



SERVITUDE OPTION AGREEMENT – POWERLINES, CABLES AND TELECOMMUNICATION

Made and entered into between:

Upgrade Energy Africa (Pty) Ltd

Registration Number: 2015/108109/07

(Grantee)

And

SEPTIMUS DERCKSEN

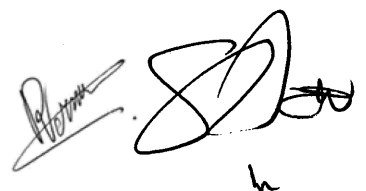
Identity number: 4306025027084

(Grantor)

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DETAILS OF THE PARTIES

| | |
|-------------------|--|
| Grantor | |
| Full Name(s): | SEPTIMUS DERCKSEN |
| Identity No | 4306025027084 |
| Physical Address: | Portion 10 of Farm Weltevreden No. 170 |
| Postal Address: | |
| Email Address: | <u>dercksen.seppie@gmail.com</u> |
| Telefax Number: | |
| Grantee | |
| Full Name(s): | UPGRADE ENERGY AFRICA (PTY) LTD |
| Registration No | 2015/108109/07 |
| Physical Address: | 4th floor, 96 Rivonia Road, Sandton 2196 |
| Postal Address: | P. O. Box 1171, Umhlanga Rocks 4320 |
| Email Addresses: | <u>emil@upgrade-energy.com</u> |
| Mobile number: | 0824659825 |

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DETAILS OF THE PROPERTY/IES AND SERVITUDES

| Property/ies | |
|---|--|
| Portion 10 of farm Weltevreden under title deed T69948/2006 | |
| Servitudes | |
| (i) | A perpetual servitudes of electric power transmission of a total width of 31 meters and length to be determined, extending an equal distance on each side of the centre of the power line over the Property subject to any existing servitude or other real right, to convey electricity across the Property to its existing or future renewable energy facility; |
| (ii) | A perpetual servitude for telecommunication and other related purposes over the Property substantially along the route/s referred to above, by means of conductors, cables and/or appliances mounted on the poles and/or structures with such structure supporting mechanisms as may be necessary or convenient; |
| (iii) | An access servitude of width and length to be determined over the Property, the median line which is shall be lettered on the on Lease Diagram approved by the Surveyor General and attached to the Notarial Deed of Servitude (Access Servitude). |

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OPTION PERIOD AND SERVITUDE FEES

| | |
|---|--|
| Option Period | |
| Period | 5 Years (sixty months) |
| Servitude Fees | |
| Initial payment within 120 days of signature of this document | R100 000-00 (one hundred thousand rand) exclusive of VAT. |
| Full and final settlement upon registration of servitude | <p>R1 000 000-00 (one million rand) exclusive of VAT.</p> <p>which shall escalate at the Consumer Price Index on each anniversary of signature of the Land Option Agreement. The first such increase taking place on the 2nd (second) anniversary thereof;</p> |

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SCHEDULE 4**NOMINATED SITE**

- The figures below illustrate the current proposed Nominated Site which may be amended from time to time as agreed between the Parties in writing, the Grantor shall not unreasonably withhold consent for any amendment as may be proposed by the Grantee.
- The Nominated site is an area of 31m wide and the total length is still to be determined depending on the final routing of the overhead power lines.
- The mid-point of the Nominated Site co-ordinates are presented in the table below (noting that the servitude area would be 15.5m on either side of the line following the co-ordinates).

| | Co-ordinates of the Nominated Site: | | |
|-------|-------------------------------------|------------|-----------|
| Label | Image reference | Latitude | Longitude |
| A | Figure 1 | -32.409991 | 22.529271 |
| B | Figure 1 | -32.409934 | 22.530332 |
| C | Figure 1 | -32.409363 | 22.536489 |
| D | Figure 1 | -32.410265 | 22.536618 |
| E | Figure 1 | | |


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FIGURE 1:



[Handwritten signature] 80 *[initials]*
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PRE-AMBLE

WHEREAS:

- (a) The Grantor owns the Property.
- (b) The Grantee has identified the Property as a possible site to register a perpetual servitude of electric power transmission and/or access servitude and other ancillary related matters.
- (c) The Grantee requires access to the Property in order to investigate the feasibility of registering a servitude over the Property.
- (d) The Grantor agrees to:
 - (i) The Grantee or its nominee conducting the feasibility studies to the exclusion of any third parties during the option period; and
 - (ii) The Grantee being granted the sole and exclusive right to register a Servitude over the Nominated Site, subject to existing servitudes.
- (e) The parties wish to record the terms of the option in writing.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

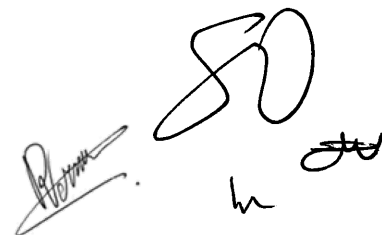
1. INTERPRETATION

1.1. Definitions

- 1.1.1. **"Agreement"** means this option agreement and any addenda hereto;
- 1.1.2. **"Authorised Signatory"** means the person or persons authorised to sign the Notarial Deed of Servitude and/or deed of cession and delegation on behalf of the Grantor in terms of the Special Power of Attorney;
- 1.1.3. **"Business Day"** means any other day other than a Saturday, Sunday, or official public holiday in the Republic of South Africa;
- 1.1.4. **"Eskom"** means Eskom Holdings SOC Limited, a public state-owned company with registration number 2002/015527/06, together with its successors-in-title and assigns;
- 1.1.5. **"Grantee"** means the party listed in Schedule 1 (*Details of the Parties*);
- 1.1.6. **"Grantor"** means the party/ies listed in Schedule 1 (*Details of the Parties*);

