

## AGREEMENT FOR LEASE

Between

### **!OË#GÂN TRADITIONAL AUTHORITY**

P.O. Box 21164 Windhoek (the Landlord which expression shall include his personal representatives and

assignees); herein represented by **GAOB IMMANUËL #NU-AXA**

**/GÂSEB** in his capacity as Traditional Chief.

And

### **HELIUM ENERGY (PTY) LTD**

a Namibian company with an address at 19 Axali Doeseb Street, Windhoek West, Windhoek and postal address P.O Box 26672, Windhoek, Namibia (the Tenant which expression shall include its successors in title and assignee),

herein represented by **MR. PAULUS MULUNGA** in his capacity as Director.

(Collectively referred to as "The Parties")



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## BACKGROUND

- (a) The Landlord is the current registered proprietor of the Land.
- (b) The Landlord has agreed to allow the Tenant to use the Property for erecting and operating of a Solar Power Plant and related facilities, which will be constructed by the Tenant.
- (c) The Tenant intends to enter into a Power Purchase Agreement with an offtaker for a period of 25 years with an option to extend for 25 years.
- (d) The Landlord has agreed to allow the Tenant access to the Property during the Appraisal Period to carry out the Appraisal Work. The Landlord has agreed to subsequently grant to the Tenant a lease of the Property in order to construct, build, maintain and operate a Solar Power Plan and all ancillary and related facilities together with the Access Road Easement (the "Easement") in order to access the Property and related facilities on the terms contained in this agreement..
- (e) The grant of the Lease and the Easements is subject to the Conditions set out under clause 3 below.

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## AGREED TERMS

### 1. INTERPRETATION

The definitions in this clause apply in this agreement:

**Annual Rent:** N\$ 0.00... (excluding VAT) per year for the Property with an annual 5% increase on the agreement anniversary date, as long as the annual average CPIX rate remains below 5%. Should the annual CPIX rate increase above 5% per annum, the rate above 5% shall apply as escalation rate for a subsequent year of the contract.

**Appraisal Period:** means a period of three months from date of signature.

**Appraisal Works:** means the preliminary environmental assessment study and any geophysical survey and studies which may be required by the relevant authorities.

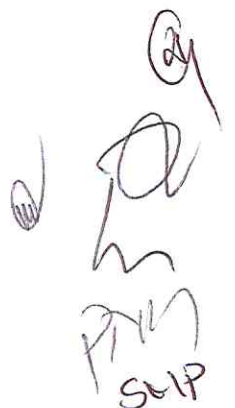
**Completion Notice:** the written notice served by the Tenant on the Landlord confirming that every Condition has been satisfied in accordance with clause

**Conditions:** means the conditions set out in clause 4.

**Consumer Price Index:** means an economic indicator that measures the price of typical consumer expenses that is used to give an indication of inflation as published by the Namibia Statistics Agency (NSA) from time to time.

**Contractual Term:** the period from the Term Commencement Date to the termination of the Power Purchase Agreement which shall be a period of 25 years from the Full Commercial Operation Date with an option to renew for a further 25 years.

**Easement:** the legal right for an access road to and from the Property through portion(s) of Land that are not be part of the Property.



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**Full Commercial Operation Date:** means the start date more particularly defined in the PPA.

**EIA Licences:** the Environmental Impact Assessment Licence to be obtained by the Tenant.

**GON:** the Government of the Republic of Namibia.

**Head Titles:** the titles comprising the Property.

**Nampower:** Namibia's national power utility.

**Land:** means the total area 100 hectares comprised in the Head Titles, the area and extent of which is provisionally demarcated as per annexure A hereof.

**Lease:** a lease for the Contractual Term substantially in the form of a lease contract signed between the parties in a period of 90 days since the date of the present document.

**Licence:** the generation license issued by the Electricity Control Board (ECB).

**Planning Consent:** planning consent issued in accordance with the Physical Planning Act for the construction of the Solar Power Plant.

**Power Purchase Agreement (PPA):** the power purchase agreement made between the Tenant and Nampower, as such agreement may be amended or supplemented from time to time.

