

DATED :[●]

(1) *[Generator's name]*

- and -

(2) *[Supplier's name]*

POWER PURCHASE AGREEMENT

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THIS AGREEMENT is made

BETWEEN:

- (1) The generator, particulars of which are set out in Schedule 1 (**the "Generator"**); and
- (2) The supplier, particulars of which are set out in Schedule 1 (**the "Supplier"**).

WHEREAS:

- (A) The Generator submitted the Facility to the Auction conducted by the Generator's Agent on behalf of the Generator.
- (B) As the successful bidder in the Auction in respect of the Facility, the Supplier now wishes to contract with the Generator for the purchase of the Metered Output of the Facility as measured at the Delivery Point and any associated Renewables Benefits.
- (C) The Generator has appointed the Generator's Agent to invoice and collect payment from the Supplier in accordance with the terms of this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions:

In this Agreement (including the Recitals), unless the context otherwise requires, the following words and expressions shall bear the following meanings:

"Act" means the Electricity Act 1989 as amended from time to time;

"Affiliate" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;

"Agency Agreement" means the agreement between the Generator and the Generator's Agent under which the Generator's Agent provides services on behalf of the Generator in respect of the Auction and this Agreement;

"Ancillary Services" means those services and facilities (if any) which the Facility is capable of providing (whether to the Supplier or a third party) as more particularly described in paragraph 7 of Schedule 2, but excluding the availability and trading of Triad Avoidance Benefits;

"Auction" has the meaning given in the Auction Code;

"Auction Code" means the e-POWER Auction Code as amended from time to time in accordance with the terms of the Auction Code;

"Authority" means the Gas and Electricity Markets Authority established under the Utilities Act 2000 or any successor from time to time;

"Balancing and Settlement Code Framework Agreement" means the agreement of that name, in the form approved by the Secretary of State, by which the Balancing and Settlement Code (being the code of that name prepared by National Grid Electricity Transmission plc pursuant to its transmission licence) is made binding between signatories to such agreement, as amended from time to time;

"Banking Day" means a day (other than a Saturday or a Sunday) on which banks are open for domestic business in the City of London;

"CCL" means the tax of that name introduced pursuant to the CCL Rules;

"CCL Exemption Accreditation" means obtaining confirmation from the Authority that the Facility is a generator of a "renewables source of electricity" as defined in regulation 47 of the Climate Change Levy (General) Regulations SI 2001/838;

"CCL Rules" means section 30 of the Finance Act 2000 and subordinate legislation, including the Climate Change Levy (General) Regulations SI 2001/838;

"Central FIT Register" means the register kept and maintained by the Authority for the purpose of recording details of accredited FIT installations and other such matters relating to the FIT;

"Commencement Date" means the Contract Term Start Date specified in Schedule 2 or, if the Facility is not Commissioned on the specified date, such later date as is specified in Schedule 2 as the Expected Commissioning Date or as otherwise agreed between the Parties and notified to the Generator's Agent provided that such date shall be no later than 6 Months after the date specified in Schedule 2;

"Commissioned" means the satisfactory completion of such procedures and tests as from time to time constitute usual industry standards and practices to demonstrate that the Facility or the relevant Phase of it is capable of commercial operation for the purposes of this Agreement and "Commission" and "Commissioning" shall be construed accordingly;

"Connection Agreement" means the agreement entered into by the Generator and the Local Distributor, providing for the connection of the Facility to the distribution system of the Local Distributor;

"Contract Term" means the period from the Commencement Date until the earlier of the Contract Term End Date and the date of termination of the Contract Term pursuant to clause 12;

"Contract Term End Date" means the date specified in Schedule 2;

"Contract Term Start Date" means the date specified in Schedule 2;

"Delivery Point" means the delivery point being, as the case may be, that part of the lines or system or other premises of the Local Distributor, particulars of which are set out in paragraph 5 of Schedule 2, at which the Energy from the Facility enters the Local Distributor's system;

"Energy" means the electrical energy (expressed in kWh) generated by the Facility in accordance with the provisions of clause 3, other than any such electrical energy consumed by the Facility in connection with its operation and maintenance;

"Export Payment" has the meaning given to that term in Standard Condition 33 of a Supply Licence granted under section 6 of the Act;

"Export Payment Opt Out Notification" means a notice in writing from a FIT accredited generator to a FIT Licensee in terms of which the FIT accredited generator opts out of receiving Export Payments from a date specified therein;

"Facility" means the generating facility particulars of which are set out in Schedule 2;

"FIT Accreditation" means confirmation that the Facility is an accredited FIT installation in accordance with the FIT Order and has been entered onto the Central FIT Register, as may be amended, replaced or substituted from time to time;

"FIT" means feed-in tariffs for small-scale low carbon generation facilities introduced in accordance with the powers contained in sections 41 to 43 of the Energy Act 2008, and as set out in Standard Condition 33 of a Supply Licence granted under section 6 of the Act and the FIT Order;

"FIT Licensee" has the meaning given to that term in Standard Condition 33 of a Supply Licence granted under section 6 of the Act;

"FIT Order" means the Feed-in Tariffs Order 2012, SI 2012/2782;

"Force Majeure" means in respect of any party any event or circumstance which is beyond the reasonable control of such party and which results in or causes the failure of that party to perform any of its obligations under this Agreement including act of God, strike, lockout or other industrial disturbance, act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems (other than as required as a source of energy), explosion, fault or failure of plant and apparatus which could not have been prevented by Prudent Operating Practice, governmental restraint, any Act of Parliament, other legislation, by-law, prohibition, measure or directive of any kind of any governmental, parliamentary, local or other competent authority; provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of such party;

"Forced Outage" means an unplanned outage during the Contract Term;

"Fossil Fuel" has the meaning given to that term in section 32(8) of the Act;

"Generator's Agent" means NFPAS Limited whose registered office is at 4th Floor, Higham House, New Bridge Street West, Newcastle upon Tyne NE1 8AN;

