

"Landlord"

WIND POWER PTY LTD

ACN 097 047 268

"Tenant"

LEASE

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Reference PAN:1198466

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# LEASE

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THIS LEASE is made the                      day of                      2005.

BETWEEN

Landlord"

AND

WIND POWER PTY LTD ACN 097 047 268 of c/- Level 20, 385 Bourke  
Street, Melbourne, Victoria

"Tenant"

ON THE BASIS THAT:

- A. The Landlord is the Registered Proprietor of the Land upon which the Premises is located.
- B. The Landlord has at the request of the Tenant agreed to grant to the Tenant and the Tenant has agreed to take a lease of the Premises for the Term at the rental and subject to the covenants and conditions contained in this Lease.
- C. This Lease is subject to and conditional upon Financial Close being achieved.

AND THE PARTIES AGREE THAT:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Accessways	means any vehicular and other accessways over the Land coloured yellow on the plan annexed to this Lease as Annexure 2)
Business Day	means any day that is not a Saturday or Sunday on which banks are open for general banking business in Melbourne
Commencement Date	means the date that the Wind Turbine Generators are commissioned and begin operation in the vicinity of the Land
Expiry Date	means the date specified in Item 6 of Schedule 1)
Financial Close	means the date on which a letter of credit is issued by the financier for the wind farm project contemplated in the vicinity of the Land
Holding Company	means a holding company as that term is defined in the Corporations Law
Land	means the land comprised in Certificate of Title Volume [REDACTED] known as [REDACTED]
Landlord	means the person named in Item 2 of Schedule 1) and includes the Landlord's successors and assigns and, where the context permits, its servants and agents

<b>Lease Year</b>	means each period of <b>12 months</b> starting on the Commencement Date and includes any portion of the Term, not being a full Lease Year, from the end of a Lease Year until the end of the Term
<b>Permitted Use</b>	means the use specified in <b>Item 9 of Schedule 1)</b>
<b>Premises</b>	means the Premises described in <b>Item 1 of Schedule 1)</b>
<b>Rent, Rental and rental</b>	means the Rent stated in <b>Item 7 of Schedule 1)</b>
<b>Tenant</b>	includes the person or persons described in <b>Item 3 of Schedule 1)</b> and his executors, administrators or (being a corporation) its successors in title, and where applicable those claiming through or under them respectively
<b>Term and term</b>	means the period of time specified in <b>Item 4 of Schedule 1)</b>
<b>Wind Turbine Generators</b>	means electrical generators rotated by the movement of wind over rotor blades

**1.2 Covenants to Bind Parties Jointly or Severally**

When two or more Tenants are parties to this Lease the covenants agreements conditions and stipulations on their part contained in this Lease refer to and bind them and any two or greater number of them jointly and each of them severally.

**1.3 Persons, Corporations etc.**

Any reference to a person includes a corporation and words importing the singular number include the plural and words importing the masculine gender include the feminine and neuter genders and vice versa respectively.

**1.4 Periods Less than 12 Months**

For any period of less than **12 calendar months** any payments to be made by the Tenant in respect of a whole period of **12 months** will (unless otherwise specifically provided to the contrary) be calculated on a pro rata basis being the ratio which the number of days in the relevant period bears to 365.

**1.5 Determination**

Any reference to the determination of this Lease will be deemed to mean that this Lease will absolutely cease and determine as and from the date of such determination but without prejudice to any right of action or remedy of the Landlord or the Tenant in respect of any antecedent breach or default in respect of any of the covenants agreements conditions and stipulations contained in this Lease or implied on the part of the Tenant or the Landlord to observe perform or keep or any other right of action or remedy of either party acquired prior to the termination.

**1.6 Acts to include all Re-Enactments**

A reference to any Act of Parliament Statute Regulation or Rule or to any part section sub-section regulation sub-regulation rule or sub-rule of any such Act Statute

Regulation or Rule includes a reference to the corresponding provisions of any statutory modification or re-enactment of such Act Statute Regulation Rule part section sub-section regulation sub-regulation rule or sub-rule.