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- 1.1.7. **"Initial Period"** means a period of time as set out in Schedule 3 (*Option and Servitude Fees*) commencing from the 1st day after the Signature Date;
- 1.1.8. **"Nominated Site"** means such portion of the Property over which the Grantee considers suitable for the Servitude as more fully set out in Schedule 4 (*Nominated Site*);
- 1.1.9. **"Notarial Deed of Servitude"** means the draft notarial deed of servitude, annexed marked ("A");
- 1.1.10. **"Option"** means the rights granted to the Grantee in terms of clause 3 (*Grant of Rights*) below, which includes but is not limited to the sole and exclusive option during the Option Period to register a Servitude within the Nominated Site on the terms and conditions as set out in this Agreement;
- The Parties are aware that the **Grantor** signed Servitude Access Agreements with **Red Cap Nuweveld North Proprietary Limited and Enertrag SA (Pty) Ltd**, copies of proposed Servitude maps attached hereto;
- 1.1.11. **"Option Period"** means 60 (SIXTY) months from signature;
- 1.1.12. **"Parties"** means the parties to this Agreement and the term **"Party"** shall mean any one of the Parties, as the context indicates;
- 1.1.13. **"Property"** means the property or properties listed in Schedule 2 (*Details of Properties and Servitudes*) together with any improvements thereon;
- 1.1.14. **"Servitude"** means the servitude(s), as more fully set out in Schedule 2 (*Details of the Properties and Servitudes*) to be registered over Property, which servitude shall cover a servitude area within the Nominated Site which may consist of one servitude of up to 31 meters wide;
- 1.1.15. **"Servitude Fee"** means the fee payable by the Grantee to the Grantor for the registration of the Servitude as set out in Schedule 3 (*Option Period and Servitude Fees*);
- 1.1.16. **"Signature Date"** means the date on which the Agreement is signed by the Party who signs last in time;
- 1.1.17. **"Special Power of Attorney"** means the special power of attorney to be granted by the Grantor in favour of the Authorised Signatory in accordance with clause 6 below;
- 1.1.18. **"Studies"** means all the studies to be conducted by the Grantee and/or its duly authorised representatives on the Property, which the Grantee deems necessary and/or required in order to determine whether the Property, in the opinion of the Grantee, suitable for registering the Servitude;
- 1.1.19. **"VAT"** means value-added tax levied at the applicable rate in terms of Value-Added Tax, 89 of 1991;
- 1.1.20. **"Warranties"** means the warranties contained in clause 9 (*Warranties*).

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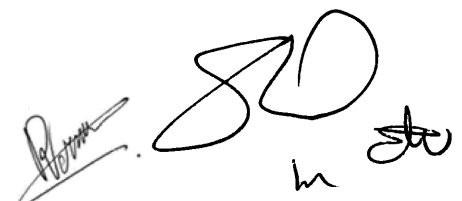
1.2. **General rules of interpretation**

In this Agreement:

- 1.2.1. if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 1.2.2. words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include artificial persons and vice versa;
- 1.2.3. any schedules or addenda to this Agreement form an integral part hereof and words and expressions defined in this Agreement shall bear, unless the context otherwise requires, the same meaning in such schedule or addendum;
- 1.2.4. where the day upon or by which any act is required to be performed falls on a day which is not a Business Day, then the relevant date for performance shall be the next succeeding Business Day;
- 1.2.5. where any term is defined within the context of any particular clause in this Agreement, the terms so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning as ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in clause 1 (*Interpretation*)
- 1.2.6. any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction; and
- 1.2.7. References to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT.

1.3. **Termination of this Agreement**

The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

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1.4. **Agreement negotiated between the parties**

Each of the provisions of this Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of the Agreement, shall not apply.

2. **COMMENCEMENT DATE AND EXCLUSIVITY**

2.1. **Commencement Date**

The Option Period shall commence on the Signature Date and terminate on the earliest of the following events:

- 2.1.1. Subject to clause **Error! Reference source not found.** at the expiration of the Initial Period; or
- 2.1.2. Early in accordance with clause 15 (*Termination and Default*); or
- 2.1.3. On such earlier or later date as the Parties agree in writing.

2.2. **Extension**

The Grantee may by written notice extend the Option Period ("**Extension Notice**"), subject to the following terms and conditions:

- 2.2.1. The Extension Notice must be given within the final month of the Initial Period;
- 2.2.2. The Grantee shall pay an additional servitude fee equal to the First Servitude Fee payment during the final month of the Initial Period;

3. **GRANT OF RIGHTS**

The Grantor hereby grants the Grantee, upon and subject to the Warranties, but otherwise subject to the provisions and conditions contained in the title deed under which the Property is held and the Grantee hereby accepts:

3.1. **Right to conduct Studies**

the right to the Grantee, its agents, contractors, directors, employees, guests, invitees, officials, workers, such equipment, machinery, plant, tools, materials and vehicles as it may deem necessary or desirable for the exercise of its rights under this Option or at law; the right during the Option Period to enter into and egress from the Property for the purpose of any or all of the following to conduct the Studies with prior notice to a duly authorised representative of the Grantor; and

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3.2. **Right to register a Servitude**

the sole and exclusive right to register a Servitude over the Property, comprising of a servitude area covering all or a portion of the Nominated Site up to 31 meters in width and length to be determined during the Option Period on the same or similar terms and conditions as set out in the Notarial Deed of Servitude annexed (marked "A").

4. **NOMINEE**

4.1. **Appointment of a nominee**

The Grantee shall at any time during the Option Period, be entitled to nominate a third party, as the Grantee by giving written notice to the Grantor whereupon the provisions of clauses 4.2 to 4.4 (both inclusive) shall apply.

4.2. **Reference to Grantee**

"The Grantee" for purposes of this Agreement be defined as the person who is the nominee.

