

No. 103.

Today the twenty-seventh
(27th) day of November of
the year two thousand and
fourteen (2014)

TEMPORARY
SUBEMPHYTE
UTRAL GRANT

Before me Doctor of Laws Marco Burlo' a Notary
Public, duly admitted and sworn, have personally
appeared and identified themselves according to law,
by means of the hereunder mentioned official
documents:

SALE OF
MOVABLES

The Parties (and each a "Party")

ENROLLED
05/12/2014

Of the first part:

ENR: 22644
2014

Doctor of Laws Joseph known as Joe Bugeja, Director
Land Department and Commissioner of Land, son of
the late George Bugeja and of the late Philippa nee'
Carabott, born in Attard on the 23rd April 1969 and
residing at Tarxien, holder of identity card number
181569M who appears on this deed in his capacity of
Commissioner of Land in the name and on behalf of
the **Government of Malta**, duly appointed by Legal
Notice four hundred and thirty six of the year two
thousand and thirteen (L.N.436/2013) issued in the
Government Gazette of the sixth day of December of
the year two thousand and thirteen (06/12/2013) and by
Government Notice number one hundred and one
(G.N. 101) issued in the Government Gazette of the
twenty eighth day of January of the year two thousand
and fourteen (28/01/2014) and in accordance with The
Public Administration Act, Chapter four hundred and
ninety seven (Chapter 497) of the Laws of Malta and as
also specifically authorised for the purposes of this
deed by virtue of a cabinet decision as evidenced by
the annexed document marked with the letter 'A'.

Of the second part:

Salvu Sant, company director, holder of identity card number 652036M, a son John Sant and Mary nee Consiglio, born in Paola on the 11th September 1936 and residing at Fgura, who appears on this deed in the name and on behalf of, **Enemalta p.l.c.**, a public limited liability company, registered and incorporated under the Laws of Malta and bearing registration number C65836 having its principal business address at Triq Belt il-Hazna, Marsa, MRS 1571, Malta, as duly authorised by virtue of a resolution of the board of directors, a copy of which is attached to this deed and marked document letter 'B'.

Of the third part

Robert Borg, board secretary, holder of identity card number 281474M a son of Charles Borg and Jane nee Mallia, born in Pieta on the 28th May 1974 and residing at Attard together with Architect Christopher Cachia, holder of identity card number 156867M, a son of Joseph and Mary nee Bonello, born in Attard on the 4th April 1967 and residing at Zejtun who appear on this deed in the name and on behalf of the **Authority for Transport in Malta**, a body corporate established by virtue of the Authority for Transport in Malta Act, Chapter four hundred and ninety nine (499) of the Laws of Malta, having its principal business address at Malta Transport Centre, Marsa, MRS 1917, Malta, as duly authorised by virtue of a resolution of the board of the Authority for Transport in Malta a copy of which is annexed to this deed and marked document letter 'C'. For all intents and purposes of law it is hereby declared that by virtue of the above mentioned Authority for Transport in Malta Act, the Authority was vested with the functions previously exercised by the Malta Maritime Authority, and acquired the property and undertakings owned by the Malta Maritime Authority in the manner and as provided in the aforesaid Act.

Of the Fourth Part

Henry Attard, financial controller, holder of identity card number 648660M, a son of Philip Attard and Maria Lourdes nee Titley, born in Sliema on the 30th September 1960 and residing at Santa Venera, who appears on this deed in the name and on behalf of D3 POWER GENERATION LIMITED, a private limited liability company registered under and by virtue of the laws of Malta, and bearing company registration number C66510 having its registered office at Enemalta Building, Triq Belt il-Hazna, Marsa MRS1571, Malta, as duly authorised by virtue of a resolution of the board of directors, a copy of which is attached to this deed and marked document letter 'D'.

Definitions

In this deed the following terms shall have the following meanings respectively assigned to them:

"ATM Act" means the Authority for Transport in Malta Act, Chapter four hundred and ninety nine (499) of the Laws of Malta or any other enactment substituting or amending the ATM Act.

"Delimara Finance Contract" means the finance contract entered into by and between the European Investment Bank and Enemalta on twenty second (22nd) September of the year two thousand and eight (2008) in relation to Delimara 3.

"Delimara Power Station" means the site known as the Delimara Power Station, situated in the district known as Delimara in the limits of Marsaxlokk and accessible from a main gate without number in Triq Il-Power Station and also from a secondary gate without number in Triq Delimara; this site has several other gates without number in the security fence which separates the site from the gated quay situated on the South Westerly side of the site; this site includes the adjacent and contiguous parking area situated outside the above

mentioned main gate, which parking area is accessible from its own unnumbered entrance in Triq Il-Power Station; this site (including the aforesaid parking area) is shown outlined in red on the plan indicated as P.D. No: 2011_89_7 (Property Drawing number two zero one one underscore eight nine underscore seven) annexed to the Title Deed as a document marked "P1" and includes the buildings, structures, chimneys and other improvements considered immovable things in terms of the Civil Code, Chapter sixteen (16) of the Laws of Malta, all without official number, situated within the boundaries of the site; this site (inclusive of the aforesaid parking area and aforesaid buildings, structures, chimneys and other improvements) has a superficial area of approximately two hundred and twenty nine thousand eight hundred and seventy five square metres (229,875sq.m.) and is bounded on the North West by Triq Il-Power Station, on the North by property of the Government or of its successors in title, on the West in part by Triq Il-Power Station and in part by the foreshore, on the South West in part by a gated quay (which, save for what is contained in this deed granting the Rights of Use to the Transferee, and in any agreement entered into by Enemalta with third parties is used exclusively by Enemalta) property of the Government, on the South in part by the foreshore and in part by property of the Government or of its successors in title, on the North East by Triq Delimara and on the East in part by Triq Delimara and in part by property of the Government or of its successors in title; this site includes all its rights and appurtenances, including its overlying airspace and underlying land as well as the pipes and drains which abut from the South Westerly and Westerly sides of the site and extend to the sea through the adjacent gated quay and foreshore (which drains and pipes are located in the areas indicated with the numbers "1", "2", "3" and "4" (one, two, three and four) on the plan indicated as EM/PST/05 (letters EM stroke letters PST stroke number zero five) annexed to the Title Deed as a document marked "P26".