**Project:** including, but not limited to, the design, procurement, construction, commissioning, testing, operation and maintenance of the Solar Power Plant and related facilities and all related plant and equipment necessary to facilitate the generation of solar energy for sale to Nampower.

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**Property:** the property from the Land comprising 100 Ha a provided that this measure shall be made subject to a final plan layout to be provided by the Tenant.

**Rent Commencement Date:** means the date that the Tenant shall commence the construction of the Solar Power Plant on the Property.

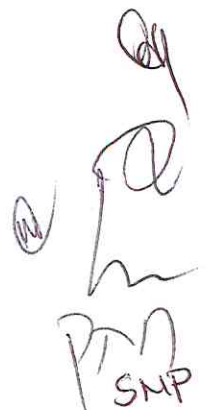
**Rent Payment Dates:** means every one (1) year from the Rent Commencement Date.

**Solar Power Plant:** means the solar power plant installation and the interconnection infrastructure to the grid power station and associated buildings and equipment to be constructed and operated by the Tenant at the Property.

**Term Commencement Date:** the date that is five (5) working days after the Tenant has served on the Landlord the Completion Notice.

**VAT:** value added chargeable in terms of the Value Added Tax Act 10 of 2000.

- 1.1 The rules of interpretation in this clause apply in this agreement.
- 1.2 Clause and Schedule headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 Unless otherwise specified, a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment.
- 1.7 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to writing or written includes faxes and e-mail.

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1.9 Except where a contrary intention appears, references to clauses and Schedules are to the clauses and Schedules of this agreement.

1.10 Landlord includes the Landlord's successors in title, assigns, personal representatives, nominees, grantor (in the case of a power of attorney) and any other person who is or becomes entitled to the reversion (whether immediate or not) expectant on the term to be created by the Lease.

1.11 Tenant includes the Tenant's successors in title and assigns.

1.12 A reference to the PPA means a reference to the Power Purchase Agreement.

## **2. AGREEMENT FOR LEASE AND EASEMENT**

2.1 In consideration of the Tenant's obligations under this agreement, the Landlord shall grant to the Tenant and the Tenant shall accept from the Landlord the Lease and the Easement on the terms set out in this agreement.

2.2 The Tenant acknowledges that the Landlord has given the Tenant and those authorized by the Tenant, the opportunity to inspect, survey and carry out investigations (Appraisal Works) during the Appraisal Period.

## **3. TENANT'S OCCUPATION PRIOR TO THE GRANT OF THE LEASE**

3.1 During the Appraisal Period the Tenant is entitled to access the Property for purposes of carrying out the Appraisal Works.

3.2 Any occupation of the Property by the Tenant is by way of this agreement and subsequent licence only.

3.3 The Tenant does not have, and is not entitled to, any estate, right or interest in the Property.

3.4 The parties shall observe and perform their respective obligations imposed by the covenants and conditions in the Lease and the Easements (to the extent that they are not inconsistent with the other provisions of this agreement) as if the Lease and the Easement had been completed on the date hereof.

3.5 The Landlord shall have the same rights and remedies in respect of any breach of the obligations imposed on the Tenant by the covenants and conditions in the Lease and the Easement as if the Lease and the Easement had been completed on the date hereof.

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#### 4. CONDITIONS

4.1 Completion of the grant of the Lease is conditional on:

- a) the successful change of user for purposes of operating a Solar Power Plant on the Head Titles,
- b) the grant of Planning Consent,
- c) the grant of the Licence ECB,
- d) the Tenant obtaining financing for the Project,
- e) the grant of any construction or business licenses that may be required,
- f) the Licence and the EIA Licence remaining in full force and effect on the Term Commencement Date, and
- g) the execution of the Power Purchase Agreement.

4.2 Upon the execution of this Agreement, the Landlord agrees to cooperate with the Tenant and assist the Tenant in obtaining any other consents, approvals and licenses required to satisfy all the conditions set out under clause 4.1 and shall sign any application as may be required for the purposes of a change of user and any other related document as may be requested by the Tenant.