4.3. **Rights and obligations**

The nominee shall be obliged to comply with all the obligations of the Grantee and shall remain entitled to all of the rights of the Grantee under this Agreement.

4.4. **Prior payments**

Any amounts paid or received by the Grantee under this Agreement shall be treated as paid or received by the nominee.

4.5. **Eskom as nominee**

Notwithstanding anything to the contrary, the Grantee or any other party nominated by the Grantee in terms of clause 4.1, immediately prior to the nomination of Eskom as nominee in terms of this clause shall be liable for (i) the Servitude Fees (ii) costs to be paid by the Grantee in terms of clauses 5.4 and 19 (which includes but is not limited to the cost of registering the Notarial Deeds of Servitude).

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5. **MINISTERIAL CONSENT**

5.1. **Approval in terms of Act 70 of 1970**

In terms of Section 6A of the Subdivision of Agricultural Land Act 70 of 1970 ("**the Act**"), a third party may not register a servitude in respect of any agricultural land without the prior written consent of the Minister of Agriculture in terms of Section 4 of the Act ("**Ministerial Consent**") except of a right of way, aqueduct, pipe line or conducting of electricity with a width not exceeding 15 (fifteen) metres.

5.2. **Section 4 of the Act application**

Section 4 of the Act requires that any party requiring Ministerial Consent shall:

5.2.1. Make an application in terms of the rules and regulations in place at the time;

5.2.2. Such application shall be made by the landowner of the land concerned.

5.3. **Undertaking by the Grantor**

The Grantor (as landowner) undertakes in favour of the Grantee to comply with its obligations in order for the Grantee to obtain Ministerial Consent for the Servitude, if so required.

5.4. **Costs**

All costs pertaining to procuring Ministerial Consent shall be borne by the Grantee, including any surveyor fees.

6. **SPECIAL POWER OF ATTORNEY**

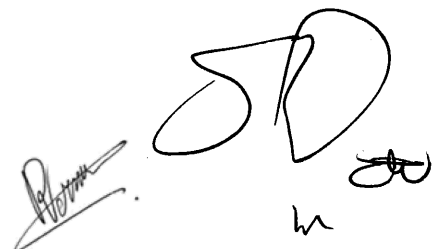
The Grantor shall sign a Special Power of Attorney authorising the Authorised Signatory to sign the Notarial Deed of Servitude on his behalf as presented in Annexure B. The Grantor shall sign the Special Power of Attorney by no later than 21 days after the Grantor is requested by the Grantee in writing to sign provided that there are no substantive changes to Notarial Deed of Servitude. Approval by the Grantor of any substantive changes required, if any, shall not be unreasonably withheld.

7. **CESSION AND DELEGATION**

The Grantee shall have the right to cede all or any of its rights (whether as security or otherwise), and/or delegate all or any of its obligations in terms of this Agreement, to any third party.

8. **EXERCISE OF OPTION**

In the event that the Grantee exercises its Option as set out in clause 3.2 (*Right to register a Servitude*) above, the following shall apply:

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8.1. **Written notice**

The Grantee shall give written notice to the Grantor, which notice shall be valid and effective if given at any time during the Option Period; and

8.2. **Special Power of Attorney**

The Authorised Signatory shall be authorised to enter into and execute the Notarial Deed of Servitude on behalf of the Grantor, in terms of the Special Power of Attorney and execute any memoranda and addenda recording the transaction.

8.3. **Ministerial Consent**

notwithstanding anything to the contrary, if Ministerial Consent is required in terms of clause 5 (Ministerial Consent), then the Grantee shall not be entitled to exercise the Option prior the Minister granting such Ministerial Consent in writing and any exercise of the Option prior to such date shall be of no force or effect.

9. **WARRANTIES**

9.1. **Warranties at Signature Date**

The Grantor warrants in favour of the Grantor that as at the Signature Date:

9.1.1. He will not be in breach of any other agreement by entering into and carrying out his obligations in terms of this Agreement;

9.1.2. There are no options or encumbrances in favour of any person in respect of the Property, which may prevent the Grantee from utilising the Property in accordance with this Agreement or which may otherwise limit the rights of the Grantee in terms of this Agreement, other than those registered against the Property and reflected in the title deed of the Property as at the Date of Signature (to the extent applicable); and

9.2. **Warranties during the Option Period**

The Grantor warrants in favour of the Grantor that during the Option Period that he shall not:

9.2.1. Disclose details of this Agreement to any third party, save for the authorised representatives of the Grantor;

9.2.2. Take any steps that may hinder or frustrate the ability of the Grantee to conduct the Studies and/or rights granted to the Grantee in terms of this Agreement;

9.3. **Undertaking**

The Grantor warrants to the Grantee that it will enter into the Notarial Deed of Servitude with the Grantee within 7



(seven) days from receipt of the Exercise Notice.

10. RIGHTS OF THE GRANTEE DURING THE OPTION PERIOD

10.1. Rights

Without in any way limiting or detracting from the rights which the Grantee may have in terms of this Agreement, the Grantor grants to the Grantee, its officials, employees, contractors, agents or persons having business with the Grantee, the following rights:

- 10.1.1. The right of access to, way over and egress from the Property on foot, or by means of conveyance or transport;
- 10.1.2. pedestrian access on fields of the Property;
- 10.1.3. To the free use of such portions of the surface of the Property, which might be reasonably necessary for conducting the Studies;
- 10.1.4. To generally carry out of all such things as the Grantee may deem necessary for the implementation of the Studies.

