

Investec Bank (Australia) Limited
ACN 5071 292 594 (the Company)

and

[]

WIND MONITORING ACCESS AGREEMENT

Levels 10 & 11
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Melbourne Victoria 3000 Australia

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THIS WIND MONITORING ACCESS AGREEMENT is made on(date)

PARTIES

- 1 **Investec Bank (Australia) Limited**
ACN 5071 292 594
of Level 31, Chifley Tower, 2 Chifley Square, Sydney, NSW 2000
("the Company" as defined in this Agreement)
- 2
("the Owner" as defined in this Agreement)

WITNESSES THAT whereas:

- A The Owner is the owner of the freehold of the Site.
- B The Owner has agreed to allow the Company access to the Site for the purposes described in this Agreement and to licence and lease parts of the Site in consideration of and subject to the conditions and provisions of this Agreement.
- C In consideration of the payments to be made by the Company to the Owner pursuant to this Agreement, the Owner agrees to grant the Company the Option to Lease described in this Agreement.

IT IS EXPRESSLY AGREED AND PROVIDED AS FOLLOWS:-

1 Definitions and Interpretations

- 1.1 In this Agreement the following words and expressions have the following meanings:-
- 1.1.1 "Company" means Investec Bank Ltd ACN 5071 292 594 of Level 31, Chifley Tower, 2 Chifley Square, Sydney, NSW 2000 and includes its successors and assigns.
- 1.1.2 "Owner" means the person/s described in Schedule 1 and includes and is intended to include its/his/her/their successor/s in title to the Site.
- 1.1.3 "Licence Payments" means the amount/s described in Schedule 1
- 1.1.4 "Site" means that part of the land described in Schedule 1
- 1.1.5 "Term" means the term of this Agreement described in Schedule 1.
- 1.1.6 "Wind Energy Facility" has the same meaning as in clause 74 of the applicable Planning Scheme.
- 1.1.7 "Wind Monitoring Equipment" means such equipment, facility, building or works as the Company requires for monitoring or assessing the nature of the wind and other meteorological parameters on or above the Site.
- 1.2 The Parties agree that in the interpretation of this Agreement:
- 1.2.1 the singular includes the plural and the plural includes the singular;
- 1.2.2 a reference to a gender includes a reference to each other gender;

- 1.2.3 a reference to a person includes a reference to a firm, corporation or other corporate body and its successors in law;
- 1.2.4 if a party consists of more than one person this agreement binds them jointly and each of them severally;
- 1.2.5 a reference to a statute shall include any statutes amending, consolidating or replacing it and any regulations made under any such statute;
- 1.2.6 the recitals to this Agreement are and will be deemed to form part of this Agreement including any terms defined within the Recitals; and
- 1.2.7 a reference in this Agreement to “the Company” or “the Owner” includes each of its successors.

2 Applicable law

This Agreement is to be construed and take effect in accordance with the laws in force in the State of Victoria, and each of the Parties submits to the jurisdiction of the courts and appeal courts of that State.

3 Owner's warranties

- 3.1 The Owner warrants to the Company that the Owner is solely entitled to the freehold of the Site and is authorised and empowered to enter into this Agreement. The Owner further warrants that it has obtained any necessary consents from any mortgagee or any other person having any interest in the Site prior to its execution of this Agreement.
- 3.2 The Owner warrants that it will not, without the prior written consent of the Company sell, assign, transfer, declare itself trustee, dispose of, alienate, mortgage, charge or encumber or otherwise deal with the Site without acknowledging and recognising the interests of the Company in the Site pursuant to this Agreement.
- 3.3 The Owner warrants that there is not presently pending any action, suit, claim, dispute or other proceeding affecting the Site or any part of it to the best of the knowledge of the Owner.

