

DATED [●]

[            ]  
(as the **GENERATOR**)

and

**CFD COUNTERPARTY COMPANY LIMITED**  
(as the **CFD COUNTERPARTY**)

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**CFD (PHASE 1) AGREEMENT**  
**RELATING TO [*name of Project*]**

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**THIS CFD (PHASE 1) AGREEMENT** is dated [●] (the “**Agreement Date**”) and made between:

- (1) [●] (the “**Generator**”); and
- (2) **CFD COUNTERPARTY COMPANY LIMITED**, a company incorporated under the laws of England and Wales whose registered office is 3 Whitehall Place, London SW1A 2AW and whose company number is 08818711 (the “**CfD Counterparty**”).

## **BACKGROUND**

- (A) This CfD (Phase 1) Agreement is entered into following the applicable contract allocation or negotiation process established under or by virtue of the EA 2013. It relates to the first phase of a Phased Project and [a] separate agreement[s] [is]/[are]<sup>1</sup> also entered into on or about the date of this agreement in respect of the other phases of such Phased Project.
- (B) Together, the Generator [and]/[, ] Project Company 2 [and Project Company 3]<sup>2</sup> have satisfied the relevant Eligibility Criteria in relation to the Phased Project.
- (C) The CfD Counterparty is a company wholly owned by the UK Government and is entering into this CfD (Phase 1) Agreement solely for the purpose of implementing the provisions of the EA 2013.
- (D) This CfD (Phase 1) Agreement is a CfD Agreement for the purpose of the Conditions.
- (E) This CfD (Phase 1) Agreement, together with the terms and conditions set out in version [●] of the document entitled “FIT Contract for Difference Standard Terms and Conditions” as at [date], constitute an agreement entered into on “standard terms” (as defined in section 11(1) of the EA 2013).

**IT IS AGREED** as follows:

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this CfD (Phase 1) Agreement and its recitals:

“**Aggregate Installed Capacity Estimate**” means the aggregate of the Installed Capacity Estimates specified in this CfD (Phase 1) Agreement [and]/[, ] the CfD (Phase 2) Agreement [and the CfD (Phase 3) Agreement];

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<sup>1</sup> Drafting note: To be selected depending on the number of phases in the Phased Project.

<sup>2</sup> Drafting note: References to the CfD (Phase 3) Agreement should be deleted if the Phased Project only has two phases.

**“CfD (Phase 2) Agreement”** means a Contract for Difference between Project Company 2 and the CfD Counterparty entered into on or about the date of this CfD (Phase 1) Agreement in relation to the second phase of the Phased Project;

[**“CfD (Phase 3) Agreement”** means a Contract for Difference between Project Company 3 and the CfD Counterparty entered into on or about the date of this CfD (Phase 1) Agreement in relation to the third phase of the Phased Project;]

**“Conditions”** means the terms and conditions set out in version [•] of the document entitled “FiT Contract for Difference Standard Terms and Conditions” as at [date] (as amended, modified, supplemented or replaced by this CfD (Phase 1) Agreement and as may be amended, modified, supplemented or replaced from time to time in accordance with the Conditions);

**“Facility”** means the generating facility comprising:

- (A) all assets (including all Generating Units):
- (i) which are used (or intended to be used) to generate or deliver electricity;
  - (ii) which were taken into account by the Generator in determining the Initial Installed Capacity Estimate; and
  - (iii) which are (except as otherwise agreed in writing by the CfD Counterparty) situated (subject to paragraph (d)) within the area shaded green on the map contained in, and which has the geographical coordinates specified in, Annex 1 to this CfD (Phase 1) Agreement (*Description of the Facility*),

adjusted where the context requires to take due account of any changes to the composition of such assets arising as a result of, or giving rise to:

- (a) any reduction to the Installed Capacity Estimate pursuant to Condition 5 (*Adjustment to Installed Capacity Estimate: Relevant Construction Event*);
  - (b) any adjustment to the Installed Capacity Estimate pursuant to Condition 6 (*Adjustment to Installed Capacity Estimate: Permitted reduction*);
  - (c) the agreement or determination of the Final Installed Capacity pursuant to Condition 7 (*Final Installed Capacity; Maximum Contract Capacity*); and
  - (d) any turbine reallocation pursuant to Clause 6.5; and
- (B) all assets owned by the Generator and comprised within the Offshore Transmission System of such generating facility except for the purposes of:

- (i) in Condition 1.1 (*Definitions*), the definitions of “**Competent Authority**”, “**Curtailment**”, “**Defined Curtailment Compensation**”, “**Defined Partial Curtailment Compensation**”, “**Discriminatory Change in Law**”, “**Eligibility Criteria**”, “**Foreseeable Change in Law**”, “**Generation Tax Liability**”, “**Partial Curtailment**”, “**QCIL Capital Costs**”, “**QCIL Capital Savings**”, “**QCIL Construction Event**”, “**QCIL Construction Event Costs**”, “**QCIL Operations Cessation Event**”, “**Qualifying Curtailment**”, “**Qualifying Partial Curtailment**”, “**Qualifying Shutdown Event**”, “**Required Authorisation**” and “**Specific Change in Law**”;
  - (ii) Conditions 28.2(A), 30.1(E), 30.11, 36.1, 47.2 and 49.1; and
  - (iii) paragraph 9.3 of Annex 3 (*Form of Direct Agreement*) to the Conditions,
- and otherwise excluding all other assets forming part of the Transmission System or a Distribution System;

“**Group Company**” means, in respect of the Generator, any Wholly-owned Subsidiary of the Generator, any company of which the Generator is a Wholly-owned Subsidiary (a “**Parent Company**”) and any other Wholly-owned Subsidiary of any Parent Company;

“**Parent Entity**” means a company which is a parent undertaking (within the meaning of section 1162(2) of the Companies Act 2006) of the Generator[,]/[and] Project Company 2 [and Project Company 3] (or such other entity as is acceptable to the CfD Counterparty);

“**Phase 2 Allocation Adjustment Notice**” has the meaning given to that term in Clause 6.5(C);

“**Phase 2 Facility**” has the meaning given to the term “**Facility**” in the CfD (Phase 2) Agreement;

“**Phase 2 ICE Adjustment Notice**” has the meaning given to that term in Clause 6.4 (*Adjustment to Installed Capacity Estimate: Permitted reduction*);

“**Phase 2 Installed Capacity Estimate**” has the meaning given to the term “**Installed Capacity Estimate**” in the CfD (Phase 2) Agreement;

“**Phase 2 Longstop Date**” has the meaning given to the term “**Longstop Date**” in the CfD (Phase 2) Agreement;

“**Phase 2 Project**” has the meaning given to the term “**Project**” in the CfD (Phase 2) Agreement;

[“**Phase 3 Allocation Adjustment Notice**” has the meaning given to that term in Clause 6.5(C);

**“Phase 3 Facility”** has the meaning given to the term **“Facility”** in the CfD (Phase 3) Agreement;

**“Phase 3 ICE Adjustment Notice”** has the meaning given to that term in Clause 6.4 (Adjustment to Installed Capacity Estimate: Permitted reduction);

**“Phase 3 Installed Capacity Estimate”** has the meaning given to the term **“Installed Capacity Estimate”** in the CfD (Phase 3) Agreement;

**“Phase 3 Longstop Date”** has the meaning given to the term **“Longstop Date”** in the CfD (Phase 3) Agreement;

**“Phase 3 Project”** has the meaning given to the term **“Project”** in the CfD (Phase 3) Agreement;]

**“Phased Project”** means an offshore wind electricity generation project consisting of the Project and at least one other phase, the Project and each such other phase having a separate target commissioning date, for which a joint application for a Contract for Difference has been submitted to the Delivery Body;

**“Project Company 2”** means [legal name of company];

[**“Project Company 3”** means [legal name of company];]