10.2. Written consent by the Grantor

At the request of the Grantee, the Grantor shall give its written consent or will execute any agreement or document with third parties which will be reasonably necessary to carry out the Studies

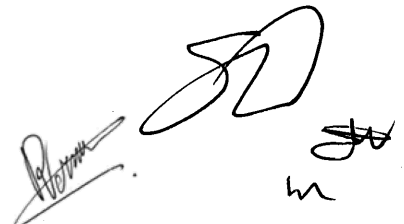
11. SUPPLY OF DOCUMENTATION BY THE GRANTOR

The Grantor undertakes, upon request by the Grantee and/or its attorneys, to furnish all title deeds, diagrams and documents relating to the Property for the purpose of registration of the Servitude, and to sign all such documents, and render any other assistance, which may be necessary and/or required for the obtaining of any necessary approval and/or the due registration of the Servitude and/or and subsequent notarial agreement.

12. INTELLECTUAL PROPERTY

The Grantor shall not acquire any rights, title or interest of any kind in any data, information or other intellectual property collected, created or prepared by the Grantee or any of its agents or contractors during the execution of the Studies ("Intellectual Property"). All rights, title or interest of any kind in the Intellectual Property shall at all times remain the sole property of the Grantee.

13. DISCREPANCY IN DESCRIPTION OF THE PROPERTY

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If there is any discrepancy between the extent of the Property as herein set out, the Parties undertakes to rectify such discrepancy within 10 (ten) days of a Party informing the other in writing of such discrepancy.

14. RESTRICTIONS ON GRANTOR

14.1. General Restriction

The Grantor may not sell, transfer, alienate or otherwise dispose of the Property or any portion thereof without complying with the provisions of clause 14.2 (*Undertaking*)

14.2. Undertaking

The Grantor undertakes in favour of the Grantee:

- 14.2.1. to notify the Grantee of any agreement, including but not limited to an agreement of sale or donation, which will result in the Property or any portion thereof being sold, transferred, alienated or otherwise disposed of to a third party; and
- 14.2.2. to insert a suspensive condition in any agreement referred to in clause 14.2.1 which makes it a condition of such agreement that such third party shall conclude a written agreement ceding and delegating all the rights and obligations under this Option to such third party on such terms and conditions acceptable to the Grantee in its sole and absolute discretion, within 7 (seven) Business Days of the signature of the aforesaid agreement or such extended period as the Grantee may decide in its sole and absolute discretion, failing which such agreement shall be null and void.

14.3. Failure to comply with Undertaking

If the Grantor fails to comply with the provisions of clause 14.2 (*Undertaking*) then the Grantor shall be entitled to:

- 14.3.1. Approach a Court with competent jurisdiction to obtain an interdict and/or any other suitable remedy to enforce its rights in terms of this clause 14 (*Restrictions on the Grantor*); and
- 14.3.2. Recover from the Grantor all costs incurred in terms of clause 14.3.1, which includes but is not limited to legal costs on an attorney and own client scale.

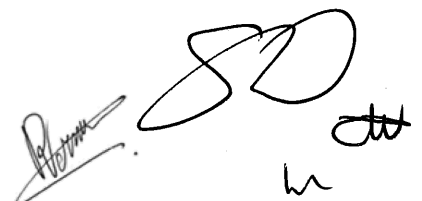
15. TERMINATION AND DEFAULT

15.1. Grantee's automatic right of termination

The Grantee shall be entitled to cancel this Agreement with 10 (ten) days written notice to the Grantor.

15.2. Breach by defaulting party

Should the Grantor or Grantee, as the case may be ("**Defaulting Party**"):



- 15.2.1. Fail to pay any amount due by the Defaulting Party in terms of this Agreement on the due date and remain in default for more than 10 (ten) days after being requested in writing to do so by the aggrieved party; or
- 15.2.2. Commit or any other breach of any of the provisions of this Agreement and fail to remedy such breach within 10 (ten) days after receipt of notice in writing to do so by the aggrieved party,

Then and in any one of such events, the aggrieved party shall forthwith be entitled (but not obliged) without prejudice to any of its other rights or remedies, including damages:

- 15.2.3. To cancel this Agreement; or
- 15.2.4. To claim immediate payment and/or performance of the obligations of the Defaulting Party in terms of this Agreement.

15.3. **Recovery of legal costs**

Should the aggrieved party institute action against the Defaulting Party pursuant to a breach by the Defaulting Party of this Agreement, then without prejudice to any other rights which the aggrieved party may have in terms of this Agreement or at law, the aggrieved party shall be entitled to recover all legal costs incurred by the aggrieved party, including attorney and own client costs.

16. **CONFIDENTIALITY**

16.1. **Confidential Information**

Without the prior written consent of the other Party, each Party will keep confidential and will not disclose to any person:

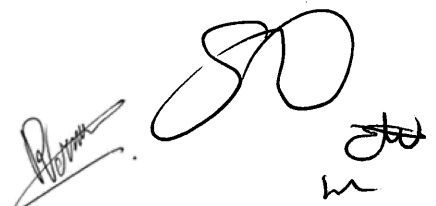
- 16.1.1. the details of this Agreement, the details of the negotiations leading to this Agreement and the information handed over to such Party during the course of negotiations, as well as the details of the transactions contemplated in this Agreement; and
- 16.1.2. all information relating to the business or the operations and affairs of the Parties

(Together "**Confidential Information**").

16.2. **Disclosure of confidential information to authorised representatives**

The Parties agree not to use any of the Confidential Information for any purpose other than as contemplated in this Agreement and to keep all Confidential Information confidential and to disclose it only to their officers, directors, employees, consultants and professional advisers who:

- 16.2.1. Have a need to know (and then only to the extent that each such person requires the Confidential Information in order to fulfil his or her functions properly);

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- 16.2.2. Are aware that the Confidential Information should be kept confidential;
- 16.2.3. Are aware of the disclosing Party's undertaking in relation to such information in terms of this Agreement; and
- 16.2.4. Have been directed by the disclosing Party to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential.