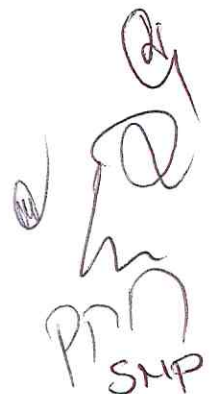
4.3 This agreement does not imply any obligation to Lease the Property by the Tenant, only the right to do so in case the conditions set out in clause 4.1 are fulfilled.

4.4 The Tenant may retain the option to Lease by paying a non-refundable deposit of N\$ 0.00.. commencing the day after the end of the Appraisal Period.

4.5 This option is valid for one (1) year. The Landlord agrees not to sell, tease or market the Property to other potential purchases or lessees during the Option period.

4.6 If any condition has not been satisfied by the term of the Option Period, this agreement may be rescinded by the Tenant giving written notice to the other at any time after the end of the Option Period.

4.7 Notwithstanding the reminder of this clause 4, the Tenant may waive any or all of the Conditions by serving written notice on the Landlord before the end of the Option Period in which case the Landlord shall grant the Lease in accordance with clause 10.



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4.8 If a notice to rescind is served under clause 4.6, neither of the parties shall have any further rights or obligations under this agreement.

## **5. VACANT POSSESSION**

Subject to clauses 3 and 4, the Landlord shall give the Tenant vacant possession of the Property on completion of the grant of the Lease.

## **6. PAYMENT OF ANNUAL RENT**

The Annual Rent shall be paid in Namibian Dollars as follows:

6.1 The Annual Rent shall be paid by a banker's standing order or by electronic transfer to the Landlord's bank account as directed by the Landlord.

6.2 The first payment of the Annual Rent and any VAT (the Initial Rent) shall be paid on the Rent Commencement Date.

6.3 Upon payment of the Initial Rent and provided that the PPA is for a term of 25 years after the commercial operation of the Solar Plant the next payment of the Annual Rent and any VAT shall be due on the date falling one (1) year from the Rent Commencement Date.

6.4 The Annual Rent shall be payable in accordance with clause 6.3 above on condition that the said Annual Rent be revised annually according to clause 1.1 hereof.

## **7. DEDUCING TITLE**

7.1 The Landlord will supply a copy of the Head Titles to the Tenant within a period of 30 days from the date of signature of this agreement.

7.2 The Tenant is deemed to have full knowledge of the Landlord's title and is not entitled to raise any enquiry, objection, enquiry or requisition in relation to it.

## **8. TITLE GUARANTEE**

8.1 The Landlord shall grant the Lease of the Property with full title guarantee.



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## 9. CONSTRUCTION

- 9.1 The Tenant shall give the Landlord two (2) weeks written notice of its intention to commence construction of the Solar Power Plant on the Property.
- 9.2 Upon receipt by the Landlord of the said notice, and upon the expiry of the two (2) week notice, the Tenant shall pay the Annual Rent as defined in 6.2.
- 9.3 Upon payment of the Annual Rent to the Landlord in accordance with clause 6.2 above, the Landlord will immediately and unconditionally permit the Tenant to construct the Solar Power Plant on the Property.

## 10. COMPLETION

- 10.1 The Landlord shall grant to the Tenant the Lease on the Term Commencement Date.
- 10.2 The Landlord shall grant to the Tenant an Easement within 14 working days of the receipt of an Easement Notice. All cost associated with construction and maintenance of access roads for the rights associated with the easement shall be for the account of the Tenant.
- 10.3 On completion of this agreement, clauses 2.1 and 10.2 shall continue in force until the Landlord has granted to the Tenant all of the Easement and the Tenant confirms in writing to the Landlord that no further easement is required.
- 10.4 The Landlord shall permit the Tenant (if required) to Sub-I-lease part of their 30Ha to related parties/companies with the consent of the Landlord, which consent shall not be unreasonably withheld.

## 11. OPTION TO RENEW

In the event that the Tenant enters into a PPA for a period of twenty-five (25) years then it shall have a right to renew the Lease for a further term of fifteen (25) years subject to renegotiation of rental payable.

