or by any recognised stock exchange on which its shares are listed;

- (b) If the confidential information has come within the public domain, other than by a breach of this **clause 13** by a party;
- (c) To the party's banker or professional adviser; or
- (d) If it is required to do so by a government agency.

14 Dispute Resolution

14.1 Notice of Dispute

If a dispute or difference arises between the parties under or in connection with this agreement, a party may deliver to the other parties a notice of dispute identifying and providing reasonable details of the dispute or difference.

14.2 Mediation

- (a) Subject to **clause 14.3**, if the parties are unable to resolve the dispute within 20 business days after receipt of the notice, the dispute must be referred to mediation before any litigation proceedings are instituted.
- (b) The mediator must be appointed by agreement between the parties or failing agreement will be appointed, at the request of any party, by the president of the NSW Chapter of the Institute of Arbitrators and Mediators Australia.
- (c) The parties must submit brief written outlines of the issues in dispute as well as any expert reports on the issues in dispute to the mediator.
- (d) The mediator is not liable to any party, except in the event of fraud, for any act or omission by the mediator in the performance of his obligations as mediator.
- (e) The parties must equally share the costs of the mediator's fees, room hire, administration fees and registration fees.
- (f) The mediator does not have the authority to impose a settlement on the parties but will assist the parties in resolving their dispute. The parties may however, agree in writing to be bound by the decision of the mediator.

14.3 Alternate Proceedings

Nothing in this **clause 14** prejudices any party's right to institute proceedings to enforce any payment due under this agreement or to seek injunctive or urgent declaratory relief in respect of a dispute or difference under this **clause 14** or any other matter arising under this lease.

15 General

15.1 Notices

- (a) A notice under this lease must be in legible writing and in English.

- (b) If a party wants to give a notice to another party the notice must be left at, or send by security post to or faxed to, the relevant party's registered office or any other address that the relevant party nominates.
- (c) If any notice is given on a day which is not a business day or after 5.00pm (addressee's time), it is taken not to be given until the next business day.

15.2 Exclusion of Implied Covenants and Powers

Sections 84, 84A and 85 of the Conveyancing Act, 1919 do not apply to and are not implied in this lease unless they are expressly included.

15.3 Governing Law and Jurisdiction

- (a) This agreement is governed by the laws of New South Wales.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales.

15.4 Variation

A variation of any provision of this lease must be in writing, signed by the parties and in a form able to be lodged for registration at Land and Property Information New South Wales.

15.5 Whole Agreement

This lease comprises the whole agreement between the parties in respect of its subject matter.

15.6 Severability

If a court decides that any part of this lease is void, voidable, illegal or unenforceable or this lease would be void, voidable, illegal or unenforceable unless a part is severed from this lease, then that part is severed from this lease and does not affect the continued operation of the rest of this lease.

15.7 Consent or Approval

Unless expressly stated in a particular clause:

- (a) The parties must not unreasonably withhold or delay their consent or approval under this Lease, but may give it on reasonable conditions; and
- (b) Any consent or approval must be in writing.

15.8 No Waiver

- (a) Failure to exercise, delayed exercise or partial exercise of any available remedy or right does not waive any breach by a party.
- (b) Waiver by a party of a particular breach is not a waiver of any other breach or default.

15.9 Relationship of Parties

No party is the partner, agent, employee or representative of any other party and no party has the power to incur any obligations on behalf of, or pledge the credit of, any other party.

15.10 Attorneys

Each of the attorneys executing this agreement states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

Schedule 1 - Rent

- (a) The rent on the commencing date will be:
- \$ 10,000.00 for each turbine and a substation (if any) located within the premises, which is to be considered as two turbines.
- (b) The rent payable on each anniversary of the commencing date and will be the rent payable in the previous year increased by CPI as follows:

$$R = PR \times \text{CPIB} / \text{CPIA}$$

Where:

R = the Rent applicable for the relevant year;

PR = the Rent applied in the previous year;

CPIB = the CPI figure for the completed year preceding the Rent payment date in the relevant year; and

CPIA = the CPI figure for the completed year preceding the Rent payment date in the previous year.

Note: The first payment on the First Fee Date will be calculated and indexed from the completed quarter closest to the date of signing of the Agreement for Lease.

Annexure B – Nomination Notice

NOMINATION NOTICE

Agreement for Lease

Clause 3.2

EPYC PTY LTD ABN 11 145 377 448 (the **Lessee**) hereby exercise the right granted to them under **clause 3.2** of the Agreement for Lease dated _____ between the **Lessor** and the **Lessee** to nominate a party to be the “**Lessee**” under the Lease, as that term is defined in the Agreement for Lease.

The **Lessee** hereby nominates _____ as their nominee under **clause 3.2**.

Dated:

Signed by the **Lessee**:

.....