**1.7 Invalid Conditions Void**

All covenants agreements conditions and stipulations contained in this Lease will be so construed as not to infringe the provisions of any Act of Parliament whether State or Federal but if any such covenant agreement condition or stipulation on its true interpretation does infringe any such provision the same will be deemed to be void and severable.

**1.8 Index, Marginal Notes etc.**

Any index marginal notes and clause headings are for convenience only and will not affect the construction or interpretation of this Lease.

**1.9 Schedules, Annexures Included in Lease**

This Lease includes the Schedule any Annexures and any plans and specifications annexed the Lease or incorporated by reference in this Lease and embodies the entire understanding and the whole agreement between the parties relative to the subject matter and all previous negotiations representations warranties agreements and statements (if any) whether express or implied with reference to the subject matter of this Lease or the intentions of either of the parties are merged in this Lease and otherwise are excluded and cancelled.

**2. DEMISE**

Subject to and conditional upon Financial Close being achieved, the Landlord grants to the Tenant a lease of and the right to enter the Land on Accessways set out on the Premises Plan to permit the exercise of the Tenant's rights and obligations under this Lease for the Term subject to the provisions contained in this Lease.

**3. RENT**

3.1 From the Commencement Date, the Tenant must pay the Rent without demand on the last day of each year in arrears without deduction, set-off or counterclaim as the Landlord directs.

3.2 On each anniversary of the Commencement Date ("Review Dates"), the Rent payable as and from the Review Dates will be the Rent payable immediately before the relevant Review Date increased by the percentage increase in the Consumer Price Index (All Groups) issued by the Australian Statistician between the date the index was last issued prior to the Review Date and the date which is one year earlier than that date.

**4. GST**

4.1 In this **Clause 4**:

(a) "**GST Act**" means the *A New Tax System (Goods and Services Tax) Act 1999*; and

(b) "**GST Law**" has the meaning given in the GST Act; and

(c) words in bold italics have the meanings given in the *GST Law*.

- 4.2 The Rent and other amounts payable or to be provided by the Tenant under this Lease for any ***taxable supply*** represents the *value* of the ***taxable supply***.
- 4.3 If the Landlord makes a ***taxable supply*** to the Tenant under this Lease the Tenant must, in addition to paying or providing the amount which represents its *value*, pay to the Landlord at the same time as paying or providing the amount an additional amount equal to the amount of any *GST* payable by the Landlord in respect of the ***taxable supply***.
- 4.4 Where the Tenant is required to pay or reimburse the Landlord for the amount paid or payable by the Landlord for ***taxable supplies*** acquired by the Landlord for which the Landlord is entitled to claim an ***input tax credit***, the amount required to be paid or reimbursed by the Tenant is the *value* of the acquisition by the Landlord, plus, if:
- (a) the Landlord's recovery of payment or reimbursement from the Tenant; or
  - (b) the supply by the Landlord to the Tenant of the thing acquired by the Landlord for which the payment or reimbursement is to be made by the Tenant,

(or both) is a ***taxable supply***, any amount of *GST* payable by the Landlord in respect of that ***taxable supply***.

## 5. LANDLORD'S RELEASE

To the extent permitted by law, the Landlord releases the Tenant from any liability for loss, damage or injury occurring in the Premises or on the Land arising from the Tenant's breach of the *Environment Protection Act 1970* (Vic) due to noise emitted from the Wind Turbine Generators.

## 6. USE

The Tenant must use the Premises only for the Permitted Use.

## 7. ASSIGNMENT

The Tenant may assign this Lease at any time upon written notice to the Landlord provided:

- (a) the Tenant is not in default under this Lease of which the Landlord has given the Tenant written notice other than a default which has been waived by the Landlord;
- (b) the Tenant proves to the Landlord's reasonable satisfaction that the incoming tenant is a respectable, responsible and solvent person;
- (c) the Tenant obtains, at its expense, from the incoming tenant an executed deed, in a form reasonably required by the Landlord, requiring the incoming tenant to perform and observe the Tenant's obligations under this Lease;
- (d) the Tenant pays the Landlord's reasonable costs of giving its consent, whether or not the proposed assignment proceeds to completion;

- (e) the incoming tenant pays or gives to the Landlord additional security for the observance and performance of the Tenant's obligations as is appropriate and reasonable having regard to the security provided under this Lease and the terms and conditions of this Lease.