"Holding Company" means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

"Insolvency Event" includes the following events in respect of the party concerned:

- (a) passing a resolution for the party's winding-up (other than for the purpose of and followed by a solvent reconstruction or amalgamation) or summoning a meeting to pass any such resolution; or
- (b) the party having a petition for a winding-up order presented against it; or
- (c) any step is taken to appoint an administrator in relation to the party; or
- (d) a receiver, administrative receiver, receiver and manager or similar officer being appointed by any person of all or any part of the party's property, assets or undertaking; or
- (e) the party making a proposal for a voluntary arrangement as defined in section 1 of the Insolvency Act 1986; or
- (f) the party entering into any other arrangement with its creditors or any of them; or
- (g) taking or suffering any other action in consequence of debt including, without limitation, giving notice to its creditors or any of them that it has suspended or is about to suspend payment; or
- (h) the party being unable to pay its debts for the purposes of section 123 of the Insolvency Act 1986 in sub section 123(1)(a) thereof or any distress, execution or other process being levied upon the whole or a substantial part of the party's assets; or
- (i) a proposal or threat to do any of the above acts or things being made; or an event analogous to the aforesaid occurring in whatever jurisdiction.

"kWh" means kilowatt hour;

"LECs" means the levy exempt certificates (in units of 1 MWh each) issued by the Authority or its appointed agent to a Generator as evidence that a unit of electricity is exempt from CCL and any replacement or substitute certificate or benefit;

"Liability Cap" means an amount representing the appropriate value over the Contract Term under the Agreement calculated as the Net Site Capacity (expressed in MW) x 8760 x 0.9 (being an assumed availability factor) x Successful Bid Price;

"Local Distributor" means any person who is authorised by a licence under Section 6(1)(c) of the Act to distribute electricity and whose standard conditions in Section C (in whole or in part) of its licence have effect in respect of the geographic area within which the Facility is located;

"Maximum Fossil Fuel Percentage" means the maximum stated Fossil Fuel generation proportion for the Facility as set out in paragraph 2 of Schedule 2;

"Metering Data" means the amount of Energy recorded by the equipment and apparatus used to measure the kWh sold by the Generator to the Supplier under this Agreement at the Delivery Point;

"Metered Output" means, in any Month, the aggregate amount of Energy delivered at the Delivery Point;

"Month" means a calendar month;

"MPAN" means the unique number allocated to the metering point located at the Delivery Point;

"MW" means megawatt;

"MWh" means megawatt hour;

"National Grid Licence" means the transmission licence granted to National Grid Electricity Transmission plc pursuant to Section 6(1)(b) of the Act, as amended from time to time;

"Net Site Capacity" means, in respect of each period identified in paragraph 3 of Schedule 2 the Net Site capacity set against such period in such paragraph;

"Non-Fossil Fuel" means a means of fuelling or driving a generating station other than by a Fossil Fuel;

"party" means every person for the time being and from time to time party to this Agreement;

"Phase" means a separate part of the Facility referred to in paragraph 4 of Schedule 2;

"Prudent Operating Practice" means practices, methods and procedures which are or should be adopted at the relevant time by a person exercising in the general conduct of its undertaking that degree of judgment, skill, diligence, prudence and foresight which would ordinarily and reasonably be expected from a skilled and experienced operator engaged in the business of developing and operating electric generating plant (of the same or similar type as that now or hereafter installed at the Facility) lawfully, in accordance with all applicable safety and environmental regulations and the capability of such plant and under the same or similar circumstances and conditions;

"Reasonable Endeavours" means, notwithstanding Force Majeure, the taking by the person subject to the obligation of all of the reasonable steps which a prudent and conscientious person having willingly undertaken the obligation would take to achieve the object of the obligation and in accordance with Prudent Operating Practice);

"Registration Agreement" means the Registration Form for Participation in the e-POWER Auction, as amended from time to time;

"REGO" means Renewable Energy Guarantees of Origin certificate issued by the Authority certifying that the electricity in respect of which the certificate is issued was electricity produced from renewable energy sources pursuant to the REGO Regulations;

"REGO Regulations" means The Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations SI 2003/2562;

"Renewables Benefits" means all current and future renewables benefits associated with the availability, capacity and generation of electricity from the Facility including without limitation ROCs, LECs, and REGOs (and any successors to ROCs, LECs and REGOs);

"RO Accreditation" means confirmation that the Facility is accredited as being a generating station capable of generating from eligible renewable sources as set out in article 4 paragraph 10 of the RO Order or ROS Order (as applicable);

"ROC" means renewable obligation certificate issued by the Authority under section 32(b) of the Act pursuant to the RO Order ROS Order or the RONI Order;

"RO Order" means the Renewables Obligation Order 2009;

"RONI Order" means the Renewables Obligation Order (Northern Ireland) 2009;

"ROS Order" means the Renewables Obligation (Scotland) Order 2009;

"Specified Day" has the meaning given in the RO Order or ROS Order (as applicable);

"Statement Use of System Charges" means the Condition C4 Statement Use of System Charges published in respect of each year by National Grid Electricity Transmission plc pursuant to the National Grid Licence;

"Subsidiary" means a subsidiary within the meaning of section 1159 of the Companies Act 2006;

"Successful Bid Price" means the Bid Price specified in Schedule 2;

"Triad Avoidance Benefit" means the amount by which the National Grid Transmission Network Use of System Charges detailed in any Statement of Use of System Charges payable by a supplier of electricity is reduced by virtue of the output of a generator of electricity being attributed to such supplier during the periods of system demand peak or any replacement arrangements of like effect that apply to the Facility from time to time.