## 12. MATTERS AFFECTING THE PROPERTY

- 12.1 The Landlord shall grant the Lease to the Tenant free from encumbrances other than:

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(a) any matters other than financial charges contained or referred to in the Head Titles;

(b) all matters contained or referred to in the Lease;

(c) any matters discoverable by inspection of the Property before the date of this agreement;

(d) any matters which the Landlord does not and could not reasonably know about;

(e) any matters, other than financial charges, disclosed or which would have been disclosed by the searches and enquiries that a prudent tenant would have made before entering into this agreement; and

(f) public requirements.

12.2 The Tenant is deemed to have full knowledge of the matters referred to in clause 12.1 above and shall not raise any enquiry, objection, requisition or claim in respect of any of them.

### **13. REPRESENTATIONS AND WARRANTIES**

#### **13.1 Representations and Warranties of the Tenant**

The Tenant represents and warrants on the date hereon that:

(a) the Tenant is a limited liability company duly organized and validly existing under the laws of Namibia and has all requisite legal power and authority to execute this agreement and to carry out the terms and conditions and covenants contained herein;

(b) this agreement constitutes valid, legal and binding obligations of the Tenant, enforceable against the Tenant in accordance with its terms except as the enforceability may be limited by applicable laws affecting creditors' rights generally or general principles of equity;

(c) all action required to authorize the execution, delivery and performance by the Tenant of its obligations under this agreement have been taken and are in full force and effect; and

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(d) the execution, delivery and performance by the Tenant of this agreement have been duly authorized by all requisite corporate action, and will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it is a party or by which it or its property may be bound.

### **13.2 Representation and Warranties of the Landlord**

The Landlord represents and warrants on the date hereon that:

(a) this agreement constitutes valid, legal and binding obligations of the Landlord, enforceable against the Landlord in accordance with its terms except as the enforceability may be limited by applicable laws affecting creditors' rights generally or general principles of equity

(b) All action required to authorize the execution, delivery and performance by the Landlord of its obligations under this agreement have been taken and are in full force and effect; and

(c) the execution, delivery and performance by the Landlord of this agreement have been duly authorized by all requisite corporate action, and will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it is a party or by which it or its property may be bound.

### **14. VAT**

14.1 Each amount stated to be payable by the Tenant to the Landlord under or pursuant to this agreement is exclusive of VAT (if any).

14.2 If any VAT is chargeable on any supply made by the Landlord under or pursuant to this agreement, the Tenant shall pay the Landlord an amount equal to that VAT as additional consideration on completion.

### **15. PARTIES' COSTS**

15.1 Each party shall be responsible for its own legal costs and disbursements in connection with this agreement and the grant of the Lease.

15.2 Should any subdivision of the property be a requirement for the granting of applicable licences, the Tenant shall be liable for all costs associated with subdivision and other survey or licence fees.

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## 16. NOTICES

16.1 Any notice or other communication required to be given under this agreement shall be in writing and shall be delivered personally, or sent by recorded delivery or by commercial courier, to each party required to receive the notice or communication as set out below:

(a) **Landlord:**

IOË#GÂN TRADITIONAL AUTHORITY

Postal Address:

P.O. Box 21164

Windhoek

Cell: +264 81242 2607

(b) **Tenant:**

HELIUM ENERGY (PTY) LTD

Physical Address:

19 Axali Doeseb Street, Windhoek West, Windhoek

Postal Address:

P.O Box 26672

Windhoek

Tel no: +264 61 555 000

Cell: +264 811622042/ +264 812886222

or as otherwise specified by the relevant party by notice in writing to each other party.

16.2 Any notice or other communication shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause; or
- (b) if sent by recorded delivery, at 3 pm on the third working day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

16.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

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## 17. ASSIGNMENT

The Tenant shall be entitled to assign this agreement or any of its rights and obligations under this agreement to its subsidiaries, related or affiliated companies with the consent of the Landlord, which consent shall not be unreasonably withheld.

## 18. ENTIRE AGREEMENT

18.1 This agreement constitutes the whole agreement between the parties and supersede all previous agreements between the parties relating to its subject matter.