4 Licence

The Owner grants the Company for the Term:-

- 4.1 The exclusive licence to pursue activities relating to the development of a Wind Energy Facility on the Site including
 - (a) the installation of Wind Monitoring Equipment on such part/s of the Site as the Company may from time to time determine
 - (b) access to and through the Site to/from any such Wind Monitoring Equipment, where possible on existing tracks, driveways or roads, or otherwise as is necessary for the installation, maintenance, servicing and retrieval of information from such Wind Monitoring Equipment;
 - (c) collection of data, removal or replacement of any Wind Monitoring Equipment or other improvements incidental thereto;

- (d) the construction or improvement, only where necessary, of access tracks to any such Wind Monitoring Equipment;
- (e) the carrying out of any assessments, surveys or studies of, on, or from the Site for the preparation of any planning permit application or any other planning or environmental purpose incidental to determining whether the Site is suitable for the construction and use of a Wind Energy Facility.
- (f) To construct any fencing necessary to protect any Wind Monitoring Equipment of the Site

All such access is unrestrained as to hours or days but the Company shall give not less than 48 hours notice to the Owner before commencing any works on the Site, except in emergencies.

- 4.2 Any fixture, structure or improvement installed by the Company shall be deemed to remain the property of the Company and may, at the end of the Term, or any lawful holding over, be removed by the Company from the Site.
- 4.3 In consideration for this licence granted by the Owner to the Company, the Company shall pay the Owner the Licence Payments at the dates specified in Schedule 1

5 Other rights of the Company

The Company, during the Term or any overholding, has the following rights:-

- 5.1 The Company shall have the right to assign, sell or otherwise dispose of the whole or any part of its interest or benefit or rights under this Agreement at any time provided that the assignee or disponent first agrees with the Owner to assume and perform the obligations of the Company remaining unperformed or fulfilled in respect of the balance of the term and otherwise to give effect to the rights of the Owner pursuant to this Agreement.
- 5.2 To prepare and submit any application for a planning permit for any Wind Energy Facility on the Site, and any supporting information or material including any environmental assessment or environmental management plan and any studies of the Site and its environs;
- 5.3 To make submissions and any application for any permit or licence that may be necessary to develop or use the Site for any Wind Energy Facility, including any change to the relevant planning controls affecting the Site to allow for the construction and use of any Wind Energy Facility on the Site;
- 5.4 To terminate this Agreement at any time during the Term upon no less than one month's written notice to the Owner, whereupon any Licence payment obligations shall cease.

6 Option to lease

- 6.1 In consideration of the sum of \$1000 paid by the Company to the Owner upon the execution and exchange of this deed, the Owner grants to the Company the option and right for the Company to lease any part of the whole of the Site (as determined by the Company) from a date corresponding to the end of the Term (or earlier by agreement between the Owner and the Company). Such lease shall contain the terms and conditions specified in Schedule 2 and clauses 6.3 and 6.4 and:
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- (a) will be in a form agreed between the Owner and the Company negotiating in good faith; or
- (b) if the form cannot be agreed within 30 days of the exercise of the option, will be in the form of the Lease of Real Estate (Commercial Property) Copyright Law Institute of Victoria (May 2003 revision) with the following agreed terms:
 - (1) the term of the lease will be 30 years;
 - (2) no corporate, personal or other guarantees, bonds (including directors guarantees) or security deposits will be required to be provided;
 - (3) the mediation process will apply; and
 - (4) there will be no option to renew the lease.

6.2 The Company may exercise this option by giving written notice to the Owner no less than 3 months prior to the end of the Term of its intention to do so.

6.3 Any such lease shall authorise the Company to construct and use a Wind Energy Facility on the Site comprising of such wind power turbines as the Company deems fit with no limit or restraint as to times or hours of use; height or size except as required by any planning permit and the law for a term of at least 30 years from the date of commencement of any such lease. The lease shall also include the ancillary rights of access to any Wind Energy Facility on the Site as otherwise provided in this Agreement and the right to connect any Wind Energy Facility to any electricity grid either by underground or above ground conduits, cables or other works on or beyond the Site. Having regard to the purposes and objectives of this Agreement, any such lease shall be conditional upon the Company obtaining a Planning Permit and all other necessary consents, authorities or permits for a Wind Energy Facility (including one or more turbines) on the Site, and the Company or its nominee entering into a power purchase arrangement for the sale of any power generated on or from the Site.

6.4 The Company may lodge a caveat against any title or titles to the Site to protect its interests under this Agreement during the Term or any agreed holding over.