## **7.2 Change in Ownership of Shares in Company**

- (a) If the Tenant is a company, any change in the persons who beneficially own or control a majority of the company's voting shares at the date of this Lease will constitute an assignment of this Lease.
- (b) **Clause 7.2(a)** will not apply if the Tenant is a corporation whose voting shares are listed on an Australian stock exchange or if at least 80% of its voting shares are owned by another company whose voting shares are so listed.

## **7.3 Charges Over Tenant's Fittings**

The Tenant will be entitled to mortgage, charge, lease or deal with any Tenant's Fittings as a means of financing the Tenant's Fittings provided that any waiver or similar document required by the Tenant's financier is in a form acceptable to the Landlord (acting reasonably) and the Tenant pays the Landlord's reasonable costs in relation to it.

## **8. LANDLORD'S COVENANTS**

### **8.1 Quiet Enjoyment**

While the Tenant complies with its obligations under this Lease it may occupy the Premises during the Term without interference from the Landlord.

### **8.2 Positive Obligation**

The Landlord must allow the Tenant to enter the Premises to maintain, repair, service, view or for any other lawful purpose the Wind Turbine Generators at any reasonable time.

## **9. EXPIRY OR TERMINATION**

### **9.1 Tenant to Vacate**

The Tenant must vacate the Premises on the Expiry Date or the earlier termination of this Lease leaving it in the condition required by this Lease.

### **9.2 Removal of Tenant's Property**

- (a) The Tenant must remove any chattels from the Premises within a reasonable time after the Expiry Date or the earlier termination of this Lease.
- (b) The Landlord may treat the Tenant as having abandoned any property which the Tenant has not removed from the Premises as required by **Clause 9.2(a)** and the Landlord may remove that property from the Premises and deal with it in any way the Landlord thinks fit. The expense of any such removal by the Landlord is at the cost of and for the account of the Tenant.



**10. HOLDING OVER**

If the Tenant continues to occupy the Premises after the Expiry Date with the Landlord's approval, it does so as licensee under licence and not Tenant. The licence may be terminated by either party on **1 month's** notice in writing given by either the Landlord or Tenant. The licence will be on the same terms and conditions on the part of the Tenant to be performed and observed as are contained in this Lease where applicable.

**11. ABANDONMENT OF PREMISES**

The parties agree that if the Tenant vacates the Premises during the Term:

- (a) in the absence of a written agreement by the Landlord to accept the surrender of the Tenant's interest under this Lease or a formal notice of forfeiture or re-entry this Lease will be deemed to continue in full force and effect until the date as from which a new Tenant actually commences to occupy the Premises; and
- (b) any entry by the Landlord into the Premises in the meantime will be deemed an entry by the leave and licence of the Tenant.

**12. DEFAULT**

**12.1 Landlord's Right to Terminate**

- (a) If the Tenant:
  - (i) repudiates its obligations under this Lease; or
  - (ii) does not pay any money payable under this Lease even if a demand for payment has not been made; or
  - (iii) does not comply with any other obligation under this Lease; or
  - (iv) is wound up (or if an order is made or resolution effectively passed for the winding up of the Tenant) except for the purpose of reconstruction or amalgamation; or
  - (v) if the Tenant goes into liquidation; or
  - (vi) if the Tenant makes an assignment for the benefit of or enters into an arrangement or composition with its creditor; or
  - (vii) if the Tenant is unable to pay its debts within the meaning of the Corporations Law
  - (viii) if the Tenant is placed under official management; and
  - (ix) if a Receiver or Receiver and Manager is appointed in respect of the Tenant or any of its assets; or
  - (x) if execution (or other legal process) is served against the Tenant or the Tenant's interest in this Lease and is not satisfied within **90 days**; or