1.2 Interpretation

In this Agreement unless the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 headings and the use of bold typeface shall be for convenience only and shall not affect the interpretation or construction of this Agreement;
- 1.2.3 references to any enactment or statutory provision shall include references to such enactment or statutory provision as it may, after the date of this Agreement, from time to time be amended, supplemented or re-enacted;
- 1.2.4 a reference to a clause, paragraph or Schedule is, unless indicated to the contrary, a reference to a clause, a paragraph or schedule to this Agreement;
- 1.2.5 if a period of time is specified as from a given day, or from the day of an act or event, shall be calculated exclusive of that day;
- 1.2.6 references to writing shall include any modes of reproducing words in any legible form and shall include email except where expressly stated otherwise;
- 1.2.7 a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation"; and
- 1.2.8 except to the extent that it requires otherwise, any reference to "this Agreement" or any other agreement or document is a reference to it as amended, supplemented or novated from time to time and includes a reference to any document which amends, is

supplemental to, novates or is entered into, made or given pursuant to or in accordance with any terms of it.

2. METER REGISTRATION

- 2.1 The Generator undertakes to provide to the Supplier as soon as reasonably practicable all such information as is reasonably necessary to enable the Supplier to register the MPANs for the Facility in accordance with the Balancing and Settlement Code prior to the Commencement Date.
- 2.2 As soon as reasonably practicable after the Supplier receives the information described in clause 2.1 from the Generator, the Supplier undertakes to register the metering points with effect from the Commencement Date, to maintain registration for the duration of the Contract Term and to provide the subsequent supplier (if applicable) prior to the end of the Contract Term all such information as is reasonably necessary to enable such subsequent supplier to register the MPANs for the Facility in accordance with the Balancing and Settlement Code.
- 2.3 The Supplier shall confirm registration to the Generator's Agent at least 5 Banking Days prior to the Commencement Date.
- 2.4 The Supplier shall pay the charges as set out in clause 9.1 (calculated by reference to metering data provided by the Generator), notwithstanding any failure of the Supplier to achieve meter registration by the Commencement Date, unless:
 - 2.4.1 the failure to register is caused by a breach by the Generator of its obligation as set out in clause 2.1; or
 - 2.4.2 the Generator has received payment in respect of Energy including associated Renewable Benefits delivered to the Delivery Point from the incumbent meter registrant, in which case the liability of the Supplier will be reduced to the extent of such payment.

3. OPERATION OF THE FACILITY

3.1 Entitlement to Metered Output

Subject to the Supplier achieving successful meter point registration in accordance with clause 2.2, the Generator hereby grants to the Supplier the sole and exclusive right for the Contract Term to the Metered Output of the Facility.

3.2 Prudent Operating Practice

The Generator confirms that it will operate the Facility during the Contract Term in accordance with Prudent Operating Practice whilst using reasonable endeavours to maximise the Metered Output of the Facility.

3.3 Net Site Capacity of the Facility

- 3.3.1 The Generator shall not materially alter the following without giving 10 Banking Days' prior written notice to the Supplier:
 - (A) the declared net capacity of the Facility; or
 - (B) the type or quantity of fuel used.
- 3.3.2 If there is a net increase in the declared net capacity of the Facility after the date hereof, the Supplier shall be under no obligation to purchase the output resulting from the increased capacity above the Net Site Capacity but it may, in its sole discretion, notify the Generator within 10 Banking Days of receipt of the Generator's notice under clause 3.3.1 (or otherwise on becoming aware of such increase), that it wishes to purchase such additional capacity and the Net Site Capacity shall be increased accordingly.

3.3.3 If the Supplier does not serve a notice on the Generator under clause 3.3.2, the Supplier shall at the Generator's request, give reasonable cooperation to the Generator in order to facilitate the sale of the additional output to a third party.

3.4 **Force Majeure**

3.4.1 Subject to clause 3.4.3, if either party (the "**Affected party**") is, or could reasonably be expected to be, materially prevented, hindered or delayed from performing any of its obligations under this Agreement by reason of an event of Force Majeure, such obligations of the Affected party and any corresponding or related obligations of the other parties shall remain in effect but shall be suspended without liability for a period equal to the duration of the event of Force Majeure provided that:

- (i) as soon as reasonably practicable after the start of the event of Force Majeure the Affected party notifies the other parties in writing of the act, event or circumstance relied on, the date on which such act, event or circumstance commenced, the effect of the event of Force Majeure on the Affected party's ability to perform its obligations under this Agreement; and
- (ii) the Affected party continues to use its reasonable endeavors to perform its obligations under this Agreement.

3.4.2 Immediately after the end of the event of Force Majeure the Affected party shall notify the other party in writing that the event of Force Majeure has ended and shall resume performance of its obligations under this Agreement.

3.4.3 This clause 3.4 does not apply to the Supplier's obligations to register the meter point under clause 2 or to make payments relating to the charges under clauses 9 and 10.

3.5 **No Interest in Facility**

The Supplier shall have no rights or powers or liabilities regarding the operation, maintenance or repair of the Facility other than as expressly provided by this Agreement. Nothing in this Agreement is intended to create, or shall create in favour of the Supplier any legal or beneficial interest in the Facility or in any property of the Generator of any nature whatsoever.

3.6 **Ancillary Services**

Subject always to the provisions of clauses 3.1, 3.2 and 6.3, and save to the extent that the performance of the obligations of the Generator under this Agreement would be affected or would be likely to be affected (in particular with respect to the maximisation of Metered Output and Renewables Benefits), nothing in this Agreement shall prevent the Generator from providing or selling any Ancillary Services in relation to the Facility.

3.7 **Triad Avoidance Benefit**

3.7.1 The Supplier shall be entitled to Triad Avoidance Benefits relating to the Metered Output from the Facility, provided that the Supplier shall share the benefit with the Generator pursuant to clause 9.2.

3.7.2 The Generator agrees to do all things reasonably required (but without any obligation to incur any costs) to assist the Supplier in claiming the Triad Avoidance Benefits.