6.5 The precise part of the Site which shall be the subject of any lease granted following the exercise of the option given by this clause shall be surveyed (at the expense of the Company) or otherwise accurately determined and shall be generally in accordance with the area and location of the land, being part of the Site, in respect of which the option is exercised.

7 The Company's other obligations

7.1 The Company must, during the Term, insure against public liability in respect of any incident arising out of the exercise of any of its rights under this Agreement or in respect of its use or development of any Wind Monitoring Equipment or other use or works on the Site authorised by this Agreement for an amount of at least \$10 million in respect of any one claim.

7.2 The Company must indemnify the Owner against any claim arising from any such event.

- 7.3 The Company must obtain, at its expense, any necessary permit, authority, or licence required by law for any of the uses, works or activities of the Company authorised by or under this Agreement.
- 7.4 The Company must do as little damage or alteration to the Site as possible and, at the end of the Term, or when removing any of the Wind Monitoring Equipment or any other works, restore the Site to the condition it was in prior to commencement of the Term, so far as reasonably practicable. The Company, in the exercise of its rights under this Agreement, must do as little damage as possible to the Site including trees, crops, vegetation, roads, buildings, gates and fences. The Company must immediately rectify any damage caused by it or on its behalf.
- 7.5 The Company shall pay the Owner's legal costs of and incidental to this Agreement not exceeding the sum of \$500, including GST.
- 7.6 The Company must fence and keep fenced with good and substantial fences all pit shafts or other dangerous places or structures or buildings made or used by it under this Agreement entirely at its cost.

8 Other obligations of the Owner

- 8.1 The Owner must give notice of this Agreement and any licence/lease incidental to or under this Agreement to any purchaser, lessee, mortgagee, transferee or other person having or taking or proposing to have or take any interest in the Site.
 - 8.2 The Owner must not, during the currency of this Agreement or any lease or licence incidental to or derived from it grant or agree to grant any right or entitlement in or to the Site to any other person which is similar to or potentially in conflict with the rights granted to the Company by or under this Agreement. Should the Owner be in default in the performance of this obligation, the Company may terminate this Agreement; may initiate action to restrain the Owner; and may withhold payments otherwise due under this Agreement to the Owner, in addition to any other legal remedy.
 - 8.3 The Owner must sign and execute any consents or any other documents necessary to facilitate the implementation of the purposes of this Agreement and the exercise of the Company's rights under it. The Owner must also provide information known to it as is necessary to the Company to facilitate any necessary assessment of the Site or any adjoining or adjacent lands for site analysis in any application for a Wind Energy Facility planning permit or in respect of the preparation of any environmental management plan but this obligation shall not include any obligation on the Owner to pay for any such information or material.
 - 8.4 The Owner must not obstruct the construction of any works on the Site authorised by this Agreement and must, when necessary, remove any stock from such parts of the Site as is necessary during the construction of any such works.
 - 8.5 The Owner must provide the Company with any keys necessary to give access to or within the Site, and the Company agrees to close and/or lock any gates that the Company opens in exercising its rights under this Agreement.
 - 8.6 The Owner must continue to pay Municipal or other rates applicable to the Site.
 - 8.7 The Owner must not object to any planning application or procedure made on or initiated by the Company in respect of any use or development of the Site authorised by this Agreement, or any licence or lease under it.
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- 8.8 During the Term and the term of any lease entered into following the exercise of an option under clause 6.1 of this Agreement, the Owner must not:
- (a) Construct a residence within 750m of a turbine or monitoring tower
 - (b) Construct a building or structure in excess of 5m in height within 200m of a turbine or monitoring tower
 - (c) Construct a building or structure in excess of 10m in height within 500m of a turbine or monitoring tower
- 8.9 During the Term and the term of any lease entered into following the exercise of an option under clause 6.1 of this Agreement, the Owner must not plant trees or shrubs within 1 km of a turbine or monitoring tower without the written consent of the Company. The company shall not unreasonably withhold consent provided:
- (a) The trees or shrubs are planted solely for the purpose of sheltering livestock or wildlife.
 - (b) The species planted are unlikely to exceed 5m in height
 - (c) The dimensions and orientation of plantations are selected such that output of a Wind Energy Facility on the site would not be diminished.
- 8.10 The Owner grants the Company the right to gain access to the Site through any other adjoining or abutting land of the Owner as is reasonably necessary for the Company's use of the Site as authorised by this Agreement but any such right shall be in common with the rights of the Owner and any lessee of the Owner.