- (xi) if the Tenant becomes a bankrupt or has a petition presented against him for a Sequestration Order or takes advantage of the provisions of part X of the *Bankruptcy Act* 1966 or otherwise brings his estate within the operation of any law relating to bankrupts; or
- (xii) if a trustee is appointed or takes possession of any property of the Tenant; or
- (xiii) if an encumbrancer or mortgagee takes possession of any of the property of the Tenant; or
- (xiv) if any insurance policy in relation to the Premises is cancelled unilaterally by the insurer and not immediately replaced by a similar policy with an insurer approved by the Landlord, which approval will not be unreasonably withheld.

the Landlord may, after service of any notice required by law:

- (xv) end this Lease by re-entering the Premises; or
- (xvi) end this Lease by notice to the Tenant,

without prejudice to any action or other remedy which the Landlord has or might otherwise have for arrears of rent (calculated to the date of the Landlord taking possession of the Premises) or breach of covenant or for damages as a result of any such event.

- (b) For breach of any covenant or condition to which Section 146(1) of the *Property Law Act* 1958 applies, **14 days** after service of a notice under that section is fixed as the time within which the Tenant must:
  - (i) remedy the breach, if it is capable of remedy; and
  - (ii) make reasonable compensation in money to the Landlord's satisfaction for the breach.
- (c)
  - (i) Notwithstanding anything contained in this **Clause 12** or the Lease, the Landlord acknowledges and agrees that the Tenant may need to procure finance to construct the Wind Turbine Generators and that as a result the Tenant may need to, inter alia, mortgage this Lease as security for that finance.
  - (ii) As a consequence of mortgaging this Lease, the Landlord agrees that it will consent to the mortgage of Lease and to any reasonable terms and conditions which any financier imposes by way of a consent to mortgage of lease or other required document including without limitation:
    - (A) permitting the financier to enter upon the Premises to exercise its powers under its mortgage or charge;
    - (B) giving the financier at least 21 days notice before exercising any of the Landlord's following powers:
      - terminating the Lease;

- taking possession of the whole or any part of the Premises;
  - refusing to grant a further term following the purported exercise of any option for renewal of this Lease;
  - converting the tenancy to a periodic tenancy;
  - seeking to vary the Lease in any manner whatsoever;
- (C) immediately forwarding to the financier any notice sent to the Tenant under this Lease;
- (D) ensuring that any transferee or mortgagee of the whole or any part of the Landlord's interest in the Lease or the Premises covenants with the financier as contemplated in this **Clause 15.1(c)**;
- (E) permitting the financier to lodge a caveat in respect of its interest in the Premises pursuant to its mortgage or other security documentation.

## 12.2 Damages for Breach

### (a) **Repudiation**

- (i) If the Tenant's conduct constitutes breach of an essential provision of this Lease and the Landlord elects to treat that breach as repudiation or the conduct otherwise constitutes repudiation, the Tenant will compensate the Landlord for all loss or damage suffered by reason of or arising from the repudiation.
- (ii) The following covenants are deemed to be essential:
- (A) to pay Rent (**Clause 3**);
  - (B) to use the Premises for the use stated in **Item 9**.
  - (C) to insure (**Clause Error! Reference source not found.**);
  - (D) to comply with laws and requirements (**Clause Error! Reference source not found.**).
  - (E) not to assign, sublet or charge without consent (**Clause 7**).

### (b) **Damages for Repudiation**

Any loss or damage for the unexpired residue of the Term suffered by the Landlord as a result of the Tenant's repudiation may be recovered as damages at any time.

(c) ***Landlord's Entitlement to Damages***

The Landlord's entitlement to recover damages from the Tenant or any other person will not be limited or affected by any of the following:

- (i) if the Landlord elects to re-enter the Premises or terminate this Lease;
- (ii) if the Landlord accepts the Tenant's repudiation; or
- (iii) if the parties' conduct (or that of any of their servants or agents) constitutes or may constitute a surrender by operation of law.