16.3. Exclusions

The obligations of the Parties in relation to the maintenance and non-disclosure of Confidential Information in terms of this Agreement do not extend to information that:

- 16.3.1. Is disclosed in terms of 16.2 (*Disclosure of the confidential information to authorised representatives*) and the recipient of the information has given a written confidentiality undertaking;
- 16.3.2. Is disclosed by the Grantee to potential investors in respect of the Project on the Property;
- 16.3.3. Is disclosed to the receiving Party in terms of this Agreement but at the time of such disclosure such information is known to be in the lawful possession or control of that Party and not subject to an obligation of confidentiality;
- 16.3.4. Is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement by the Party who received such confidential information;
- 16.3.5. Is required to be disclosed by the provisions of any law, statute or regulation, or during any court proceedings.

17. NOTICES AND DOMICILIUM

17.1. Domicilium

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

17.1.1. as to the Grantor:

Address: 36 Donkin Street, Beaufort West, 6970

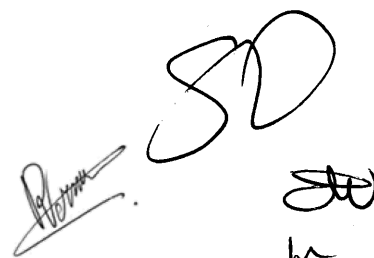
Telefax No:

Email address: vorster@crawfordsattorneys.co.za

17.1.2. as to the Grantee:

Address: 4th floor, 96 Rivonia Road, Sandton, 2196

Telefax No: 0866008622

Handwritten signatures and initials at the bottom right of the page. There are three distinct marks: a signature that appears to be 'D. Vorster', a large stylized 'SD' or 'JD', and a smaller signature or set of initials below it.

Email address: emil@upgrade-energy.com

17.2. Valid and effective Notice

Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing and it shall only be competent to give that notice by hand delivery, e-mail or telefax.

17.3. Amendment to Domicilium

Either Party may be written notice to the other Party change its chosen address and/or telefax number or e-mail address to another physical address, telefax number or e-mail address in South Africa, provided that the change shall become effective on the 10 Business Day after the receipt of the notice by the addressee in respect of that Party's physical address and on the dates set out in such notice in respect of that Party's telefax number or e-mail address.

17.4. Deemed Notice

Any notice to a Party contained in the correctly addressed envelope and delivered by hand to a responsible person, being a representative of such Party, during ordinary business hours at its chosen address shall be deemed to have been received. Any notice telefaxed or sent by e-mail to a Party shall be deemed to have been received on the day following transmission of the telefax or e-mail.

17.5. Adequate Notice

Notwithstanding anything to the contrary contained in this clause 17 (*Notices and Domicilium*) a written notice or communication actually received by a Party shall be an adequate notice or communication to him/her notwithstanding that it was not sent or delivered as provided for in this clause 17 (*Notices and Domicilium*)


18. ARBITRATION

18.1. Referral to Arbitration

Subject to 18.2 (*Interim Relief*), in the event of any dispute of any nature whatsoever arising between the Parties in respect of any matter provided for in, or arising out of, this Agreement, then that dispute shall be submitted to and decided by arbitration. Any arbitration arising out of this 18 (*Arbitration*) shall be referred to the Arbitration Forum of Southern Africa, and shall be conducted in accordance with the standard terms and conditions and summary procedure rules then applicable in that forum, such arbitration to take place at a duly designated location within the city of Cape Town, South Africa.

18.2. Interim relief

The provisions of 18.1 (*Referral to Arbitration*) shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction.

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19. **COSTS**

Each Party shall bear their own costs of and incidental to the preparation of this Agreement (including prior drafts and consultations).

20. **CO-OPERATION**

Each of the Parties hereby undertakes to:

- 20.1. Do, and to procure the doing by other persons, and to refrain and procure that other persons will refrain from doing, all such acts; and
- 20.2. Pass, and to procure the passing of all such resolutions of directors or shareholders of any company,

To the extent that the same may lie within such Party's power and may be required to give effect to the import or intent of this Agreement, or any contract concluded pursuant to the provisions of this Agreement.

21. **GENERAL PROVISIONS**

21.1. **Entire Agreement**

This Agreement contains the entire agreement between the Parties in regard to the subject matter of this Agreement.

21.2. **Conflicts**

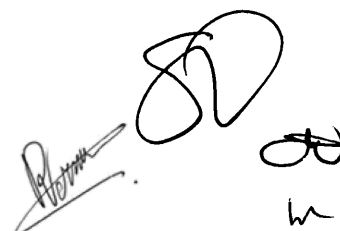
Should this Agreement be translated into any other language, the Parties agree that to the extent that any conflict exists between the executed English version and such translated version (whether or not signed), the English version shall prevail.

21.3. **Representations**

Neither Party shall be bound by or have any claim or right of action arising from any express or implied term, undertaking, representation, warranty, promise or the like not included or recorded in this document whether it induced the contract and/or whether it was negligent or not.

21.4. **Variation**

No addition to or variation, consensual cancellation or novation of this Agreement, and no waiver of any right arising from this Agreement, shall be of any force or effect unless reduced to writing and signed by duly authorized representatives of the Parties.

The block contains three handwritten signatures in black ink. The first signature on the left is a cursive name, possibly 'R. H. ...'. The second signature in the middle is a large, stylized 'S' or 'D' shape. The third signature on the right is a smaller, more compact cursive mark.

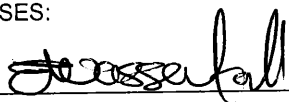
21.5. **Waiver**

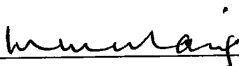
Any indulgence, leniency or extension granted by a Party at any time shall not be construed as a novation or waiver of any rights by that Party under this Agreement.