**“Required ICE Threshold”** means 25 per cent. (25%) of the aggregate of:

- (A) the Installed Capacity Estimate (for these purposes only taking into account any adjustment to the Initial Installed Capacity Estimate as a result of an ICE Adjustment Notice or an Allocation Adjustment Notice having been given by the Generator to the CfD Counterparty but disregarding any adjustment to the Installed Capacity Estimate resulting from the operation of Condition 5 (Adjustment to Installed Capacity Estimate: Relevant Construction Event); [and
- (B) the Phase 2 Installed Capacity Estimate (for these purposes only taking into account any adjustment to the Phase 2 Installed Capacity Estimate as a result of a Phase 2 ICE Adjustment Notice or a Phase 2 Allocation Adjustment Notice having been given by Project Company 2 to the CfD Counterparty but disregarding any adjustment to the Phase 2 Installed Capacity Estimate resulting from the operation of Condition 5 (Adjustment to Installed Capacity Estimate: Relevant Construction Event) to the CfD (Phase 2) Agreement[.];/]; and
- (C) the Phase 3 Installed Capacity Estimate (for these purposes only taking into account any adjustment to the Phase 3 Installed Capacity Estimate as a result of a Phase 3 ICE Adjustment Notice or a Phase 3 Allocation Adjustment Notice having been given by Project Company 3 to the CfD Counterparty but disregarding any adjustment to the Phase 3 Installed Capacity Estimate resulting from the operation of Condition 5 (Adjustment to Installed Capacity Estimate: Relevant Construction Event) to the CfD (Phase 3) Agreement;] and

“**Wholly-owned Subsidiary**” has the meaning given to it in section 1159(2) of the Companies Act 2006.

1.2 Save as specified in this CfD (Phase 1) Agreement, words and expressions defined in the Conditions shall have the same meanings when used in this CfD (Phase 1) Agreement.

1.3 For the purposes of:

(A) Conditions 4.2 and 4.3, as amended by Clause 5.9 of this Contract for Difference; and

(B) Annex 3 (*Project Commitments*) to this CfD (Phase 1) Agreement

the reference to the Generator in the definition of “Directors’ Certificate” in Condition 1 shall be deemed to refer to the company on whose behalf the Directors’ Certificate is required, by that provision, to be given.

## 2. AGREEMENT

### *The Generator*

2.1 The Generator shall, as from the Agreement Date, comply with this CfD (Phase 1) Agreement (including the Conditions) as the “**Generator**” and agrees that the Conditions are hereby incorporated into this CfD (Phase 1) Agreement as if they were clauses of this CfD (Phase 1) Agreement.

### *The CfD Counterparty*

2.2 The CfD Counterparty shall, as from the Agreement Date, comply with this CfD (Phase 1) Agreement (including the Conditions) as the “**CfD Counterparty**” and agrees that the Conditions are hereby incorporated into this CfD (Phase 1) Agreement as if they were clauses of this CfD (Phase 1) Agreement.

### *Specific terms*

2.3 [*The Parties have agreed to amend the Conditions as set out in Annex 2 (Modification Agreement).*]<sup>3</sup>

2.4 The Parties agree that, for the purposes of this Contract for Difference, the Conditions shall be amended, modified, supplemented or replaced in accordance with the terms of this CfD (Phase 1) Agreement.

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<sup>3</sup> Drafting note: To be retained only if specific amendments to any given Contract for Difference are agreed to be made.

### 3. TERM

The “**Specified Expiry Date**” applicable to this Contract for Difference is the 15<sup>th</sup> anniversary of the earlier of the Start Date and the last day of the Target Commissioning Window.

### 4. GENERATION TECHNOLOGY TYPE

#### ***Facility Generation Technology***

4.1 The Facility Generation Technology applicable to this Contract for Difference is Offshore Wind, provided that for the purposes of paragraph (A) of the definition of Specific Change in Law or paragraphs (B) or (C) of the definition of Other Change in Law, Offshore Wind and Onshore Wind shall be deemed to be one Facility Generation Technology.

4.2 The Facility Generation Technology is an Intermittent Technology and accordingly:

- (A) Part 5B (*Payment calculations: Intermittent Technologies*) to the Conditions shall apply to this Contract for Difference;
- (B) Annex 5 (*IMRP*) to the Conditions shall apply to this Contract for Difference; and
- (C) in this Contract for Difference, “**Settlement Unit**” means each hour in a day divided into hour-long periods starting at 00:00 on such day.