**13. COSTS**

The Tenant will pay the Landlord on demand the Landlord's reasonable legal fees and disbursements in connection with:

- (a) any consent required under this Lease;
- (b) obtaining the consent of any mortgagee of the Land and production of the title deed;
- (c) any assignment;
- (d) any surrender or termination of this Lease except through its expiry; and
- (e) any default by the Tenant or its employees, agents or contractors in observing or performing the provisions of this Lease.

**14. NOTICES**

Any notice to be given under this Lease may be served on:

- (a) the Landlord by delivering it to the Landlord, or by sending it through the post by prepaid security post addressed to the Landlord, at the address stated in **Item 2 of Schedule 1** of the Lease;
- (b) the Tenant by delivering it to the Tenant, or by sending it through the post by prepaid security post addressed to the Tenant, at the address stated in this Lease;

and any notice sent by post will be deemed to be given at the time when it ought to be delivered in the due course of post.

**15. MISCELLANEOUS**

**15.1 Waiver**

- (a) A right under this Lease not be waived or varied except in writing signed by the party having the benefit of the right.
- (b) If the Landlord:
  - (i) accepts rent or other money under this Lease; or

- (ii) does not exercise or delays exercising any rights under this Lease;  
or
- (iii) gives any concession to the Tenant; or
- (iv) attempts to mitigate its loss,

it is not to be taken to be a waiver of any breach or of the Landlord's rights under this Lease. An attempt by the Landlord to mitigate its loss is not to be taken to be a surrender of this Lease.

## 15.2 Registration

The Tenant may register this Lease on the title to the Land and the Landlord will do all things reasonably necessary to enable such registration.

## 15.3 Interest on Overdue Money

The Tenant must pay on demand interest on any rent or other amounts payable by the Tenant but which are unpaid after the due date for payment at the rate of **2%** above the rate from time to time fixed under Section 2 of the *Penalty Interest Rates Act 1983*.

## 15.4 Whole Agreement

The parties agree that no information, representation or warranty given or made prior to the execution of this Lease has been or will be relied upon and that any prior agreement is rescinded and that this Lease is the sole and full repository of the agreement between the Landlord and the Tenant.

## 15.5 Prior Representations

The Tenant acknowledges that no promise representation warranty or undertaking has been given by or on behalf of the Landlord in respect of the potential financial return to be derived by the Tenant from the lease of the Premises or the suitability of the Premises for any trade, business, profession or occupation to be carried on from the Premises.

## 16. FURTHER TERMS

### 16.1 Renewal

The Landlord must renew this Lease for the Further Term or Terms specified in **Item 10 of Schedule 1)** if:

- (a) there is no unremedied breach of this Lease by the Tenant of which the Landlord has given the Tenant written notice;
- (b) the Tenant has requested the renewal in writing not more than **6 months** nor less than **3 months** before the Expiry Date.

### 16.2 Terms of Renewal

The renewed Lease:

- (a) starts on the day after this Lease ends;

- (b) must contain the same terms as this Lease but for the last further Term with no option for renewal.