“Delimara 3” means the divided part of the Delimara Power Station consisting of a portion of land situated within the Delimara Power Station in the district known as Delimara in the limits of Marsaxlokk, with the non exclusive right of access, from the public road network in Delimara and from the sea and vice versa, over the network of roads, driveways, pathways, passages, stairways, open spaces constructed within the Delimara Power Station which link Triq Il-Power Station, Triq Delimara and the gated quay situated on the South Western side of the Delimara Power Station, as necessary to provide adequate and uninterrupted pedestrian and vehicular access to the Delimara 3, as shown outlined in red on the plan attached to this deed and marked document “E” and is without official number, having a superficial area of approximately sixteen thousand two hundred and eighty six point seven square metres (16,286.7 sq.m.) and is bounded on all sides by the remainder of the Delimara Power Station; Delimara 3 comprises various structures and improvements, including but without limitation:

- i. the structure which houses two fresh water generators, with all their rights and appurtenances, (but excluding the said two fresh water generators and all ancillary equipment);
- ii. the structure which houses the diesel engines, with all its rights and appurtenances (but excluding the said diesel engines and all ancillary equipment);
- iii. the structure which houses the electrical annex and main block transformers, with all their rights and appurtenances, (but excluding the said transformers and all ancillary equipment);
- iv. the structure which houses the fuel oil treatment area and equipment, with all its rights and appurtenances, (but excluding the fuel oil treatment equipment and all ancillary equipment);
- v. the structure which houses the separator and compressor equipment, with all their rights and appurtenances, (but excluding the separator and compressor equipment and all ancillary equipment);

- vi. the structure which houses the steam turbine building, with all its rights and appurtenances (but excluding the steam turbine and all ancillary equipment);
- vii. the structure which houses the machinery and equipment in the abatement area, with all its rights and appurtenances, (but excluding the said machinery and equipment and all ancillary equipment);
- viii. the structure which houses the fuel oil treatment equipment room, with all its rights and appurtenances, (but excluding the said oil treatment equipment and all ancillary equipment);
- ix. a container yard with all its rights and appurtenances (but excluding urea tanks, bumps, lubricating oil tanks, any heavy fuel oil tanks and bunds).

“Enemalta” means the above mentioned and described Enemalta p.l.c..

“Government” means the Government of the Republic of Malta.

“Immovable Things” means all buildings, structures, developments, infrastructure, and other improvements, now existing, or which in the future may exist (as the context requires), within the boundaries of the Delimara 3 whether constructed or erected on, in or under the Delimara 3 or otherwise constructed and erected outside the confines of Delimara 3 but servicing Delimara 3, and considered immovable things in terms of the Civil Code, Chapter sixteen (16) of the Laws of Malta, as well as any Movable Items recharacterised as Immovable Things, but in each case to the extent only that they are considered immovable things in terms of the Civil Code, Chapter sixteen (16) of the Laws of Malta.

“Land Registry” means the office in Malta constituted by virtue of the Land Registration Act, Chapter two

hundred and ninety six (296) of the Laws of Malta, for the purposes of registration of title to land.

“**Malta**” means the Island of Malta, the Island of Gozo and the other islands of the Maltese Archipelago, including the territorial waters thereof.

“**Movable Items**” means all the facilities, installations, tanks, pipe-works, equipment, plant and machinery situated in any part of the Delimara 3 delivered to Enemalta by the contractor Burmeister & Wain Scandinavian Contractor upon completion of a turnkey project commissioned by Enemalta, or outside the confines of Delimara 3 but servicing exclusively Delimara 3 provided they are not considered immovable things in terms of the Civil Code, Chapter sixteen (16) of the Laws of Malta including, but without limitation:

- i. the two fresh water generators and all ancillary equipment;
- ii. the diesel engines and all ancillary equipment;
- iii. the transformers and all ancillary equipment;
- iv. the fuel oil treatment equipment and all ancillary equipment;
- v. the separator and compressor equipment and all ancillary equipment;
- vi. the steam turbine and all ancillary equipment;
- vii. the machinery and equipment in the abatement area and all ancillary equipment;
- viii. the sea water pump with all ancillary equipment;
- ix. the main pipes, and all ancillary equipment installed on the main pipe rack
- x. the diesel oil and heavy fuel oil transfer pumps with all ancillary equipment;
- xi. the demineralized water pumps and all ancillary equipment;
- xii. the evaporated water pumps with all ancillary equipment;
- xiii. the demineralized and evaporated water pipe equipment and all ancillary equipment;

- xiv. the oil treatment equipment and all ancillary equipment;
- xv. the oily water interceptor with all ancillary equipment;
- xvi. the fire fighting facilities situated within the confine of Delimara 3;
- xvii. urea tanks, bumps, lubricating oil tanks, any heavy fuel oil tanks and bunds situated within the confine of Delimara 3.

“Permitted Use” means the activities, functions, purposes and duties or any of them which Enemalta is obliged to carry out in terms of or as set out in or otherwise contemplated by the Enemalta (Transfer of Assets, Rights, Liabilities and Obligations) Act Chapter five hundred and thirty six (Chap 536) of the Laws of Malta as amended from time to time, and in particular, but without limitation to the generality of the above, the generation of electrical energy in, to or for Malta.

“Power Purchase Agreement” means the power purchase agreement entered into, or to be entered into, by and between Enemalta and the Transferee in relation to Delimara 3.

“Title Deed” means the public deed in the records of Doctor of Laws Notary Pierre Attard, of the thirty first (31st) day of December of the year two thousand and twelve (2012), deed number one hundred and fifty of the year two thousand and twelve (No. 150/2012).

“Transferee” means D3 POWER GENERATION LIMITED as mentioned above.

“Transport Authority” means the above mentioned and described Authority for Transport in Malta.