#### ***Renewable Qualifying Multiplier***

4.3 The Renewable Qualifying Multiplier shall not apply to this Contract for Difference.

#### ***CHP Qualifying Multiplier***

4.4 The CHP Qualifying Multiplier shall not apply to this Contract for Difference.

#### ***Fuelling Criteria***

4.5 There are no Fuelling Criteria applicable to this Contract for Difference.

#### ***Sustainability Criteria***

4.6 The Sustainability Criteria do not apply to this Contract for Difference.



## 5. CONDITIONS PRECEDENT AND MILESTONE

### *Interpretation*

- 5.1 The “**Initial Target Commissioning Window**” applicable to this Contract for Difference shall be one year, such period commencing on [*insert date*]<sup>4</sup>.
- 5.2 The “**Target Commissioning Date**” applicable to this Contract for Difference shall be [*•*]<sup>5</sup>.
- 5.3 The “**Longstop Period**” applicable to this Contract for Difference shall be two (2) years.

### *Further Conditions Precedent*

- 5.4 Delivery to the CfD Counterparty of a certified copy of the Interim Operational Notification issued by the Transmission System Operator under the Grid Code shall be an additional Further Condition Precedent applicable to this Contract for Difference.
- 5.5 For the purpose of Clause 5.4, if by the time at which the Further Condition Precedent referred to in that Clause is to be fulfilled the relevant Interim Operational Notification shall have been split between an ION A and an ION B as contemplated in paragraphs 2.13 to 2.18 of Ofgem’s “Consultation on Implementation of the Generator Commissioning Clause in the Energy Bill 2012/13” then the reference in Clause 5.4 to the Interim Operational Notification shall be to whichever of ION A or ION B most closely signifies, in the reasonable opinion of the CfD Counterparty, the time at which the offshore transmission network is ready to export energy from the Facility onto the national electricity transmission system.

### *Milestone*

- 5.6 The “**Initial Milestone Delivery Date**” applicable to this Contract for Difference shall be [*•*]<sup>6</sup>.
- 5.7 The “**Total Project Pre-Commissioning Costs**” applicable to this Contract for Difference shall be £2,050,000.00 per MW of Aggregate Installed Capacity Estimate.

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<sup>4</sup> Drafting note: Insert commencement date of the Initial Target Commissioning Window, which shall be on or before the Target Commissioning Date.

<sup>5</sup> Drafting note: This shall be the date notified to the Delivery Body in the Generator’s FIT CfD Application as its “Target Commissioning Date” and will be a date falling within the Initial Target Commissioning Window.

<sup>6</sup> Drafting note: This will be a specified date which will be before the Target Commissioning Window and there will only be one such date for the whole Project. The date to be included here shall be no later than 12 months after the Agreement Date.

- 5.8 The “**Project Commitments**” applicable to this Contract for Difference shall be the requirements set out in Parts (A) and (B) of Annex 3 to this CfD (Phase 1) Agreement (*Project Commitments*).
- 5.9 Condition 4 (*Milestone Requirement*) of the Conditions shall be deleted and replaced by the following provision:

**“Milestone Requirements Notice**

4.1 No later than the Milestone Delivery Date, the Generator shall procure that the Generator[,]/[and] Project Company 2 [and Project Company 3] shall jointly give a notice to the CfD Counterparty (a “**Milestone Requirements Notice**”) that they consider that the Milestone Requirements have been complied with and fulfilled. The Milestone Requirements Notice shall:

- (A) be substantially in the form set out in Annex 4 to the CfD (Phase 1) Agreement (*Milestone Requirements Notice*); and
- (B) include:
- (i) such invoices, payment receipts and other Supporting Information as they consider relevant to evidence that they and, in each case, their direct shareholders have in aggregate spent ten per cent. (10%) or more of the Total Project Pre-Commissioning Costs on the Project; or
  - (ii) such Information as is listed as the Project Commitments and such Supporting Information as they consider relevant to evidence compliance with or fulfilment of the Project Commitments,

(either of which shall be the “**Milestone Requirements**”).