## 17. DISPUTE RESOLUTION/OPTION TO LEASE RESIDENCE

### 17.1 Dispute Resolution

- (a) (i) If a dispute or difference arises or the parties fail to agree in connection with any matter arising out of or relating to or concerning this Lease including any matter whatsoever concerning the operation of the Wind Turbine Generators (collectively called "**a dispute**") then the parties agree to use all reasonable endeavours to resolve the dispute through consultation in good faith between the Landlord and the Tenant.
- (ii) If the parties cannot resolve the dispute in accordance with **Clause 17.1(a)(i)** then either party may give to the other notice in writing of the dispute ("**Notice of Dispute**") which notice shall specify particulars of the dispute and require resolution pursuant to this **Clause 17**.
- (iii) If the parties have not agreed to settle the dispute specified in the Notice of Dispute within **3 Business Days** of the service of the Notice of Dispute, either party may give written notice to the other of that fact and thereupon the dispute or difference shall be determined by an independent expert in the relevant field agreed upon and appointed jointly by the parties.
- (b) If the parties are unable to agree upon the independent expert pursuant to **Clause 17** within 3 Business Days after the giving of written notice contemplated in **Clause 17.1(a)(iii)**, then either party may apply to the President for the time being of the Royal Australian Institute of Architects (Victorian Chapter) (or such other body as carries on the functions of the Institute) or nominee to appoint an independent expert in the relevant field.
- (c) The independent expert agreed upon or appointed pursuant to this clause will act as an expert and not as an arbitrator and the decision of the independent expert will be final and binding on the parties.
- (d) The parties agree that the independent expert shall not be empowered to make any decision or determination in relation to the application of any statutory remedy or damages.
- (e) Subject to subclause (d) above, no party will be entitled to commence or maintain any action relating to a dispute or difference arising out of or in relation to this Lease until it has been referred and determined as provided in this **Clause 17**.
- (f) An independent expert may engage other consultants to advise him if he considers the same necessary. The fees of the independent expert (and any other consultants whom he may engage) will be payable equally between the Lessor and the Lessee.

17.2 Option to Lease Residence

- (a) In consideration of the Tenant entering into this Lease, in the event of a dispute arising pursuant to **Clause 17.1** the Landlord grants an option to the Tenant (or the Tenant's Nominee), to lease the residence on the Land on the terms contained in a standard Law Institute of Victoria Lease ("Residence Lease") at a rent to be agreed or failing agreement at a rent to be determined by taking the average of two valuations performed by two valuers one nominated by the Landlord and one nominated by the Tenant. If either the Landlord or the Tenant fail to nominate a valuer within a reasonable time (and in any even within **60 days**) from the end of the period stipulated in **Clause 17.1(a)(ii)**, then the rent shall be that determined by the valuer appointed by either the Landlord or the Tenant (as the case may be).
- (b) The other terms of the Residence Lease shall be as follows:
  - (i) one month's security deposit payable on the commencement date;
  - (ii) commencement date to be 60 days from the notice contemplated in **Clause 17.2(c)**;
  - (iii) the term of the Residence Lease will equate to the balance of the Term of this Lease.
- (c) The option can be exercised by notice in writing from the Tenant to the Landlord at any time within **30 days** from the date of the determination of the rent in accordance with **Clause 17.2(a)**.
- (d) The Landlord must not during the Term of this Lease sell, assign, transfer, lease or grant any encumbrance over the Land or part or any estate or any interest in the Land to any person nor must the Landlord by any act or Deed procure the Land to be sold assigned, transferred, let, optioned or put into the possession of any person without the prior written consent of the Tenant."

EXECUTED as a deed.

SIGNED SEALED AND DELIVERED by the

SIGNED SEALED AND DELIVERED by the )  
( )

THE COMMON SEAL of WIND POWER )  
PTY LTD ACN 097 047 268 was hereunto )  
affixed in accordance with its Constitution in )  
the presence of: )

..... Director

..... Director/Secretary



SCHEDULE 1)

Item 1	PREMISES:	
Item 2	LANDLORD:	
Item 3	TENANT:	Wind Power Pty Ltd ACN 097 047 268
Item 4	TERM:	10 years
Item 5 A	COMMENCEMENT DATE:	
Item 5 B	RENT COMMENCEMENT DATE	
Item 6	EXPIRY DATE:	
Item 7	RENT:	
Item 8	PUBLIC LIABILITY INSURANCE:	Nil
Item 9	PERMITTED USE:	Access to the Premises
Item 10	OPTIONS:	Three further terms of 5 years each

THE COMMON SEAL of WIND POWER )  
PTY LTD ACN 097 047 268 was hereunto )  
affixed in accordance with its Constitution in )  
the presence of: )

..... Director

..... Director/Secretary