Construction

In this deed, unless otherwise expressly stated or the contrary intention appears:

a) words importing the masculine gender shall include the feminine gender and vice-versa and words importing the neuter gender shall include the masculine and the feminine gender.

b) references to a Recital, Part, heading, section, clause, paragraph, sub-paragraph, document or schedule is to a Recital, Part, heading, section, clause, paragraph, sub-paragraph, document or schedule of or annexed to this deed.

c) references to a person include references to any person, whether natural or legal and whether registered or not and whether incorporated or unincorporated, and includes (without limitation) an undertaking and this irrespective of citizenship, place of registration, residence or management;

d) The headings in this deed are inserted for convenience only and do not affect its construction.

e) any reference to the term 'this deed', shall include also a reference to the schedules, documents, and annexes annexed to this deed, which schedules, documents, and annexes form an integral part of this deed.

FIRST PART

By virtue of this deed Enemalta hereby grants by title of temporary sub-emphyteusis to the Transferee, which accepts and acquires, by the same title of temporary sub-emphyteusis, Delimara 3 as enjoying and as subject to all easements which exist for the advantage of, or as a burden on the Delimara 3, as the case may be, with all its respective rights and appurtenances, subject to the terms and conditions arising from this deed with free, vacant and immediate possession.

1.1 Terms and Conditions

- 1.1.1 This sub-emphyteutical grant shall be subject to the conditions contained in the schedule annexed to this deed and marked as document letter "F" ("Schedule F") which incorporates with it "Schedule G", forming an integral part thereof except to the extent lawfully excluded or modified hereby.
- 1.1.2 Without prejudice to any warranties and obligations of the Parties under this deed or any other agreements, Enemalta and the Transferee agree that the terms and conditions of this transfer are consistent with the terms and conditions of the relevant provisions of the Title Deed. Enemalta and the Transferee shall commit their best endeavours in order to resolve any inconsistency with respect to the Title Deed which may arise. For the purposes of clarity and for the avoidance of doubt it is being agreed that any extension of this subemphyteusis attributable to an extension of the Power Purchase Agreement would terminate contemporaneously with the extended Power Purchase Agreement.

1.2 Term

- 1.2.1 This sub-emphyteutical grant is made and accepted for a period commencing from the signing of this deed and ending on January first (1st) of the year two thousand and thirty three (2033).
- 1.2.2 This term of the sub-emphyteutical grant shall be extended in the event that the Power Purchase Agreement is extended or renegotiated by the parties for a term in excess of the termination date mentioned in Clause 1.2.1, provided that the terms and conditions thereof including the ground rent have to be agreed to by the Parties.

1.3 Consideration

1.3.1. This sub-emphyteutical grant is made and accepted in consideration of:

1.3.1.1 the annual and temporary sub-groundrent which shall be as follows:

Year 1 - one million three hundred and forty thousand euro (€1,340,000);

Year 2 - one million three hundred and forty thousand euro (€1,340,000);

Year 3 - one million three hundred and forty thousand euro (€1,340,000);

Year 4 – one million four hundred and twenty thousand and four hundred euro (€1,420,400);

Year 5 – one million four hundred and twenty thousand and four hundred euro (€1,420,400);

Year 6 – one million four hundred and twenty thousand and four hundred euro (€1,420,400);

Year 7 – one million five hundred and five thousand six hundred and twenty four euro (€1,505,624);

Year 8 - one million five hundred and five thousand six hundred and twenty four euro (€1,505,624);

Year 9 - one million five hundred and five thousand six hundred and twenty four euro (€1,505,624);

Year 10 – one million five hundred and ninety five thousand nine hundred and sixty one euro (€1,595,961);

Year 11 - one million five hundred and ninety five thousand nine hundred and sixty one euro (€1,595,961);

Year 12 - one million five hundred and ninety five thousand nine hundred and sixty one euro (€1,595,961);

Year 13 – one million six hundred and ninety one thousand seven hundred and nineteen euro (€1,691,719);

Year 14 – one million six hundred and ninety one thousand seven hundred and nineteen euro (€1,691,719);

Year 15 – one million six hundred and ninety one thousand seven hundred and nineteen euro (€1,691,719);

Year 16 – one million seven hundred and ninety three thousand two hundred and twenty two euro (€1,793,222);

Year 17 – one million seven hundred and ninety three thousand two hundred and twenty two euro (€1,793,222);

Year 18 – one million eight hundred and thirty two thousand eight hundred and seventy eight euro (€1,832,878).

1.3.2 The sub-groundrent is to be paid in advance in one lump-sum of twenty eight million and eighty thousand and four hundred and thirty four Euros (€28,080,434), which is to be paid by the thirty first (31st) December of the current year 2014.

1.4 Delimara 3 shall be used solely and exclusively for the Permitted Use.

1.5 Tale Quale

1.5.1 Without prejudice to any warranties of Enemalta under this deed or any other agreements, the Transferee hereby declares and agrees that it has inspected and examined to its satisfaction the Delimara 3 and its surroundings and hereby accepts the nature and adequacy thereof and declares the same to be to its satisfaction.

1.5.2 Without prejudice to any warranties of Enemalta under this deed or any other agreements, the Transferee and Enemalta agree that the Delimara 3 is being transferred *tale quale* and in an 'as is' state and condition.

1.6 Warranty

1.6.1 Enemalta, with the consent of the Transferee, is expressly excluding the warranty for defects (whether latent or otherwise) in Delimara 3, provided that it is hereby being warranted by Enemalta that:-

- i. Delimara 3 is fully covered with and remains with valid building permits issued by the competent authorities and is not in contravention of any laws and regulations relating to or affecting land and buildings generally;
- ii. Delimara 3 is covered with and remains with valid and effective licenses, permits and authorisations issued by the competent authorities as necessary according to law for the Permitted Use and Enemalta is not in breach of any term or condition of such licenses, permits and authorizations;
- iii. there are no material proceedings pending or threatened by or against Enemalta in connection with and/or relating to Delimara 3 (including, without limitation, in connection with or pursuant to any construction and development works which have already been executed to date by or on behalf of Enemalta) and that there are no circumstances which are likely to give rise to any material litigation or arbitration involving the Enemalta;
- iv. Saving the covenants mentioned in Clause 4, the special privilege registered in favour of the Government warranting the payment of the original groundrent and the proper observance of the obligations resulting from the original emphyteutical grant, and any other conditions in this Deed, there are no security interests, pledges or liens over Delimara 3.
- v. Enemalta holds a valid title on Delimara 3 being transferred by virtue of this Deed.