SIGNATURE PAGE

SIGNED at Beaufort West this 5th day of October 2021

AS WITNESSES:

1. 

2. 




SEPTIMUS DERCKSEN

SIGNED at Cape Town this 5th day of September 2022

AS WITNESSES:

1. 

2. 



Upgrade Energy Africa (Pty) Ltd



Annexure "A"

NOTARIAL DEED OF SERVITUDE

PROTOCOL NO.

Know all whom it may concern:

THAT on this day of 20 before me

[Insert name of notary public]

Notary Public, by lawful authority duly sworn and admitted, residing and practising at **[insert name and address of firm of attorneys]**, Republic of South Africa, and in the presence of the undersigned competent witnesses, personally came and appeared

[Insert name of appearer]

On behalf of:

SEPTIMUS DERCKSEN

Identity NUMBER: 4306025027084

He being duly authorised thereto under and by virtue of a power of attorney executed at **[insert place]** on the **[insert date]** day of **[insert month and year]** and granted to him by [insert name of Grantor] (who together with his successor-in-title is hereinafter referred to as the "Grantor")

AND

On behalf of:

Upgrade Energy Africa (Pty) Ltd – Registration Number 2015/108109/07

he being duly authorised thereto under and by virtue of a power of attorney executed at [●] on [●] and granted to him by [insert name of authorised representative] he being duly authorised thereto by virtue of a resolution passed by the board of directors of the company at [●] on [●] (which company, together with its successor/s-in-title and assign/s is hereinafter referred to as the "**Grantee**");



Which powers of attorney and resolutions have been exhibited to me this day and now remain filed in my Protocol;

AND THE SAID APPEARER DECLARED THAT:

WHEREAS

- A. The Grantor is the registered owner of the following property, namely:
- B. Portion 10 of Weltevreden 170, Beaufort West, 6970, in the extent of 1236.5407 (one two three six comma five four zero seven) hectares, held by Deed of Transfer No T69948/2006; as shown on the diagram attached hereto as Annexe 1.
- (The "Property")
- C. The Grantor hereby grants to the Grantee:
- (i) A perpetual servitude of electric power transmission 31 metres wide, extending 15.1 metres each side of the centre of the power line over the property substantially along the route as reflected on the attached surveyor diagram (Annexe 2), subject to any existing servitude or other real right, to convey electricity across the Property by means of **[1 (one) or more overhead power line(s), underground cables each consisting of conductors mounted on poles or structures with such structure supporting mechanisms as may be necessary or convenient];** and
 - (ii) [A perpetual servitude for telecommunication and other related purposes over the Property substantially along the route/s referred to in (i) above, by means of conductors, cables and/or appliances mounted on the poles and/or structures with such structure supporting mechanisms as may be necessary, referred to as the "**Servitude Area**"]].
[Note: Nature of servitude may differ in each case.]
 - (iii) A 31 meter wide access servitude over the Property, the median line which is lettered [insert] on Lease Diagram S.G. No [insert] approved by the Surveyor General on [insert] annexed hereto (Access Servitude)
- D. In order to secure the rights which the Grantor has agreed to grant the Grantee, it is necessary to incorporate the grant thereof in a Notarial Deed and to cause same to be registered over the Grantor's title deed to the Property.

A large, stylized handwritten signature, possibly 'S.O.', is written in black ink. Below it, there are smaller initials or a mark, possibly 'm' or 'h'.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1. Definitions

- 1.1.1. **"Business Day"** means any other day other than a Saturday, Sunday, or official public holiday in the Republic of South Africa;
- 1.1.2. **"Grantee"** means K2021807817 (Pty) Ltd with registration number 2021/807817/07
- 1.1.3. **"Grantor"** means SEPTIMUS DERCKSEN with identity number 4306025027084
- 1.1.4. **"Notarial Deed of Servitude"** means the notarial deed of servitude set out in this document, as amended from time to time, together with the Annexes, as amended from time to time;
- 1.1.5. **"Parties"** means the parties to this Agreement and the term **"Party"** shall mean any one of the Parties, as the context indicates;
- 1.1.6. **"Property"** means the property or properties described in paragraph A of the pre-amble together with any improvements thereon;
- 1.1.7. **"Servitude"** means the servitude to be registered over the Property as more fully set out in clause 2 (*Servitude*)
- 1.1.8. **"Servitude Area"** means the area of the Property, as set out in the surveyor diagram annexed marked (Annexe 2);
- 1.1.9. **"VAT"** means value-added tax levied at the applicable rate in terms of Value-Added Tax, 89 of 1991;

1.2. General rules of interpretation

In this Agreement:

- 1.2.1. if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 1.2.2. words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include artificial persons and vice versa;
- 1.2.3. any schedules or addenda to this Agreement form an integral part hereof and words and expressions defined in this Agreement shall bear, unless the context otherwise requires, the same meaning in such schedule or

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addendum;

- 1.2.4. Where the day upon or by which any act is required to be performed falls on a day which is not a Business Day, then the relevant date for performance shall be the next succeeding Business Day;
- 1.2.5. Where any term is defined within the context of any particular clause in this Agreement, the terms so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning as ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in clause 1 (Interpretation)
- 1.2.6. Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction; and
- 1.2.7. References to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT.

2. **SERVITUDE**

The Grantor hereby gives and grants to the Grantee:

2.1. **Perpetual Servitude of electric power transmission**


A perpetual servitude of electric power transmission **31 metres** wide, extending 15.5 metres each side of the centre of the power line over the Property substantially along the route as reflected on the attached surveyor diagram (Annexe 2), subject to any existing servitude or other real right, to convey electricity across the Property by means of **[1 (one) or more overhead power line, underground cables each consisting of conductors mounted on poles or structures with such structure supporting mechanisms as may be necessary or convenient]**

2.2. **Perpetual Servitude for telecommunication and other related purposes**

[A perpetual servitude for telecommunication and other related purposes over the Property substantially along the route/s in the Servitude Area, by means of conductors, cables and/or appliances mounted on the poles and/or structures with such structure supporting mechanisms as may be necessary referred to as the "**Servitude Area**").]
[Note: Nature of servitude may differ in each case.]