3.8 **Delivery of Energy**

Delivery of Energy at the Delivery Point shall be treated as delivery for all purposes of this Agreement and shall constitute satisfaction of the Generator's obligation to deliver Metered Output generated by the Facility to the Supplier.

3.9 **Use of System Charges**

Nothing in this Agreement shall require either party to compensate or reimburse the other party in relation to any charges or costs incurred by them or that they are otherwise liable for in relation to any use of system arrangements required of either party to enable transmission of Energy beyond the Delivery Point.

4. **FOSSIL FUEL USAGE**

4.1 If the Maximum Fossil Fuel Percentage is greater than nil, the Generator will at all times use Reasonable Endeavours to minimise the use of Fossil Fuels in connection with the fuelling or driving of the Facility so far as this is consistent with Prudent Operating Practices.

5. **OUTAGES**

5.1 **Maintenance and Planned Outages**

5.1.1 Subject to the other provisions of this Agreement, the Generator shall use Prudent Operating Practices when:

- (A) deciding whether it is necessary to carry out or procure to be carried out planned repair or maintenance work; and
- (B) in carrying out such repair or maintenance work.

5.1.2 The Generator shall provide the Supplier with at least 1 month's notice before the carrying out of planned repair or maintenance at the Facility or any other operation which may materially affect the Metered Output levels. In the event that the Generator is not able, in accordance with Prudent Operating Practices, to give at least 1 month's notice of the planned repair or maintenance work then the Generator must notify the Supplier as soon as practicable after first becoming aware of the need for the planned repair or maintenance work.

5.2 **Forced Outages**

The Generator shall notify the Supplier of any Forced Outage causing any deviation in the level of generation by the Facility of 25% of Net Site Capacity lasting for longer than a continuous period of 8 hours, within 4 hours of such Forced Outage.

6. **RENEWABLES BENEFITS**

6.1 **Eligibility for Accreditations**

The Generator warrants that it has obtained or will by the Commencement Date have obtained CCL Exemption Accreditation and either:

6.1.1 RO Accreditation; or

6.1.2 FIT Accreditation (and served a valid Export Payment Opt Out Notification),

and any other necessary accreditations in relation to Renewables Benefits in respect of the Facility and shall maintain these accreditations (and a valid Export Payment Opt Out Notification) at all times throughout the Contract Term.

6.2 **Compliance with RO, CCL Rules, REGO Regulations and FIT Order**

The Generator agrees, where relevant, to comply with the rules and procedures as set out in the provisions of the RO, the ROS, the RONI, the CCL Rules, the REGO Regulations and the FIT Order so long as they remain in force and with any legislation that amends or replaces them relating to the obtaining of ROCs, LECs, REGOs, FITs or any other Renewable Benefits (including the submission of accurate monthly declarations) and shall ensure that the Facility is operated in compliance with those rules and procedures at all times during the Contract Term. The Generator shall send all necessary correct and accurate information to the Authority for its

issuance of ROCs, LECs, REGOs, FITs (where applicable) and any other Renewable Benefits relating to Metered Output generated during the Contract Term within the timeframe specified by the Authority from time to time.

6.3 Maximising Renewables Benefits

Subject to clause 3.2, the Generator shall obtain the maximum amount of Renewables Benefits which could reasonably be expected to be available to the Generator for all electricity generated by the Facility throughout the Contract Term.

6.4 Transfer of Renewables Benefits

Subject to the Supplier achieving successful meter point registration in accordance with clause 2.2 and subject to clause 6.5, the Generator shall take all steps necessary to transfer to the Supplier all Renewables Benefits issued to it by the Authority in respect of the electricity generated by the Facility during the Contract Term and shall promptly notify the Authority of such transfers. Such Renewables Benefits shall be transferred to the Supplier in a timely manner and on a monthly basis and in accordance with the Authority's rules and procedures as set out from time to time. The Generator shall comply with all administrative procedures necessary to transfer the Renewables Benefits to the Supplier.

6.5 Onward Transmission of ROCs, LECs and REGOs

Notwithstanding clause 6.4, the Generator shall on receipt of a ROC, LEC or REGO from the Authority promptly transfer any ROC, LEC, or REGO relating to Metered Output delivered to the Supplier during the Contract Term to the Generator's Agent for onward transmission to the Supplier upon receipt by the Generator's Agent of the total amount due under this Agreement in respect of such Metered Output and associated ROCs, LECs or REGOs and other Renewables Benefit from the Supplier.

6.6 ROC Revocation

6.6.1 In the event that a ROC which has been transferred to the Supplier under this Agreement is subsequently revoked by the Authority prior to the Specified Day in respect of the obligation period to which the revoked ROC relates (if applicable), the Generator shall be liable to refund the Supplier an amount equal to the number of ROCs multiplied by, in the case of ROCs, the average ROC price obtained in the most recent ROC auction held by the Generator's Agent provided the Supplier notifies the Generator within 7 Banking Days of receipt of notice of the relevant revocation.

6.6.2 A party receiving the revocation notice issued by the Authority or a copy thereof shall as soon as reasonably practicable, and in any event no later than 3 Banking Days following receipt, provide the other party, and the Generator's Agent with a copy of the notice.

7. METERING AND PROVISION OF INFORMATION

7.1 Metering Data and determination of Metered Output

7.1.1 The Supplier shall procure that a copy of the Metering Data in respect of each Relevant Facility is provided to the Generator's Agent in the format, at the frequencies, within the time period, and containing the information specified by the Generator's Agent, acting reasonably, from time to time.

7.1.2 If information required for the purpose of calculating the payments due to the Generator's Agent under this Agreement is not available at any time or if remotely obtained data is lost or corrupted, the Generator's Agent may make estimates for such purpose having regard, when available, to the Meter Data before and (if appropriate)

after the period of estimation and the Supplier will make payments to the Generator's Agent in accordance with such estimates. If and when such information becomes available appropriate adjustments will be made by the Generator's Agent in the next account or as soon as practicable thereafter. If information upon which any account is based is discovered to be inaccurate or incomplete in any respect the Generator's Agent shall make such adjustment as may be necessary as soon as practicable.