18.2 The Tenant acknowledges that, in entering into this agreement, it has not relied on, and shall have no right or remedy (other than for breach of contract) in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than:

(a) as expressly set out in this agreement; or

(b) in any written replies which the Landlord has given to any written enquiries raised by the Tenant before the date of this agreement.

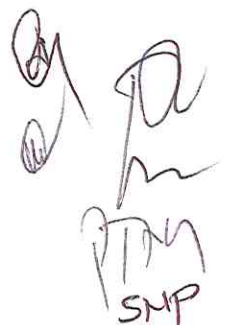
18.3 Nothing in this clause shall limit or exclude any liability for fraud

18.4 This Agreement may not be varied except with the written consent of both Parties provided that the Tenant reserves the right to vary this Agreement in accordance to the requirements of its financier in order to satisfy condition 4.1 (e) above

## 19. SEVERANCE

19.1 If any provision of this agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be illegal, invalid or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this agreement, and the validity and enforceability of the other provisions of this agreement shall not be affected.

19.2 If a provision of this agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision or part-provision shall apply with the minimum modification necessary to make it legal, valid and enforceable



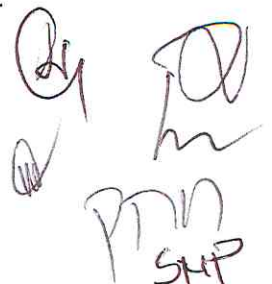
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## 20. JOINT AND SEVERAL LIABILITY

- 20.1 Unless expressly provided otherwise in this agreement, where the Tenant is more than one person, they shall be jointly and severally liable for their respective obligations and liabilities arising under this agreement.
- 20.2 The Landlord may take action against, or release or compromise the liability of, any one of them, or grant time or other indulgence, without affecting the liability of any of the other.

## 21. DISPUTE RESOLUTION

- 21.1 Any dispute or difference of any kind between the Parties arising out of or relating in any way to the Property or this agreement, including any dispute concerning the interpretation of this agreement, its validity, its enforceability, any purported breach or termination, or any dispute arising out of common law or statutory law (a Dispute") shall, as far as possible, be settled amicably between the Parties through good faith negotiations. It is agreed that the disputing party shall serve a seven (7) day notice to the other party to commence good faith negotiations and a person nominated by each party shall be obliged to meet and endeavour to resolve the Dispute through the contemplated good faith negotiations. The date upon which the good faith negotiations commence shall be referred to as the Date of Dispute.
- 21.2 Where no settlement is reached within fourteen (14) days from the Date of Dispute, then the parties agree to seek amicable non-binding settlement by mediation in accordance with a mediator appointed by agreement by the parties in dispute. To the extent that the parties are unable to agree on the identity of the mediator, he shall be appointed by the Tenant.
- 21.3 It is agreed between the parties that all costs relating to the mediation process shall be shared equally between the Parties.
- 21.4 If the Dispute is not settled and resolved by the mediator within 14 days from the commencement of the mediation process, the Dispute shall be referred to and shall be finally resolved by binding arbitration in terms of Arbitration Act 42 of 1965 and in accordance with Clause 21.5.
- 21.5 There shall be one (1) arbitrator who shall be, if the issue is:
- (a) Primarily an accounting matter, an independent Chartered Accountant;
  - (b) Primarily a legal matter, a practising Senior Counsel; or
  - (c) Primarily a technical matter, a person with suitable technical knowledge.

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21.6 The appointment of the arbitrator shall be agreed between the Parties, but failing agreement between them, within a period of 14 days after the arbitration has been demanded, either of the Parties shall be entitled to request the President of the Law Society of Namibia (LSN), to make the appointment and, in making his/her appointment, to have regard to the nature of the dispute.

21.7 Each arbitration shall be in Windhoek in accordance with the provisions of Namibian arbitration laws and the language of the arbitration shall be English.