1.7 Vacant Possession

1.7.1 Delimara 3 is hereby transferred and acquired with immediate vacant possession in favour of the Transferee.

1.8 Obligations, Encumbrances, Rights and Servitudes

1.8.1 Delimara 3 is being transferred and acquired:

(a) under all the terms and conditions contained in Schedule F, insofar as applicable.

(b) on condition that the Transferee shall convert Delimara 3 from a primarily heavy fuel oil powered plant to a primarily gas-powered plant in accordance with the Power Purchase Agreement; and

(c) on condition that the Transferee shall de-commission Delimara 3 within a maximum period of two years from expiry or early termination of the Power Purchase Agreement, in the event that the de-commissioning is required in terms of the Power Purchase Agreement.

1.8.2 Save for any public services, utilities or other easements currently passing through, under or over Delimara 3 and save as may be otherwise stated in this deed, Delimara 3 is hereby granted and acquired as free and unencumbered and as such also as free from any other burdens, ground-rents (save for the original ground rent payable to the Government and the sub-ground rent payable to Enemalta), servitudes, hypothecs, privileges (save for the privilege in favour of the Government in terms of clause one point six point one (1.6.1) charges, cautions, any third party rights whether real or personal and of whatever type or nature.

1.9 Warranty of Peaceful Possession

1.9.1 Enemalta warrants in favour of the Transferee which accepts that it has good and valid title to Delimara 3 and that Delimara 3 may legally be transferred to the Transferee for the Permitted Use and in particular, but without limitation to the generality of the above, for the generation of electrical energy in, to or for Malta.

1.9.2 Enemalta warrants the peaceful possession and real enjoyment of Delimara 3 according to law, in favour of the Transferee, which accepts.

1.10 Use of Quays and Roads

1.10.1 Included in this transfer and temporary sub-emphyteutical grant is the assignment by Enemalta to the Transferee of all rights of use (hereinafter collectively referred to as the "Rights of Use"), insofar as these relate to the Delimara 3 of the roads and quays for the purposes of carrying out the activities, functions, purposes and duties or any of them of the Transferee and in particular, but without limitation to the generality of the above, for the generation of electrical energy in, to or for Malta, which Rights of Use shall be non exclusive and are assigned under the following terms and conditions:-

1.10.2 Delimara 3 enjoys those rights and is subject to those obligations necessary for the operational and functional activities in connection with the Permitted Use and in particular, but without limitation to the generality of the above, for the generation of electrical energy in, to or for Malta and Enemalta and the Transferee acknowledge that these Rights of Use shall also apply insofar as Delimara 3 is interconnected to the services, tunnels, chambers, underground spaces, trenches, infrastructure cables, pipelines and other ancillary works or structures situated in part underground, in part above the surface and in part in the sea or on or in the seabed (the "Network"), even if such Network extends beyond the confines of Delimara 3.

1.10.3 Delimara 3 and the Delimara Power Station (less the Delimara 3) enjoy and are subject to the easements and other rights for the advantage of, or as a burden on, each other (as the case may be) which now exist or which may become necessary for each of them to be used for the Permitted Use and in particular, but

without limitation to the generality of the above, for the generation of electrical energy in, to or for Malta as a result of the position of Delimara 3 and the Delimara Power Station (less the Delimara 3) in relation to each other.

1.10.4 Delimara 3 enjoys and shall continue to enjoy the right of access, from the public road network in Delimara and from the sea and vice versa, over the network of roads, driveways, pathways, passages, stairways and open spaces constructed or still to be constructed within the Delimara Power Station which now link or in future shall link with Triq Il-Power Station, Triq Delimara and the gated quay situated on the South Western side of the Delimara Power Station, as necessary to provide adequate and uninterrupted pedestrian and vehicular access to Delimara 3; for this purpose, the Delimara Power Station (less the Delimara 3) (*as servient tenement*) shall remain or (as the case may be) shall become subject to such easements or other rights for the advantage of Delimara 3 (*as dominant tenement*) consisting of the right of way and access, both vehicular and pedestrian, from the public road network in Delimara and from the sea and vice versa, over the network of roads, driveways, pathways, passages, stairways and open spaces constructed or still to be constructed within the Delimara Power Station (less the Delimara 3) and shall enjoy and shall be provided with adequate and uninterrupted access at all times for the purpose of and according to its destination.

Provided that:

- i. the Rights of Use and the access over the aforesaid roads, driveways, pathways, passages, stairways and open spaces shall not be for the exclusive use of Delimara 3 and shall also be available to the Delimara Power Station (less the Delimara 3) and that such access shall be regulated by such signage as may be set up, painted or otherwise installed from time to time in or on the roads, driveways, pathways, passages, stairways

and open spaces to regulate both vehicular and pedestrian traffic;

ii. the access route to Delimara 3 may be changed from time to time if the new access route provides alternative but equally suitable pedestrian and / or vehicular access to Delimara 3, it being agreed that equally suitable pedestrian and vehicular access shall mean that Delimara 3 shall be provided with adequate and uninterrupted access at all times for the purpose of and according to its destination; and

iii. the access from any road, driveway, pathway, passages, stairway or open spaces may be temporarily interrupted, for the purpose of carrying out maintenance and repairs thereon or therefrom, subject to prior notice being given to the lawful operator of the Delimara 3 except in an emergency when the obligation to give notice is hereby waived and provided that such works shall be carried out and completed as expeditiously as possible and with the least interruption possible to the operations carried out from Delimara 3, provided that adequate access to Delimara 3 must be allowed at all times except in cases of *force majeure* or circumstances which are unavoidable.