- 7.1.3 The Supplier shall inform the Generator's Agent as soon as reasonably practicable of any inaccuracies in Metering Data provided to the Generator's Agent.

7.2 Access to Information

Each of the Generator and Supplier shall procure that all relevant information and data held by it relating to Metered Output shall be provided to the other provided that neither party shall be obliged to acquire or put in place any new computer or other systems to compile or hold information in addition to those it would be expected to use to compile or hold information acting in accordance with Prudent Operating Practice and in compliance with all laws, regulations and electricity industry agreements to which it is party and procedures which relate to it.

7.3 Access to Meters

Subject to the provisions of the Connection Agreement, the Generator hereby grants to the Supplier the right, at reasonable times and on reasonable notice, of access by the Supplier and the Supplier's agents to such plant, property or assets owned, occupied or controlled by the Generator as may be reasonably necessary in order for the Supplier to check the Metered Output from time to time.

7.4 Metering Disputes

- 7.4.1 If the Generator disputes the accuracy of the Supplier's Metering Data, the Generator must notify the Generator's Agent within 10 Banking Days of receipt by the Generator of the data.
- 7.4.2 In the event of a dispute as to the accuracy of the Supplier's Metering Data, the parties agree to use Reasonable Endeavours to resolve the dispute promptly.
- 7.4.3 In the absence of manifest error, and subject to the requirements of the RO Order, the ROS Order, the CCL Rules and the FITs Order (and procedures issued pursuant thereto) and save as otherwise specified in this Agreement, the Supplier's Metering Data shall be used for all purposes hereunder (including for the notification by the Generator of the output to the Authority) unless and until any such dispute is resolved to the contrary, or the parties otherwise agree.

8. WARRANTIES AND UNDERTAKINGS

8.1 Warranties by the Generator

The Generator warrants as at the date hereof and as at the Commencement Date:

- 8.1.1 that the Facility details as set out in Schedule 2 are true;
- 8.1.2 as to the existence of a valid Connection Agreement and undertakes to comply with the provisions of such Connection Agreement throughout the Contract Term;
- 8.1.3 as to the authority of the Generator's Agent to act on its behalf in respect of this Agreement.

8.2 Warranties by the Supplier

Without prejudice to the generality of clause 8.3.1, the Supplier warrants that it holds a supply licence under section 6 of the Act and is a party to the Balancing and Settlement Code Framework Agreement.

8.3 Warranties and undertakings by the Generator and Supplier

Each party warrants and undertakes that:

8.3.1 it has obtained (or will have obtained by the Commencement Date) and will maintain at all relevant times during the Contract Term all necessary licences, authorisations, permits, rights and consents necessary to enable it to perform its obligations under the Agreement;

8.3.2 it has the power to enter into, perform and comply with all its obligations under this Agreement and that its entry into, performance of or compliance with its obligations hereunder does not and will not violate any law to which it is subject or its Memorandum or Articles of Association.

8.4 Generator's Agent

Subject to the terms of the Registration Agreement, the Supplier shall not be responsible for any of the costs or fees of the Generator's Agent in respect of the Generator's Agent's role under this Agreement or the Agency Agreement.

9. CHARGES

9.1 Price for Metered Output

9.1.1 From the Commencement Date the Successful Bid Price for each kWh of Metered Output shall be due from the Supplier to the Generator in respect of each Month of the Contract Term and shall be payable in accordance with the provisions of clause 10.

9.1.2 If the Facility continues to be registered to the Supplier after the end of the Contract Term, the Supplier shall pay 90% of the System Sell Price for each kWh of Metered Output to the Generator's Agent until the Facility ceases to be registered with the Supplier. Such amounts shall be payable by the Supplier 10 Banking Days after the receipt of an invoice from the Generator's Agent.

9.2 Payment of Triad Avoidance Benefit

9.2.1 There shall be due from the Supplier to the Generator in respect of each Month of the Contract Term 80% of any Triad Avoidance Benefit arising during the relevant Month, which shall be payable in accordance with the provisions of clause 10.

9.2.2 The Parties agree that Triad Avoidance Benefits shall be calculated by the Generator's Agent using the Metering Data provided by the Supplier.

10. INVOICING AND PAYMENT

10.1 Accounts and billing

The Generator shall within 15 Banking Days of the end of each Month prepare and submit to the Generator's Agent an account based on the determination of Metered Output calculated by the Generator's Agent, in respect of any amount which would be due to the Generator by the Supplier under this Agreement.

10.2 Payment

10.2.1 The Generator's Agent shall submit such accounts submitted to it by the Generator pursuant to clause 10.1 to the Supplier.

10.2.2 Subject to clause 10.6, the Supplier shall pay such accounts to the Generator's Agent within the later of:

- (A) 15 Banking Days after the end of the month in which the Metered Output was generated; and
- (B) 10 Banking Days after receipt of the accounts,

by direct transfer to the bank account of the Generator's Agent in the United Kingdom with such bank as the Generator's Agent may from time to time notify to the Supplier or by such other arrangements as the parties may agree.

10.2.3 Nothing in this Agreement shall render the Generator's Agent liable to account for or pay monies due which have not actually been received by the Generator's Agent.

10.3 **Value Added Tax**

The sums expressed to be due and payable by the Supplier under this Agreement are exclusive of Value Added Tax (or any other tax in substitution therefor or in addition thereto) and the Supplier shall, in addition to such sums, pay to the Generator's Agent Value Added Tax (or any other tax in substitution therefor or in addition thereto) at the rate for the time being and from time to time properly payable, in respect of any payment falling to be made under this Agreement (including Triad Avoidance Benefit payments).