For the purposes of Condition 4.1(B)(i):

- (a) money spent by a direct shareholder of the Generator to acquire an interest in the Generator may be taken into account but only to the extent that the consideration paid for the acquisition exceeds the amount spent on the Project by the Generator and its direct shareholders in the period prior to the time at which such acquisition took place; and
  - (b) the Project shall exclude the assets comprised within the Offshore Transmission System of the Facility.
- 4.2 The Milestone Requirements Notice shall be accompanied by a Directors’ Certificate on behalf of each of the Generator[,]/[and] Project Company 2 [and Project Company 3] certifying that the information relating to that body corporate contained in, and enclosed with, the Milestone Requirements Notice

*is true, complete and accurate in all material respects and is not misleading, in each case by reference to the facts and circumstances then existing.*

- 4.3 *At the option of the Generator, a Milestone Requirements Notice pursuant to Condition 4.1 may be given by a Parent Entity on behalf of each of the Generator[,]/[and] Project Company 2 [and Project Company 3], in which case the Directors' Certificate under Condition 4.2 shall be given on behalf of that Parent Entity.*
- 4.4 *The CfD Counterparty shall, within [●] Business Days of receipt of a Milestone Requirements Notice, give a notice to the Generator[,]/[and] Project Company 2 [and Project Company 3] (a "**Milestone Assessment Response Notice**"). A Milestone Assessment Response Notice shall:*
- (A) *be substantially in the form set out in Part H of Annex 9 (Pro forma notices), save that it shall be addressed to the Generator[,]/[and] Project Company 2 [and Project Company 3]; and*
  - (B) *specify whether the CfD Counterparty considers that:*
    - (i) *the Milestone Requirements have been complied with and fulfilled; or*
    - (ii) *it has not been provided with sufficient Supporting Information to determine whether the Milestone Requirements have been complied with and fulfilled and, if so, details of the additional Supporting Information which the CfD Counterparty requires to determine whether the Milestone Requirements have been complied with and fulfilled (the "**Requested Milestone Supporting Information**").*
- 4.5 *If the CfD Counterparty states in the Milestone Assessment Response Notice that:*
- (A) *the Milestone Requirements have been complied with and fulfilled, then the Milestone Requirements will be deemed to have been complied with and fulfilled for the purposes of the Contract for Difference; or*
  - (B) *the CfD Counterparty has not been provided with sufficient Supporting Information to determine whether the Milestone Requirements have been complied with and fulfilled:*
    - (i) *the Generator shall procure that the Requested Milestone Supporting Information is provided as soon as reasonably practicable, and in any event within ten (10) Business Days of receipt of the Milestone Assessment Response Notice, or such longer period as is specified by the CfD Counterparty; and*

- (ii) upon receipt of the Requested Milestone Supporting Information, the CfD Counterparty shall as soon as reasonably practicable, and in any event within twenty (20) Business Days of receipt of such Requested Milestone Supporting Information, give a further Milestone Assessment Response Notice to the Generator,]/[and] Project Company 2 [and Project Company 3] (the “**Further Milestone Assessment Response Notice**”). A Further Milestone Assessment Response Notice shall:
- (a) be substantially in the form set out in Part I of Annex 9 (Pro forma notices), save that it shall be addressed to the Generator,]/[and] Project Company 2 [and Project Company 3]; and
- (b) specify whether the CfD Counterparty considers that the Milestone Requirements have or have not been complied with and fulfilled.

4.6 Nothing in this Condition 4 (Milestone Requirements) shall require the CfD Counterparty to specify in any Milestone Assessment Response Notice or Further Milestone Assessment Response Notice that the CfD Counterparty accepts that the Milestone Requirements have been complied with and fulfilled unless the CfD Counterparty is satisfied of the same.

#### **Waiver of Milestone Requirements**

4.7 The CfD Counterparty may agree by notice to the Generator,]/[and] Project Company 2 [and Project Company 3] to waive any of the Milestone Requirements.

4.8 Conditions 64 (No waiver) and 65 (Consents) shall apply to any waiver given by the CfD Counterparty pursuant to Condition 4.7.”