1.10.5 Subject to provisions contained in the proviso to paragraph 1.10.4, which provisions shall *mutatis mutandi* apply to this paragraph, the Delimara Power Station (less the Delimara 3) enjoys and shall continue to enjoy the right of access over the network of roads, driveways, pathways, passages, stairways and open spaces constructed or still to be constructed within the Delimara 3 which now interconnect or in future shall interconnect the roads, driveways, pathways, passages, stairways and open spaces within the Delimara Power Station (less the Delimara 3) as necessary to provide adequate and uninterrupted pedestrian and vehicular access to all parts of the Delimara Power Station (less the Delimara 3); for this purpose, Delimara 3 (*as servient tenement*) shall remain or (as the case may be) shall

become subject to such easements or other rights for the advantage of the Delimara Power Station (less the Delimara 3) (*as dominant tenement*) consisting of the right of way and access, both vehicular and pedestrian over the network of roads, driveways, pathways, passages, stairways and open spaces constructed or still to be constructed within Delimara 3.

1.10.6 Delimara 3 is now serviced by and enjoys and shall continue to enjoy, the use of the infrastructure (including, without limitation, common or separate chimneys, buildings (including storage facilities and yards, administration offices, control rooms, drawing office, workshops, and laboratories) structures, developments, facilities, installations, fuel storage tanks, equipment (including stocks of spare parts), fire fighting equipment and services, plant and machinery and other improvements) (hereinafter referred to as the “Infrastructure”) and of the distribution systems (namely common or separate cables, wires, flues, vents, pipes and drains together with the relative connections, fittings, accessories, installations and equipment and other media and infrastructure including appropriate channels, conduits and spaces) for the supply or discharge, including, without limitation, of fuel, water (potable and chilled as well as fire fighting equipment and services), steam, smoke, chemicals, drainage, sewerage and electricity (including high voltage (HV), medium voltage (MV), low voltage (LV) and direct current (DC) systems together with their control and protection equipment) as well as common communication and information technology (IT) network services (hereinafter referred to as the “**Distribution Systems**”), installed or which remain to be installed in the Delimara Power Station (less the Delimara 3) up to the outer boundary of Delimara 3 and which although not within the Delimara 3 are necessary for Delimara 3 to be used for the Permitted Use and in particular, but without limitation to the generality of the above, for the supply of electrical energy in, to or for Malta; for this purpose and in addition to the above

mentioned right of the Delimara 3 to enjoy the use of the Infrastructure and the Distribution Systems, the Delimara Power Station (less the Delimara 3) (*as servient tenement*) shall remain or (as the case may be) shall become subject to such easements or other rights for the advantage of the Delimara 3 (*as dominant tenement*) consisting of (i) the right of passage through such parts of the Delimara Power Station (less the Delimara 3) designated for the purpose of the Distribution Systems now already installed or which, save as provided hereunder, may in future be installed in order to provide Delimara 3 with the use of the Infrastructure and the other services and utilities necessary or convenient for Delimara 3 to be used for the Permitted Use and in particular, but without limitation to the generality of the above, for the supply of electrical energy in, to or for Malta and (ii) the right of access through the servient tenement for the purpose of inspection of and carrying out maintenance and repairs to the Infrastructure and Distribution Systems within the servient tenement and used by or for the benefit of the Delimara 3 which right of access shall be exercised after reasonable prior notice except in an emergency when the obligation to give notice is hereby waived.

1.10.7 The right of Delimara 3 to enjoy the use of the Infrastructure and the Distribution Systems applies to the Infrastructure and the Distribution Systems (as may be replaced, repaired, modified or improved from time to time) situated in, on or under the Delimara Power Station (less the Delimara 3) and which are already being used by or for the benefit of the Delimara 3 and, subject to the conditions stated in paragraph 1.10.9 below, includes the right to use additional Infrastructure and additional Distribution Systems in, on or under the Delimara Power Station (less the Delimara 3), in order to provide additional services and utilities to Delimara 3 which are necessary or convenient for Delimara 3 to be used for the Permitted Use and in particular, but without limitation to the

generality of the above, for the generation of electrical energy in, to or for Malta.

1.10.8 The rights of passage and access referred to in paragraph 1.10.6 above applies to the Infrastructure and the Distribution Systems (as may be replaced, repaired, modified or improved from time to time) situated in, on or under the Delimara Power Station (less the Delimara 3) and which are already being used by or for the benefit of the Delimara Power Station (less the Delimara 3) and, subject to the conditions stated in paragraph 1.10.9 below, shall also apply to additional Infrastructure and additional Distribution Systems which the operator of Delimara 3 may from time to time require to install or construct in, on or under the Delimara Power Station (less the Delimara 3) in order to provide additional services and utilities to Delimara 3 which are necessary or convenient for Delimara 3 to be used for the Permitted Use and in particular, but without limitation to the generality of the above, for the supply of electrical energy in, to or for Malta.

1.10.9 Any new additional Infrastructure and new additional Distribution Systems may only be used, installed or constructed in, on or under the Delimara Power Station (less the Delimara 3), after the lawful operator of Delimara 3 has obtained the written consent of the lawful operator of the Delimara Power Station (less the Delimara 3) and of the Government, which consent shall not be unreasonably withheld if the additional services are necessary or convenient for Delimara 3 to be used for the Permitted Use and in particular, but without limitation to the generality of the above, for the generation of electrical energy in, to or for Malta, but may be given as subject to reasonable terms and conditions which the lawful operator of the Delimara Power Station (less the Delimara 3) and the Government may together determine. The terms and conditions may not impose a charge for the rights of access and passage but may regulate the payment of costs and expenses for the use of new additional

Infrastructure and/or new additional Distribution Systems, the use of land or space utilised to install or construct new additional Infrastructure (but not of land or space utilised to install additional Distribution Systems), the execution of the necessary works and for disruptions suffered by the lawful operator of the Delimara Power Station (less the Delimara 3) during the execution of such works. Such terms and conditions may also regulate the manner how the additional Infrastructure and/or additional Distribution Systems are used, installed or constructed. If allowed, additional Infrastructure and/or additional Distribution Systems may not be installed or constructed on or through the servient tenement in a place or in the manner which shall materially impede the use of any part of the servient tenement according to its destination and shall be installed, maintained and repaired as required by standard practice in the relevant industry, under the supervision and direction of qualified engineers and with the least possible damage to the servient tenement.