10.4 **Interest**

Any amount properly due and payable by the Supplier or by the Generator pursuant to this Agreement and remaining unpaid at the expiry of the relevant period for payment shall bear interest thereafter, such interest to accrue from day to day and to be compounded with monthly rests at a rate equal to 3% in excess of the base lending rate of Barclays Bank plc for the time being and from time to time, from (but excluding) the date of expiry of such period until (but excluding) the date upon which the amount due is actually received by the Generator or Supplier (as the case may be).

10.5 **Disputed Items**

Without prejudice to clause 7.4, if any item or part of any item of an account rendered by the Generator's Agent in accordance with this clause 10 is disputed or subject to question by the Generator or Supplier, the payment by the Supplier of the undisputed and unquestioned items and/or parts of items shall not be withheld and the provisions of clause 10.4 shall apply to such undisputed and unquestioned items and/or parts of items and also to the disputed or questioned items and/or parts of items and/or excluded amounts to the extent that it shall subsequently be agreed or determined to have been properly payable to the Generator.

10.6 **Generator's Agent**

The Generator hereby directs the Supplier, and the Supplier agrees to comply with such direction, to provide Metering Data and payment in accordance with clauses 9 and 10 to the Generator's Agent. This direction shall be irrevocable, save in the event of the termination of the Agency Agreement or the Registration Agreement.

11. **LIABILITY**

11.1 **Limitation of Liability**

Save as provided in this clause 11.1 and 11.2, and subject to clause 11.3, neither party (the "**Party Liable**") nor any of its officers, employees, agents or sub-contractors shall be liable to the other for any indirect or consequential loss whether arising out of any tort, negligence or breach arising out of or in connection with the performance of its obligations under this Agreement, save to the extent that the same has arisen as a direct result of the wilful default of a party, its officers, employees, agents or sub-contractors.

11.2 **Liability for Death or Personal Injury**

Nothing in this Agreement shall exclude or limit the liability of the Party Liable for death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents.

11.3 **Limitation of Liability**

The aggregate liability of each party to this Agreement, its officers, employees, agents and sub-contractors to the other party resulting from negligence or any other tort or any breach of contract on the part of that party or any of its officers, employees, agents or sub-contractors arising out of any act, event or circumstance or series of acts, events or circumstances relating to this Agreement or in any contract collateral hereto, shall not exceed the Liability Cap and all conditions, warranties or other terms whatsoever inconsistent with the provisions of this clause 11.3 are hereby expressly excluded.

12. **TERMINATION**

12.1 **Termination by the Supplier**

The Supplier may by notice to the Generator forthwith terminate the Contract Term if:

- (A) the Generator fails to obtain and maintain at all relevant times during the Contract Term RO Accreditation, Climate Change Levy Exemption Accreditation or FIT Accreditation and a valid Export Payment Opt Out Notification, (whichever is the subject of this Agreement) as set out in clause 6.1;
- (B) the Generator fails to promptly transfer to the Generator's Agent for onwards transmission to the Supplier all relevant ROCs, LECs, REGOs or other Renewables Benefits, and, in the case of a Generator with FIT Accreditation, where requested, a valid Export Payment Opt Out Notification, in accordance with the terms of this Agreement;
- (C) the Generator is in material breach of its obligations under this Agreement and such breach is continuing and remains unremedied after the expiry of 28 Banking Days following the giving of written notice by the Supplier requiring the Generator to discontinue or remedy its material breach;
- (D) the Connection Agreement is terminated (and not replaced) for any reason;
- (E) the Generator's acts or omissions cause the Supplier to be in breach of its obligations under its supply licence granted under section 6 of the Act or the Balancing and Settlement Code;
- (F) the Generator is subject to an Insolvency Event; or
- (G) the Generator fails to perform its obligations under this Agreement to any material extent for a continuous period of 90 days as a result of an event of Force Majeure.

12.2 **Termination by the Generator**

The Generator may by notice to the Supplier forthwith terminate the Contract Term if the Supplier:

- (A) fails to pay (other than by inadvertent error in funds transmission which is discovered by the Supplier, notified to the Generator's Agent and corrected within 4 Banking Days of such notification) any amount due from it pursuant to the terms of this Agreement and such default is unremedied at the expiry of the period 7 Banking Days immediately following receipt by the Supplier of written notice from the Generator's Agent of such non-payment;

- (B) at any time during the Contract Term ceases to hold a supply licence under section 6 of the Act;
- (C) is in material breach of its obligations other than its payment obligations under this Agreement and such breach is continuing and remains unremedied after the expiry of 28 Banking Days following the giving of written notice by the Generator requiring the Supplier to discontinue or remedy its material breach;
- (D) is subject to an Insolvency Event; or
- (E) fails to perform its obligations under this Agreement to any material extent for a continuous period of 90 days as a result of an event of Force Majeure.

12.3 **Survival Rights on Termination**

Termination of this Agreement shall be without prejudice to any accrued rights or obligations of the parties up to the date of termination (provided that each party shall have a right of set-off in respect of amounts due from the other party) and the provisions of clauses 6.6, 9, 10 and 13 shall remain in full force and effect notwithstanding termination.

13. **CONFIDENTIALITY AND ANNOUNCEMENTS**

13.1 **General Restriction**

Subject to the exceptions provided in clause 13.2, neither party shall, at any time prior to or within 2 years after the termination or expiry of this Agreement, without the prior written consent of the others, divulge or suffer or permit its officers, employees, agents or sub-contractors to divulge to any person (other than to any of its or their respective officers or employees who require the same to enable them properly to carry out their duties) any of the contents of this Agreement or any commercially confidential information relating to the negotiations concerning the same or any commercially confidential information which may come to a party's knowledge in the course of such negotiations or otherwise concerning the operations, contracts, commercial or financial arrangements or affairs of the other party.