9 Other provisions

- 9.1 Despite any other clause of this Agreement:
- 9.1.1 any reference to an amount payable under this Agreement (including but not limited to the annual payment) is a reference to that amount plus GST payable in respect of that amount, if any, which arises from a taxable supply made under this Agreement; and
 - 9.1.2 the Owner agrees to provide the Company with an Australian Business Number (ABN) immediately upon the request of the Company.
- 9.2 The Owner shall have the right to assign, sell or otherwise dispose of the whole of its interest in this Agreement and the Site provided that the assignee or disponent first agrees with the Company to assume and perform the obligations of the Owner and to give effect to the rights of the Company pursuant to this Agreement.
- 9.3 All notices, consents, documents or other communications required or permitted to be given by this Agreement shall be deemed to have been received:
- 9.3.1 in the case of posting, when actually received, prima facie evidence of which shall include the receipt of a registered letter at the recipient's address;
 - 9.3.2 in the case of telex or facsimile, the time and date appearing on the transmission copy.
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- 9.4 If Item 6 of Schedule 1 is initialled by the Owner, the Parties acknowledge and agree that the following provisions of this clause 9.4 will apply to this Agreement:
- 9.4.1 This clause 9.4 allows the Company to create recipient created tax invoices under sub-division 29-70(3) of the *A New Tax System (Goods and Services Tax) Act 1999*, subject to clause 10.5.2.
- 9.4.2 The Company and the Owner agree that:
- (a) The Company can issue tax invoices in respect of supplies made by the Owner to the Company under this Agreement;
 - (b) the Owner will not issue tax invoices in respect of supplies it makes to the Company under this Agreement;
 - (c) the Owner acknowledges and agrees that it is registered for GST purposes when it enters into this Agreement and that it will notify the Company if it ceases to be registered for GST purposes; and
 - (d) The Company acknowledges and agrees that it is registered when it enters into this Agreement and that it will notify the Owner if it ceases to be registered for GST purposes or if it ceases to satisfy any of the requirements of any determination or ruling made by the Commissioner of Taxation relating to the issue of recipient created tax invoices.
- 9.4.3 In this clause 9.4 '*input tax credit*', '*registered*', '*recipient created tax invoice*', '*taxable supply*' and '*tax invoice*' have the meanings given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

10 **Confidentiality clause**

- 10.1 The Owner expressly acknowledges that the rights and obligations of the Owner and the Company under this Agreement, and the conditions and payments described in this Agreement and any lease or other incidental document pursuant to it are confidential and shall not be disclosed to any person except as provided in this clause. The Owner expressly acknowledges that any information the Owner may obtain or become aware of about any intellectual property of the Company, and the activities of the Company on or relating to the Site are also confidential and shall not be disclosed to any other person other than as is provided in this clause.
- 10.2 The only exceptions to the covenant and prohibition or restraint in this clause as described in 10.1 are as follows:-
- 10.2.1 the consent of the Company;
 - 10.2.2 disclosure required by law;
 - 10.2.3 disclosure to the Owner's legal advisers and any professional consultants engaged by them for the purpose of advising the Owner in relation to this Agreement provided that any such consultants are first made aware of the restraint/prohibition contained in this clause and agree to be bound by it subject to the same terms as are contained in this clause.
- 10.3 The owner must not disclose any such confidential information as permitted by 10.2.3 unless and until:-
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- 10.3.1 the nature, extent and purposes of that disclosure have been made known to the Company;
 - 10.3.2 the Company has provided its written consent to that disclosure by the Owner;
 - 10.3.3 any such other party, to whom such information may be disclosed, has executed a binding agreement for the benefit of and enforceable by the Company in terms no less favourable to the Company than those incorporated in this clause.
- 10.4 The restraint/prohibition in this clause does not apply to information that:-
- 10.4.1 is generally available in the public domain except where it is so available as a result of the disclosure by the Owner or its employees, representatives or associates in breach of this deed;
 - 10.4.2 is required by operation of the law;
 - 10.4.3 or was known by the Owner prior to the disclosure.
- Any information is not deemed to be within the exceptions set out in this sub-clause if merely individual elements of the information, or certain combinations of the information are in the public domain, or known to the Owner, but only if the combination of all individual elements as a whole and as such is in the public domain or known. A specific element of the information is not deemed to be in the public domain or known to the Owner merely because it is embraced by more general information that is in the public domain or so known.
- 10.5 The Owner agrees that it will not make any press announcement or other release relating to or in connection with this Agreement without the prior written approval of the Company agreeing to the form, manner and content of the announcement or release.