2.3. **Access Servitude**

A [insert] meter wide access servitude over the Property, the median line which is lettered [insert] on Lease Diagram S.G. No [insert] approved by the Surveyor General on [insert] annexed hereto (**Access Servitude**)

Handwritten signature and initials in black ink, located at the bottom right of the page.

3. RIGHTS OF THE GRANTEE

The Grantee, its employees and/or contractors shall have the right:

3.1. Erection of structure

Erect such structures and works on the Property or to erect or lead such conductors, cables or appliances or other equipment on or over the Property as may be necessary or convenient in exercising the right of servitude, and the right to erect such supporting mechanisms for structures and works with the possibility that it may reasonably extend beyond the Servitude Area as may be necessary or convenient to safely secure the structures or works

3.2. Access and Egress

To enter and be upon the Property at any time in order to construct, erect, operate, use, maintain, repair, re-erect, alter or inspect the structures, works, appliances, conductors or cables on the Property or in order to gain access to any adjacent property in the exercise of similar rights;

3.3. Use of existing roads

To use existing roads giving access to the Property or roads running across the Property and gates on the Property and to erect in any fence such gates as may be necessary or convenient to gain access to or egress from the Property and to gain access to any power line, telecommunication conductors, cables or accessory equipment; and

3.4. Removal of trees, bush, materials or structures

To remove any trees, bush, material, grass or structures which interferes with the Grantee exercising its rights granted in terms of the Servitude;

3.5. Letting of installations and apparatus

To let any portion of the installations and apparatus thereon to any third party on such conditions and use as Grantee may deem fit.

3.6. Ancillary purposes

Undertake in the Access Servitude every ancillary activity reasonably necessary to conduct a solar photovoltaic electricity generation facility (**Solar PV Facility**).

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a smaller, less distinct mark.

4. OBLIGATIONS OF THE GRANTEE

The Grantee shall exercise its rights subject to the following terms and conditions:

4.1. gates

It shall ensure that any gates used by it are kept closed;

4.2. compensation

It shall pay compensation:

4.2.1. Where damage is caused intentionally to any property by the Grantee, its employees or contractors, to enable the Grantee to use or continue to use the Servitude Area for its intended purpose; and

4.2.2. Where damage or injury is caused by any grossly negligent act or omission on the part of the Grantee, its employees or contractors;

4.3. No compensation

No compensation is payable for damage to natural vegetation within the Servitude Area.

5. RESTRICTIONS ON THE GRANTOR

With regard to the Grantor the following special restrictions are placed on the use of the Property namely:

5.1. Erection of structures and buildings

No building or structure may be erected or installed above or below the surface of the ground within the Servitude Area or within:

5.1.1. 20 (twenty) metres of the centre line of any power line; or

5.1.2. 6 (six) metres from any structure supporting mechanism; or

5.1.3. 6 (six) metres from the Servitude Area.

5.2. Trees

5.2.1. no tree shall be planted within 6 (six) metres from the Servitude Area;

5.2.2. no tree which will grow to a height in excess of the horizontal distance of that tree from the nearest conductor of any power line shall be planted within the vicinity of the power line, irrespective of whether it is outside the Servitude Area or not;

A large, stylized handwritten signature is located in the bottom right corner of the page. Below it, there are smaller handwritten initials, possibly 'AP', and a small mark resembling a checkmark or the letter 'w'.

5.3. **Materials**

No material which may in the opinion of Grantee endanger the safety of any power line shall be placed within 6 (six) metres of the centre line of any power line and/or 6 (six) metres of the Servitude Area; and

5.4. **Mining and blasting activities**

No mining activities or blasting operations shall be carried out within 500 metres of the centre line of any power line, without the prior written permission of Grantee.

6. **CESSION AND DELEGATION**

The Grantee shall have the right to cede all or any of its rights (whether as security or otherwise), and/or delegate all or any of its obligations in terms of this Agreement, to any third party.

7. **ACCESSION**

All equipment and/or other installations, brought onto the Property by the Grantor is intended to remain on the Property only for so long as the Agreement is in force and shall not accede to the Property. Such equipment and/or other installations shall, notwithstanding that it may be fixed upon the Property in a manner which might, had it not been for this 7, be regarded as a permanent fixture, at all times be regarded as movable. Ownership of such equipment and/or installations shall at all times remain vested in the Grantee.

8. **CONSIDERATION**

The Grantee shall upon registration of the Notarial Deed pay to the Grantor as consideration for the rights granted in terms hereof the sum of **R1 000 000-00** (one million rand) excluding VAT in full and final settlement for the rights granted in terms hereof, which shall escalate at the Consumer Price Index on each anniversary of signature of this Agreement. The first such increase taking place on the 2nd (second) anniversary thereof;

9. **BINDING ON SUCCESSORS IN TITLE**

The rights and obligations contained in this Notarial Deed shall be for the benefit of and binding on the Grantor and Grantee and their respective successors-in-title or assigns.

AND THE SAID APPEARER declared in the name of and on behalf of Grantor and Grantee to accept the grant of rights and servitude set out above, agreeing on behalf of the Grantee to fulfil each and every condition imposed upon the Grantee subject to which this servitude is granted.

A large, stylized handwritten signature is written in black ink. Below the signature, the initials 'PR' are written, followed by a small, illegible mark.