1.10.10 If the Infrastructure and Distribution Systems within the Delimara Power Station (less the Delimara 3) are used exclusively by Delimara 3 or for its exclusive benefit, the operator of Delimara 3 shall be exclusively responsible for the maintenance, upkeep, repair, replacement and cleanliness of such Infrastructure and Distribution Systems, as required by standard practice in the relevant industry, under the supervision and direction of qualified engineers, and Enemalta and the Transferee shall agree on the payment of costs in respect thereof in other agreements.

1.10.11 The Transferee has the non exclusive use (including the non exclusive berthing rights) of the gated quay situated on the South Western side of the Delimara Power Station in the district known as Delimara in the limits of Marsaxlokk, which quay is accessible from a main gate without number in Triq Il-Power Station and also from other gates without number in the security fence which separates the

Delimara Power Station from the aforesaid quay; this quay is shown coloured in blue honeycomb pattern on the plan indicated as EM/PST/05 (letters EM stroke letters PST stroke number zero five) annexed to Title Deed as a document marked "P26"; this quay has a superficial area of approximately six thousand square metres (6000sq.m.) and is bounded on the North West by Triq Il-Power Station, on the North East by the Delimara Power Station and on the South West by the sea; the "**Delimara Quay**";

1.10.12 The right of use of the Delimara Quay shall be non exclusive for the Transferee but shall be enjoyed without any impediment, interference or hindrance in any manner whatsoever from the Transport Authority, the Government or any third party and includes non exclusive berthing rights, and the non exclusive right to use the quay and all structures and improvements thereon as well as the right of passage of the existing services and infrastructure of the Delimara Power Station including the passage of the pipes and drains which abut from the South Westerly and Westerly sides of the Delimara Power Station and extend to the sea through the Delimara Quay (which drains and pipes are located in the areas indicated with the numbers "1", "2", "3" and "4" (one, two, three and four) on the plan indicated as EM/PST/05 (letters EM stroke letters PST stroke number zero five) annexed to the Title Deed as a document marked "P26";

1.10.13 the Rights of Use includes the right to retain, repair, replace and upgrade the existing network of pipelines, trenches and culverts and the pipes which pass through and / or under parts of the above mentioned properties which are subject to the Rights of Use and the right of passage and access by the Transferee or any persons authorised by it for the above mentioned purposes;

1.10.14 The obligations of maintenance and repair of the services and infrastructure used exclusively by the

Transferee shall be regulated by the Power Purchase Agreement and any ancillary documents thereto;

1.10.15 Subject to what is otherwise stipulated in this deed the Transport Authority shall continue to perform its statutory functions and related obligations and to exercise its powers in terms of the ATM Act and nothing in this clause shall be deemed to derogate from the rights, benefits, functions and duties of the Transport Authority under applicable law;

1.10.16 The Government and the Transport Authority hereby together grant their consent, to the extent of their respective rights and competencies in terms of applicable law, to the assignment of these Rights of Use over the roads and quays by Enemalta to the Transferee and agree and acknowledge that all Rights of Use enjoyed by Enemalta over the aforesaid roads and quays shall apply also in favour of the Transferee.

1.10.17 These Rights of Use are not exclusive to the Transferee but shall be enjoyed by the operators and/or occupiers of the Delimara Power Station (less Delimara 3) and shall be irrevocable and shall remain operational and effective until the expiration or earlier termination of this temporary sub-emphyteutical grant, and this without prejudice to the Transferee's obligation to abide at all times by all relevant laws and regulations that are or may be applicable from time to time, in relation thereto.

For the purpose of enabling the continued Permitted Use of Delimara 3 the Transport Authority hereby gives its consent to the Transferee to transfer the relative Rights of Use to third parties together with Delimara 3 (or any parts thereof) if these are lawfully transferred, leased or otherwise disposed of, under the terms of this deed including Schedule F.

Provided that the grant of the Rights of Use (including but not limited to rights to berth) granted prior to today

by the Transport Authority whether exclusive or non-exclusive, of any quay, jetty, wharf, public road, network or other immovable, shall for all intents and purposes at law be always subject and without prejudice to the regulatory powers and duties of the Transport Authority or its successor, as established by law, currently the ATM Act and relative subsidiary legislation. This proviso shall survive any transfer contemplated by this deed or by Schedule F.

1.11 Transfer by Enemalta

1.11.1 Without prejudice to any rights of the Transferee, Enemalta is entitled to sell, assign or transfer in any manner whatsoever the temporary sub dominium directum and the relative subgroundrent (as a separate receivable);

1.12. Declarations and Consents

1.12.1 Enemalta and the Transferee hereby:

- i. refer to Schedule F and declare that they have read Schedule F and are fully cognisant with the relevant terms and conditions contained therein;
- ii. agree and declare that this transfer is subject to the terms and conditions contained in Schedule F in so far as these are reasonably applicable to the Transferee, and the Transferee expressly assumes each and all the obligations of Enemalta arising from Schedule F;

1.12.2 The parties to this deed agree that in the event that conflicts arise between this deed including Schedule F and the Title Deed, or between any other agreements entered into by any party(ies) to this deed and the Title Deed, the parties of this deed shall use their best endeavours to resolve such conflicts.