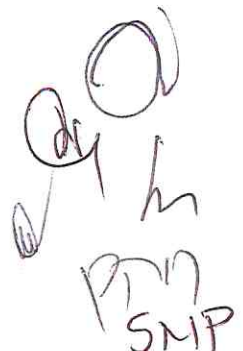
21.8 The arbitrator will be entitled to make such award, including an award for specific performance, an interdict, damages, account of profits, a penalty or otherwise as he/she in his/her sole discretion may deem fit and appropriate and to deal as he/she deems fit with the question of costs. The award rendered shall apportion the costs of the arbitration, including the Parties attorneys' fees and expenses. The arbitrator is authorized to award pre-award interest at a rate to be determined by them from the date of the injury to the date of the award. The arbitrator shall be authorized to award interim measures and to order security for interim measures in an amount and form determined by him/her to be appropriate. The award shall bear interest at a rate to be determined by the arbitrator from the date of the award until the date of the payment. The arbitrator is not authorized to award punitive, double, treble, multiple or consequential damages. The arbitrator shall not be empowered to decide any dispute ex aequo et bono or amiable compositeur.

21.9 The decision of the arbitrator shall be final and binding on the Parties, and may be made an order of any court of competent jurisdiction. The award shall be in writing and shall set forth the reasons for the arbitrator's decision. Each of the Parties hereby submits itself to the jurisdiction of the laws of Namibia should the other Party wish to make the arbitrator's decision an order of that court.

21.10 The parties shall be equally liable for the costs of the arbitration proceedings; provided however, if the arbitration ruling is made against the initiator of arbitration, the initiator will be liable for all the costs.

21.11 The Parties renounce any right they may have to appeal or challenge the decision of the tribunal insofar as such renunciation can be validly made; and

21.12 If any Dispute arising out of or in connection with this agreement raises issues which has common issues of law or fact with any dispute or difference arising out of or in connection with, the other Project Agreements (a "Related Project Dispute") then the two disputes shall be consolidated and heard by the same arbitration tribunal, and the Parties agree that the tribunal shall be authorized to establish such procedures in its discretion to resolve the disputes, including bifurcating or issuing interim awards.

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## **22. CONFIDENTIALITY:**

Any arbitration under this agreement (including a settlement resulting from an award, documents exchanged or produced during an arbitration proceeding, and memorials, briefs, witness statements or other documents prepared for the arbitration) shall be confidential and may not be disclosed by the parties, their employees, officers, directors, counsel, consultants, and expert witnesses, except (a) in a legal proceeding to enforce rights under this arbitration clause, (b) in response to a subpoena or legal process, but only after giving the other parties to the arbitration reasonable notice in advance for them to take steps to preserve the confidentiality of the material, (c) by agreement of all the parties to the arbitration, or (d) as required by law. A breach of this confidentiality provision shall not void any settlement or award.

## **23. CONTINUANCE OF OBLIGATIONS:**

The Parties shall continue to perform their respective obligations under this agreement during any good faith negotiations, mediation or arbitration proceedings.

## **24. CONFIDENTIALITY**

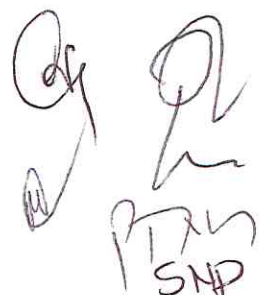
The parties shall not, either during the term or within five (5) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the agreement without the prior written consent of the other party.

## **25. GOVERNING LAW AND JURISDICTION**

The agreement shall be governed by and construed in accordance with the laws of the Republic of Namibia.

## **26. SIGNATURES**



The Parties hereto have executed the current Agreement in two (2) original copies by their duly authorised representatives on the day and at the place referred to herein, each Party receiving one (1) original copy hereof.




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Thus done and signed by LANDLORD AT Windhoek ON THIS 09 DAY OF November 2023


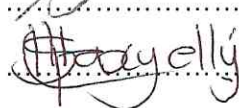
**AS WITNESSES**


1. Isaac Gaseb 
2. Mauritius Gaseb 


  
GAOB IMMANUEL #NU-AXA /GÅSEB  
LANDLORD

Thus done and signed by TENANT AT Windhoek ON THIS 09 DAY OF November 2023

**AS WITNESSES**

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4. 

  
MR. PAULUS MULUNGA  
TENANT

  
SNP