## **6. ADJUSTMENTS TO INSTALLED CAPACITY ESTIMATE AND REQUIRED INSTALLED CAPACITY**

### **Interpretation**

6.1 The “**Initial Installed Capacity Estimate**” applicable to this Contract for Difference is [●] MW<sup>7</sup>.

6.2 For the purposes of this CfD (Phase 1) Agreement, the “**Installed Capacity Estimate**” shall mean the Generator’s estimate of the Installed Capacity from time to time, being

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<sup>7</sup> Drafting note: This number will be populated from information in the Generator’s FiT CfD Application.

the Initial Installed Capacity Estimate as may be adjusted pursuant to Condition 5 (*Adjustment to Installed Capacity Estimate: Relevant Construction Event*), Condition 6 (*Adjustment to Installed Capacity Estimate: Permitted reduction*) and/or Clause 6.5 of this CfD (Phase 1) Agreement (*Turbine reallocation*).

- 6.3 The “**Required Installed Capacity**” applicable to this Contract for Difference is 85% of the Installed Capacity Estimate.

***Adjustment to Installed Capacity Estimate: Permitted reduction***

- 6.4 An ICE Adjustment Notice given pursuant to Condition 6.1 of the Conditions shall be invalid and of no effect unless and until a valid notice has been given to the CfD Counterparty pursuant to Condition 6.1 of the CfD (Phase 2) Agreement (a “**Phase 2 ICE Adjustment Notice**”) [*and Condition 6.1 of the CfD (Phase 3) Agreement (a “Phase 3 ICE Adjustment Notice”)*].

***Turbine reallocation***

- 6.5 The Generator may give a notice to the CfD Counterparty at any time prior to the date falling three months prior to the first day of the Target Commissioning Window (an “**Allocation Adjustment Notice**”). An Allocation Adjustment Notice shall:
- (A) be substantially in the form of Annex 5 to this CfD (Phase 1) Agreement (*Allocation Adjustment Notice*);
  - (B) be given jointly by the Generator [*and*]/[,], Project Company 2 [*and Project Company 3*] except in relation to any of them whose project has been terminated;
  - (C) constitute a notice given by Project Company 2 under Clause 6.5 of the CfD (Phase 2) Agreement (a “**Phase 2 Allocation Adjustment Notice**”) [*and a notice given by Project Company 3 under Clause 6.5 of the CfD (Phase 3) Agreement (a “Phase 3 Allocation Adjustment Notice”)*];
  - (D) specify the proposed reallocation of the offshore wind turbines [*between*]/[*among*] this CfD (Phase 1) Agreement [*and*]/[,], the CfD (Phase 2) Agreement [*and the CfD (Phase 3) Agreement*] from the effective date of such Allocation Adjustment Notice and the effect of such reallocation on the Installed Capacity Estimate[,]/[*and*] the Phase 2 Installed Capacity Estimate [*and the Phase 3 Installed Capacity Estimate*];
  - (E) include details of any change in assets comprising the Facility;
  - (F) if the Generator has provided the CfD Counterparty with a Further CP Notice in respect of the Further Conditions Precedent listed at Paragraph (1)(D) of Part B of Schedule 1 (*Conditions Precedent*) prior to the date of the Allocation Adjustment Notice and there has been a change to the electrical schematic diagram, include an updated date and time stamped copy of the electrical schematic diagram, certified as being correct and up-to-date by a director of the

Generator and showing the locations of the Facility Metering Equipment associated with all assets comprised within the Facility; and

(G) include such Supporting Information as the Generator considers relevant to evidence the allocation adjustment.

6.6 Any Allocation Adjustment Notice shall be invalid and of no effect unless each of the Installed Capacity Estimate[,]/[and] the Phase 2 Installed Capacity Estimate [and the Phase 3 Installed Capacity Estimate] in the Allocation Adjustment Notice is no greater than it was immediately prior to the Allocation Adjustment Notice.