1.12.3 Without prejudice to provisions of this deed this subemphyteutical concession shall not affect the rights and obligation arising between the parties to the original emphyteutical concession constituted by virtue

of the deed in the records of Notary Pierre Attard of the thirty first (31st) day of December of the year two thousand and twelve (2012) (Deed number 150)

The Second Part

2. Sale of the Movable Items

2.1 By virtue of the second part of this deed Enemalta sells and transfers to the Transferee which accepts, purchases and acquires the Movable Items for the price of one hundred and thirty eight million and five hundred and eighty six thousand and two hundred and thirty three Euro (€138,586,233) which sum is payable by not later than the thirty first (31) December of 2014.

2.2 Tale Quale

2.2.1 Without prejudice to any warranties of Enemalta under this deed or any other agreements, the Movable Items are being sold assigned and delivered by Enemalta to the Transferee *tale quale* and in an 'as is' state and condition.

2.3 Warranty

2.3.1 Enemalta warrants the Movable Items against any latent defects, provided that the liability of Enemalta for such warranty shall cease on the lapse of twelve months from the commencement date of the Power Purchase Agreement save as regards any alleged breach of warranty of which notice in writing has been given to Enemalta prior to that date.

The lapse of the warranty in this Clause shall not release Enemalta from any other obligations it may have under this deed or any other agreements.

2.3.2 Enemalta further warrants that:

- i. the Movable Items are fully covered with and remain with valid permits issued by the competent

authorities, if required, and is not in contravention of any laws and regulations relating to or affecting land and buildings generally;

ii. the Movable Items are covered with and remains with valid and effective licenses, permits and authorisations issued by the competent authorities as necessary according to law for the Permitted Use and Enemalta is not in breach of any term or condition of such licenses, permits and authorizations;

iii. there are no material proceedings pending or threatened by or against Enemalta in connection with and/or relating to the Movable Items (including, without limitation, in connection with or pursuant to any construction and development works which have already been executed to date by or on behalf of Enemalta) and that there are no circumstances which are likely to give rise to any material litigation or arbitration involving the Enemalta;

iv. Saving the covenants mentioned in Clause 4 and any other conditions in this Deed, there are no security interests, pledges or liens over the Movable Items. Enemalta holds a valid title on the Movable Items being transferred by virtue of this Deed.

The Third Part

3. Consents

3.1 The Government hereby grants its consent to the transfer executed by the First Part and the Second Part of this deed, and hereby recognises the Transferee as the sub-emphyteuta of the Delimara 3, and the owner of the Movable Items. On its part the Transferee recognises the Government as the Direct Owner of Delimara 3.

Pursuant to Articles 5 (a) and (c) of Chapter five hundred and thirty six (536) of the Laws of Malta, the Government hereby grants its consent to the sub-emphyteusis granted through the First Part of this Deed and, without prejudice to the generality of the

foregoing, the stipulations contained in clause 3.10.2 of the Title Deed shall be deemed to have been complied with.

3.2 The Government hereby grants its consent to the granting of any security interests by the Transferee in favour of any third party lenders over Delimara 3 and the Movable Items, and the Government further grants its consent to the exercise of all rights by such third party lenders in respect of any security interests granted by the Transferee over Delimara 3 and the Movable Items including a transfer thereof by judicial sale or otherwise, provided that any such transfer of Delimara 3 shall be subject to the terms of this deed and Schedule F.

3.3 Transport Malta grants its consent to the transfer executed by the First Part, and the Second Part of this deed with respect to that part of the property falling within its remit and administered by Transport Malta according to law.

These consents are being granted on condition that any security granted by the Transferee over Delimara 3 and Immovable Things including a transfer thereof by judicial sale or otherwise should only be limited to the subemphyteutical concession and shall not otherwise prejudice the original emphyteutical concession or the Government's property title over the Delimara 3 and the Immovable Things.

The Fourth Part

4. Undertaking of the Transferee

4.1 The Transferee, in its capacity as sub-emphyteuta of Delimara 3 and in its capacity as purchaser of the Movable Items, hereby undertakes towards Enemalta to abide by and observe the same project related covenants accepted by Enemalta under article 6.05 (Continuing project undertakings) of the Delimara

Finance Contract entered into by and between the European Investment Bank and Enemalta Corporation on twenty second (22nd) day of September of the year two thousand and eight (2008).

4.2 Enemalta shall have the covenants in terms of Delimara Finance Contract mentioned above removed by obtaining the consent of the European Investment Bank to such removal, in the event that the European Investment Bank refuses to give its consent thereto after all reasonable efforts of Enemalta, by repaying the loan under the Delimara Finance Contract.

The Fifth Part

5. General Provisions

5.1 Severability

5.1.1 If any part, clause or provision of this deed shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of law or other tribunal finds that any provision of this deed is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

5.2 Waivers

5.2.1 Any waiver by any of the Parties on this deed of any provision of this deed or of the breach of any provision, term, condition or covenant contained in this deed, in any one or more instances, shall not be deemed to be nor construed as a further or continuing waiver of any such or other provision of this deed or of the breach of any such or other provision, term, condition or covenant contained in this deed. Any failure by any of the Parties at any time to enforce any provision of this deed or to take action upon any breach of any

provision, term, condition or covenant contained in this deed shall not affect its right thereafter to require complete performance by any of the other Parties on this deed.

5.2.2 Any such waiver may be given subject to any conditions thought fit by the Party giving it and shall be effective only in the instance and for the purpose for which it is given.

5.3 Applicable Law and Jurisdiction

5.3.1 This deed shall be read, governed by and construed according to the Laws of Malta.

5.3.2 In case of any dispute between the parties in connection with or arising out of this deed, the parties shall use their best efforts to settle it amicably.

5.3.3 If they do not reach any such solution within sixty (60) days after one of the disputing parties notifying the others in writing of occurrences of any such dispute, such dispute shall be finally settled by arbitration by the London Court of International Arbitration ("LCIA") in accordance with the ICC Arbitration Rules for the time being in force.

The language of arbitration shall be English and the arbitration shall be conducted in England.

The number of arbitrators shall be three (3) arbitrators, each party appointing one, and the two (2) arbitrators appointed in such manner shall then nominate a third arbitrator in accordance with the ICC Arbitration Rules. In the event the two arbitrators so appointed by the Parties do not agree to a common nomination of the third arbitrator within thirty (30) days after one Party has appointed its arbitrator, the third arbitrator shall be appointed in accordance with the ICC Arbitration Rules by the ICC.