13.2 **Exceptions**

The restrictions imposed by clause 13.1 shall not apply to the disclosure of any information:

- 13.2.1 which now or hereafter comes into the public domain otherwise than as a result of a breach of an undertaking of confidentiality or which is obtainable with no more than reasonable diligence from sources other than the parties hereto;
- 13.2.2 which is required by law to be disclosed to any person who is authorised by law to receive the same;
- 13.2.3 which is required to be disclosed by the regulations of any recognised exchange upon which the share capital of the party making the disclosure is or is proposed to be from time to time listed or dealt in;
- 13.2.4 to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing party is a party;
- 13.2.5 in accordance with the provisions of the RO Order, the ROS Order, the RONI Orders, the CCL Rules, the REGO Regulations, the FIT Order, the Connection Agreement or pursuant to any licence held under the Act;
- 13.2.6 in accordance with the Balancing and Settlement Code Framework Agreement;
- 13.2.7 to any consultants, banks or professional advisors of the disclosing party, provided enforceable undertakings to observe the same restrictions on the use of the relevant information as are contained in this clause 13 have been obtained prior to such disclosure. If disclosure is made to a bank or other adviser who is not a legal or

financial adviser, the disclosing party must inform the other party in advance of the disclosure and deliver the undertaking to the other party;

- 13.2.8 from any party to any instrument or agency of Government or the European Union having jurisdiction in respect of inter-state commerce, competition or energy;
- 13.2.9 to the Authority, the Scottish Ministers, the Secretary of State or the Department of Enterprise, Trade and Investment ("**DETI**") and their respective agents to enable the Authority, the Scottish Ministers, the Secretary of State or the DETI to monitor developments concerning the generation of electricity from non-fossil fuel sources or to enable those persons and entities to discharge their duties under the Act, the RO Order, the ROS Order, the RONI Order, the CCL Rules, the FITs Order or the REGO Regulations;
- 13.2.10 to or by the Generator's Agent as necessary to facilitate the performance of this Agreement;
- 13.2.11 by the Generator's Agent to any person as to the total number ROCs, LECs or REGOs that have, or FIT accredited output that has, been sold to Successful Bidders in any Auction and the total amount payable by Successful Bidders to the Generator's Agent in respect of such ROCs, LECs, REGOs or FIT accredited output or details of any ROCs, LEC, REGO or FIT Accreditation that has been revoked; and
- 13.2.12 by the Generator's Agent to its sub-contractors to the extent required to enable such sub-contractor to carry out the Generator's Agent's obligations under this Agreement and who shall be made aware by the Generator's Agent of its obligations under this Agreement and shall be required by the Generator's Agent to observe the same restrictions on the use of the confidential information as are contained in this clause 13.

13.3 Announcements

- 13.3.1 Subject to clause 13.3.2, neither party shall issue public announcements regarding this Agreement without first having obtained prior approval of a copy of the announcement from the other party (such approval not to be unreasonably withheld).
- 13.3.2 The restrictions imposed by clause 13.3.1 shall not apply to the disclosure of any information which is required to be disclosed by the regulations of any recognised exchange upon which the share capital of the party making the disclosure is or is proposed to be from time to time listed or dealt in.

14. ARBITRATION

14.1 Reference to Arbitration

Save for the recovery of an amount due and payable hereunder where the same is not disputed in good faith and save where expressly stated in this Agreement to the contrary and subject to any contrary provision of the Act, any licence held under the Act, the RO Order, the ROS Order, the RONI Order, the CCL Rules, the REGO Regulations, the FIT Order or any other applicable legislation, rules or regulations, or the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, any dispute or difference of whatever nature howsoever arising under out of or in connection with this Agreement between any one or more parties hereto shall be and is hereby referred to arbitration pursuant to the arbitration rules in force from time to time of The Electricity Arbitration Association or, if the Electricity Arbitration Association ceases to exist, the London Court of International Arbitration.

14.2 Arbitration Act

Whatever the nationality, residence or domicile of any contracting party and wherever the dispute or difference or any part thereof arose, the law of England shall be the proper law of any

reference to arbitration hereunder and in particular (but not so as to derogate from the generality of the foregoing) the provisions of the Arbitration Act 1996 (notwithstanding anything in section 108 thereof) shall apply to any such arbitration wherever the same or any part of it shall be conducted.

14.3 **Third Party Claims**

Subject always to clause 14.5, if any third party brings any legal proceedings in any court (as defined in the Civil Procedure Rules 1998) against one of the parties, to the Agreement (the "**defendant contracting party**") and the defendant contracting party wishes to make a third party claim (as defined in clause 14.4) against the other party to this Agreement ("**other contracting party**") which would but for this clause have been a dispute or difference referred to arbitration by virtue of clause 14.1 then, notwithstanding the provisions of clause 14.1 which shall not apply and in lieu of arbitration, the court in which the legal proceedings have been commenced shall hear and completely determine and adjudicate upon the legal proceedings and the third party claim not only between the third party and the defendant contracting party but also between either or both of them and the other contracting party whether by way of third party proceedings (pursuant to the Civil Procedure Rules 1998) or otherwise as may be ordered by the court.

14.4 **Interpretation**

For the purpose of this clause third party claim shall mean:

- (A) any claim by a defendant contracting party against a contracting party (whether or not already a party to the legal proceedings) for any contribution or indemnity; or
- (B) any claim by a defendant contracting party against such a contracting party for any relief or remedy relating to or connected with the subject matter of the legal proceedings and substantially the same as some relief or remedy claimed by the third party; or
- (C) any requirement by a defendant contracting party that any question or issue relating to or connected with the subject matter of the legal proceedings should be determined not only as between the third party and the defendant contracting party but also as between either or both of them and a contracting party (whether or not already a party to the legal proceedings).

14.5 **Arbitration Commenced**

Clause 14.3 shall apply only if at the time the legal proceedings are commenced no arbitration has been commenced between the defendant contracting party and the other contracting party raising or involving the same or substantially the same issues as would be raised by or involved in the third party claim. The tribunal in any arbitration which has been commenced prior to the commencement of legal proceedings shall determine the question, in the event of dispute, whether the issues raised or involved are the same or substantially the same.