11 Dispute resolution

- 11.1 The Parties agree to deal with any dispute arising in the course of this Agreement as follows:
- (a) first, the Party asserting that there is a dispute must send the other Party a notice setting out the nature of the dispute;
 - (b) second, the Parties must try to resolve the dispute by direct negotiation;
 - (c) third, the Parties have 10 Business Days from the receipt of the notice to reach a resolution or to agree to submit the dispute to mediation or some other alternative dispute resolution procedure; and
 - (d) finally, if there is:
 - (i) no resolution; or
 - (ii) a submission to mediation, or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or such extended period as the Parties may agree before the expiration of the 15 business Days,

then either Party may commence legal proceedings.

WINDLAB SYSTEMS PTY LTD - WIND MONITORING ACCESS AGREEMENT

SCHEDULE 1

1 Owner(s)

ABN :

2 Licence Payments

\$2000 per year payable in advance within 14 days of the commencement of each such period.

3 Site

All of the land defined by:

4 Term

5 years from the.....
to the.....

5 Nominated Bank Account

Bank Name: _____
Branch Name: _____
Account Name: _____
Bank and Branch (BSB) number: _____
Account number: _____

6 Recipient Created Tax Invoices

Clause 9.4 is to apply to this Agreement

[Owner to Initial if clause 9.4 is to apply]

WINDLAB SYSTEMS PTY LTD - WIND MONITORING ACCESS AGREEMENT

SCHEDULE 2

The Lease shall contain the following conditions

1. The annual Rent shall be the greater of:
 - a. \$[] indexed at CPI (Sydney) from the date of execution of this agreement
 - b. 2.0 % of the gross revenue per annum for the Wind Energy Facility apportioned on a per turbine basis for each wind energy turbine located on the Site payable from the date of commissioning of each such turbine on the Site
 2. The Company acknowledges that during the construction phase of the Wind Energy Facilities the Owner may incur costs as a consequence of having to remove any stock from such parts of the Site and as a consequence, where this occurs the Company and the Owner will negotiate in good faith, a lump sum payment to be made by the Company to the Owner so that the Owner is not financially disadvantaged by having to remove such stock.
 3. Such lease shall impose an obligation on the Company to pay the rates applicable to or apportioned against that part of the Site to which the lease relates and any other outgoings in respect of it and shall otherwise be on such terms and conditions as are agreed or failing agreement in accordance with normal conveyancing practice
 4. The Owner shall retain the right to use the land and present improvements for any purpose, including as a place of residence and for agricultural production, provided such uses do not damage or impair the operation of the Wind Energy Facility.
 5. The Company shall annually supply provide the Owner with a written notice stating the amount of electricity produced by the Wind Energy Facility in the preceding calendar year.
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EXECUTED as an agreement.

SIGNED

for and on behalf of)

Windlab Systems Pty Ltd)
ABN 26 104 461 958)

By authority of Directors)

.....)
(Print name of Director)

in the presence of)

.....)
(Print name of Witness/
Secretary/Director)

.....
(Director)

.....
(Signature of Witness
Secretary/Director)

SIGNED

for and on behalf of)

The Owner)

Of (usual address))

.....)
.....)
.....)

.....
(Signature)

in the presence of)

.....)
.....)
.....)

.....
(Signature of Witness)

.....)
(Print name, position and address of Witness)