The award in such arbitration shall be final and binding upon the parties, and judgment thereon may be entered in any court having jurisdiction for its enforcement; and the parties renounce any right of appeal from the decision of the tribunal.

5.4 Notices

5.4.1 Unless otherwise expressly provided in this deed, any notice, notification or other communication under or in connection with this deed shall be in writing and shall be delivered by hand or recorded delivery or sent by registered mail to the relevant Party or Parties.

5.4.2 Any such notice or other communication, if correctly addressed, shall be deemed to have been given to the Party to whom it is addressed as follows:

- (a) if sent by hand or recorded delivery, when actually received; and
- (b) if sent by registered mail, from and to any place within Malta, three (3) days after posting, unless otherwise proven.

5.4.3 For the avoidance of doubt, it is agreed that the provisions of this clause 5.4 (*Notices*) do not apply to judicial acts filed in the Courts of Malta which will be served in accordance with applicable Court procedures and service of such judicial acts shall be deemed to have been made in terms of law.

5.4.4 It is also agreed that the provisions of this clause 5.4 (*Notices*) do not apply to the Transport Authority when acting within its regulatory powers under the Authority for Transport in Malta Act (the “ATM Act”) in which case the Transport Authority shall issue or serve any notice, directive or other communication in accordance with the provisions of the

ATM Act or the established practice of the Transport Authority in respect of such matters.

5.5 Costs and Fees

5.5.1 Each of the parties shall bear the fees of its own advisors.

The Sixth Part

Statutory Declarations

The transfers executed by virtue of this deed have been made with the written consent of the Government as results from the consent letter annexed to this deed as a document marked with the letter "A".

For the purposes of the Land Registration Act, Chapter two hundred and ninety six (296) of the Laws of Malta, I the undersigned Notary declare that Delimara 3 is registered at the Land Registry under certificate of title number 36000259;

For the purposes of the Immovable Property (Acquisition by Non-Residents) Act (Chapter two hundred and forty six (246) of the Laws of Malta), the authorised representatives of the Transferee declare that the Transferee is a corporate entity which was constituted, formed established incorporated or registered under the laws of a Member State of the European Union; that it has its registered address, principal place of residence and business in a Member State of the European Union; that the Transferee is wholly owned by the Government; and this after I, the undersigned Notary, gave due explanation of the importance of the truthfulness of these declarations according to the law.

For the purposes of the Duty on Documents and Transfers Act, Chapter three hundred and sixty four (364) of the Laws of Malta, I the undersigned notary

declare that Enemalta acquired Delimara 3 by virtue of the Act.

I the undersigned Notary declare that no duty on documents is due by the Transferee on this deed as this deed concerns the transfer of immovable property from one company to another company which are deemed to be the same group of companies within the terms of article forty two (42) of the Duty on Documents and Transfers Act and as results from the exemption letter annexed to this deed as a document marked with the letter 'G' issued by the Commissioner for Revenue.

For the purposes of the Income Tax Management Act, Chapter three hundred and seventy two (372) of the Laws of Malta and the Income Tax Act, Chapter one hundred and twenty three (123) of the Laws of Malta:

i. Enemalta and the Transferee declare that for the purposes of sub-article twelve (12) of article five letter 'A' (5A) of the Income Tax Act, they have declared to the undersigned Notary all the facts that determine if the transfer made by virtue of this deed is one to which the aforesaid article five letter 'A' (5A) applies or otherwise and that are relevant for ascertaining the proper amount of tax chargeable or any exemption, including the value which, in their opinion, reasonably reflects the market value of the property transferred by virtue of this deed, if this value is higher than the consideration for the transfer. Enemalta and the Transferee make such declaration after I the undersigned Notary gave due explanation of the importance of the truthfulness of this declaration of theirs.

ii. Enemalta and the Transferee declare that this deed concerns the transfer of immovable property from one company to another company which qualifies for tax relief under paragraph letter (f) of sub-article four (4) of article five letter 'A' (5A) of the Income Tax Act and that they are making this declaration after I the

undersigned Notary gave due explanation of the importance of the truthfulness of their declaration and of the consequence in the case of false or erroneous declarations.

iii. On the basis of the declarations made by Enemalta and the Transferee, I the undersigned Notary, declare that no tax is due by Enemalta or the Transferee on this transfer.

iv. For the purposes of the Income Tax Act and in accordance with the provisions of sub-rule four (4) of Rule six (6) of the Capital Gains Rules a copy of the notice mentioned in roman number two of sub-article nine of article five (5(9)(ii)) of the Income Tax Act in the form prescribed in Schedule letter 'A' attached to the Capital Gains Rules **shall** be attached to this deed by the undersigned Notary when the said notice is acknowledged and stamped by the Director General - Inland Revenue.

For the purposes of the Notarial Profession and Notarial Archives Act, Chapter fifty five (Cap.55) of the Laws of Malta and specifically the first proviso to article eighty four letter 'C' sub-article five (84(C)(5)), the representative of the Transferee on this deed hereby declares that it has received from the undersigned Notary (i) the report on the title of the property transferred by virtue of this deed; and (ii) the photocopies of the documentation compiled according to law, with regards to same, and that it is aware of the implications of any issues indicated in the said report.

List of Documents

There is being annexed as document "X", a schedule of documents.

This deed has been done, read and published by me, the undersigned Notary, after I explained the contents hereof to the Parties hereto according to the law in Malta, Valletta, at Auberge de Castille.

Dr Joseph Bugeja.
Salvu Sant.
Robert Borg.
Christopher Cachia.
Henry Attard.
MARCO BURLO'
NOTARY PUBLIC MALTA.

**A true copy of the Original deed
in my Records issued today the 7th April 2015.
Quod Attestor.**

**Marco Burlo',
Notary Public, Malta.
152/1, Naxxar Road, San Gwann.**