Signed at Beaufort, NC on 5 October 2021.

Witnesses:

[Signature]

[Signature]
Qq Grantor

[Signature]

Signed at _____ on _____ 2021.

Witness:

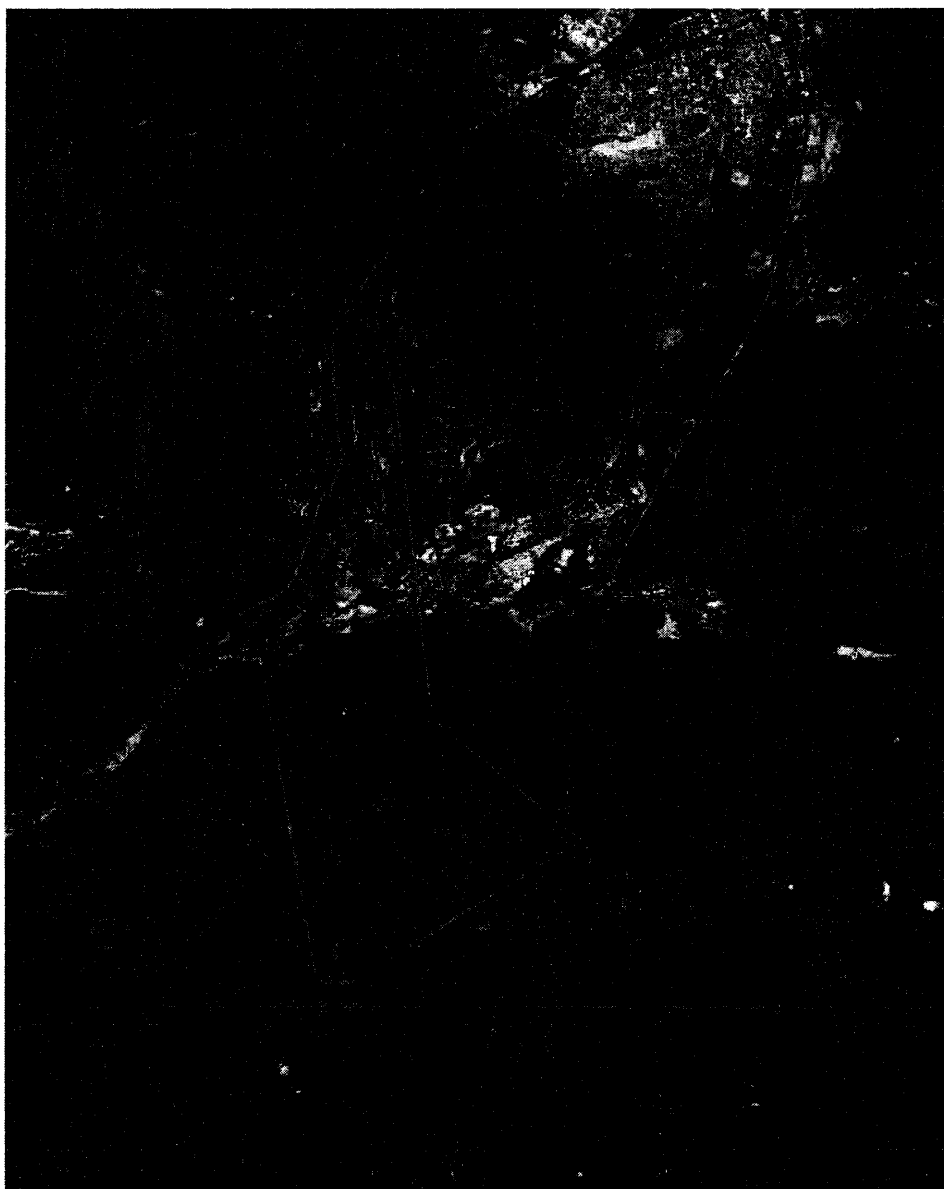
Qq Grantee

QUOD ATTESTOR

NOTARY PUBLIC

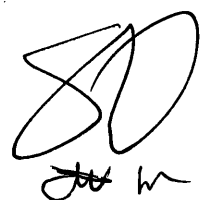
[Signature]
[Signature]
[Signature]

Diagram of Property



SD
MP
w

Surveyor Diagram

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SPECIAL POWER OF ATTORNEY

I, the undersigned,

Do hereby nominate, constitute and appoint

Andrea Keller (ID No. 710913 XXXX X8 X) of Brink De Beer and Potgieter Attorneys or any of its successors-in-title

With power of substitution, to be our lawful attorney(s) and agent(s) in my name, place and stead, to appear before a notary public and execute:

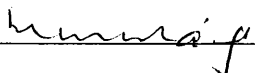
1. a notarial deed of servitude substantially in accordance with annexure "A" hereto, and to have such notarial deed of servitude amended, if necessary, in so far as is required for registration at the respective deeds registries in South Africa; and
2. a notarial deed of cession of servitude in terms of which all rights of the grantee in terms of the aforementioned servitude be ceded, and all obligations of the grantee under the aforementioned servitude be delegated, to such third party as may be nominated by the grantee (or its assign) from time to time;

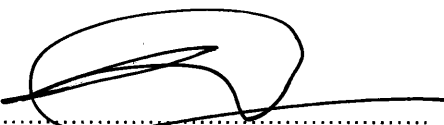
and generally for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be requisite, as fully and effectually, for all intents and purposes, as we might or could do if personally present and acting herein - hereby ratifying, allowing and confirming and promising and agreeing to ratify, allow and confirm all and whatsoever our said attorney(s) and agent(s) shall lawfully do, or cause to be done by virtue of these presents.

Signed at Beaufort West on the 5th day of October 2021.

Witness

1. 

2. 



SEPTIMUS DERCKSEN

Duly authorised and warranting such authority