15. **MISCELLANEOUS**

15.1 **No other Representation**

Each party confirms that, except as provided in this Agreement and without prejudice to any liability for fraudulent misrepresentation, neither party has relied on any representation or warranty or undertaking which is not contained in the Agreement or any document referred to in it or which was made by the other party who is not a party to this Agreement and neither party shall have any remedy in respect of misrepresentation or untrue statement made by the other party (whether innocently or negligently) unless and to the extent that a claim lies in respect of any express representation or warranty or undertaking which is contained in this Agreement.

15.2 Notices

- 15.2.1 Any notice, approval, consent or other communication to be given by one party to the other under, or in connection with the matters contemplated by, the Agreement shall be addressed to the recipient and sent to the address or facsimile number or e-mail address of such other party given in Schedule 1 for the purpose and marked for the attention of the person so given or to such other address and/or facsimile number and/or e-mail address and/or marked for such other attention as such other party may from time to time specify by notice given in accordance with this clause to the party giving the relevant notice or communication to it.
- 15.2.2 Any notice or other communication to be given by any party to the other, or in connection with the matters contemplated by, the Agreement shall be in writing in the English language and shall be given by letter delivered by hand or sent by first class prepaid post (airmail, as appropriate, if overseas) or facsimile, or sent by electronic mail and shall be deemed to have been received:
- (A) in the case of delivery by hand, when delivered; or
 - (B) in the case of first class prepaid post, on the second day following the day of posting or (if sent overseas by airmail, as appropriate,) on the fifth day following the day of posting; or
 - (C) in the case of facsimile, on acknowledgement of the addressee's facsimile receiving equipment (where such acknowledgement occurs before 1700 hours on the day of acknowledgement) and in any other case on the day following the day of acknowledgement; or
 - (D) in the case of notice given by electronic mail, when the communication is first stored in the recipient's electronic mail box. The place of receipt of e-mail will be deemed to be the postal address nominated by the recipient for the service of notices in Schedule 1.

15.3 Counterparts

This Agreement may be executed in counterparts and by the parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

15.4 Variation and Waiver

- 15.4.1 No delay by or omission of any party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or future exercise thereof or the exercise of any other right, power, privilege or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.
- 15.4.2 No variation to this Agreement shall be effective unless made in writing and signed by or on behalf of the Generator, the Supplier and the Generator's Agent.
- 15.4.3 The Generator's Agent shall not unreasonably withhold or delay its consent to any variation pursuant to clause 15.4.2.

15.5 Assignment

- 15.5.1 Subject to clauses 15.5.2, 15.5.3 and 15.5.4, neither party may transfer or otherwise assign any of its rights or obligations under this Agreement nor enter into any sub-contracted relationships with any person relating to the performance of its obligations under this Agreement or delegate the performance of any of its

obligations under this Agreement without in any case the prior written consent of the other party and the Generator's Agent (such consent not to be unreasonably withheld or delayed).

15.5.2 The Supplier shall not assign or transfer this Agreement to anyone other than a person holding a supply licence under section 6 of the Act.

15.5.3 The Supplier may assign its rights under this Agreement to an Affiliate without the written consent of the Generator or the Generator's Agent provided that such Affiliate has equal or better financial standing as the Supplier and can comply with the Supplier's warranties given under clause 8.2 of this Agreement.

15.5.4 The Generator may assign by way of security its rights under this Agreement to any person providing financing to the Generator in connection with the Facility.

15.6 **Third Party Rights**

15.6.1 Subject as provided in clause 15.6.2, no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

15.6.2 Notwithstanding clause 15.6.1, the Generator's Agent may enforce the provisions concerning the Generator's Agent set out in clauses 7, 8.4, 10, 15.4 and 15.5.

15.7 **No Partnership**

Nothing in the Agreement or in any document referred to in it or any arrangement contemplated by it shall constitute the parties a partner of the other.

15.8 **Severance**

If any condition, clause or provision of the Agreement not being of a fundamental nature, is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Agreement shall not be affected thereby.

15.9 **Law**

This Agreement shall be governed by, and construed in all respects in accordance with, English law.

15.10 **Jurisdiction**

Subject to clause 14, the Courts of England shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this Agreement and any matter arising therefrom.

In witness whereof this Agreement has been executed on behalf of the parties the day and year first before written.

Generator

_____ SIGNED by;

For _____

_____ In the presence of (witness)

Supplier

_____ SIGNED by;

For _____

_____ in the presence of (witness)

SCHEDULE 1: PARTIES

GENERATOR

Name :

Registered Office:

Registered Number:

Services of notices

Address for Services of Notices (if different from above);

Telephone Number:

Email:

Attention:

(add UK person, address, telephone for services if not UK resident)

SUPPLIER

Name:

Registered Office:

Registered Number:

Services of notices

Address for Services of Notices (if different from above);

Telephone Number:

Email:

Attention:

(add UK person, address, telephone for services if not UK resident)

SCHEDULE 2: PARTICULARS

1. SITE DESCRIPTION

a) **Site Address:**

b) **Facility description (including purpose of Fossil Fuel use where applicable)**

2. FUEL

a) **Means of fuelling (type of Non-Fossil) or driving the facility:**

3. CAPACITY

a) **Installed capacity (kWh):**

b) **Net Site Capacity (kWh):**

4. COMMISSIONING

(a) **Date Commissioned:**

5. METER REGISTRATION

a) **GSP Group:**

b) **MPANs:**

c) **Connection Voltage:**

d) **Local Distributor:**

6. RO or FIT ACCREDITATION

a) **Facility eligible for RO Accreditation? (Yes/No)**

b) **Facility eligible for FIT Accreditation? (Yes/No)**

- **If yes, unique identifier for accredited FIT installation:**

7. ANCILLARY SERVICES

8. PRICES

Bid Price (pence per kWh):

9. CONTRACT TERM