6.7 Any Allocation Adjustment Notice shall be irrevocable.

## 7. CHANGES IN LAW

7.1 The “**Assumed Load Factor**” applicable to this Contract for Difference is [●]<sup>8</sup>.

7.2 The “**Post-Tax Real Discount Rate**” applicable to this Contract for Difference is [●]<sup>9</sup>.

## 8. PAYMENT CALCULATIONS: STRIKE PRICE

8.1 The “**Base Year**” applicable to this Contract for Difference is [●]<sup>10</sup>.

8.2 The “**Initial Strike Price**” applicable to this Contract for Difference is £[●] per MWh<sup>11</sup>.

## 9. BALANCING SYSTEM CHARGES AND TLM(D)

9.1 The “**Initial Balancing System Charge**” at the Agreement Date is: [●]<sup>12</sup>.

9.2 The “**Initial Balancing System Charge Window**” is [●]<sup>13</sup>.

9.3 The “**Initial TLM(D) Charge**” for each calendar year from (and including) the Agreement Date to the end of the Term is that included opposite the relevant year in Annex 6 to this CfD (Phase 1) Agreement (*Initial TLM(D) Charges*).

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<sup>8</sup> Drafting note: The Assumed Load Factor will be provided by DECC as derived from the Delivery Plan.

<sup>9</sup> Drafting note: The Post-Tax Real Discount Rate will be a figure published by DECC.

<sup>10</sup> Drafting note: The Base Year will be provided by DECC as derived from the Delivery Plan.

<sup>11</sup> Drafting note: The Initial Strike Price will be provided by DECC as derived from the Delivery Plan.

<sup>12</sup> Drafting note: The Initial Balancing System Charges figure will be provided by DECC.

<sup>13</sup> Drafting note: The Initial Balancing System Charge Window will be provided by DECC.

## 10. TERMINATION

10.1 If the Installed Capacity Estimate (for these purposes only taking into account any adjustment to the Initial Installed Capacity as a result of (i) an ICE Adjustment Notice or (ii) an ICE Allocation Adjustment Notice, having been given by the Generator to the CfD Counterparty but disregarding any adjustment to the Installed Capacity Estimate resulting from the operation of Condition 5 (*Adjustment to Installed Capacity Estimate: Relevant Construction Event*) is lower than the Required ICE Threshold, the CfD Counterparty shall have the right but not the obligation to give the Generator a Pre-Start Date Termination Notice in accordance with Condition 50 (*Termination*) of the Conditions.

10.2 Condition 50.9 of the Conditions shall be deleted and replaced with the following provision:

*“50.9 The termination rights in this Condition 50 (Termination) or in the CfD Agreement are the only rights that either Party has to terminate the Contract for Difference.”*

## 11. TRANSFERS

11.1 Notwithstanding Condition 78.1 of the Conditions, the CfD Counterparty shall not withhold its consent to the novation of the rights, benefits, obligations and liabilities of the Generator under this Contract for Difference provided that:

- (A) no Default has arisen and is continuing;
- (B) the rights, benefits, obligations and liabilities of the Generator under this Contract for Difference are transferred to and assumed by a Group Company;
- (C) the Generator shall have given to the CfD Counterparty not less than ten (10) Business Days written notice prior to any such novation specifying the identity of the relevant Group Company to which it intends to transfer its rights, benefits, obligations and liabilities and shall have provided such details in relation to that Group Company as the CfD Counterparty may reasonably request having received such notification;
- (D) the novation relates to all (and not part only) of the rights, benefits, obligations and liabilities of the Generator under this Contract for Difference;
- (E) such novation takes effect prior to the Start Date;
- (F) the rights, benefits, obligations and liabilities of the Generator under all other CfD Documents are also transferred to and assumed by the same Group Company at the same time;
- (G) the Transferee is an Eligible Generator; and

(H) the novation is entered into in the form set out in Annex 7 (*Novation Agreement*), with such amendments as the CfD Counterparty may agree.

11.2 Where the CfD Counterparty consents to a novation pursuant to Clause 11.1 it shall enter into a novation agreement in the form described in Clause 11.1(H) with the Generator and the Group Company to which the rights, benefits, obligations and liabilities of the Generator are to be novated.

**12. NOTICES**

12.1 The address and (where such communication is expressly permitted by email) email address of each Party for any notice to be given under this Contract for Difference, and the department or officer (if any) for whose attention the notice is to be made, is:

(A) in the case of the Generator:

Address:	
Email address:	
For the attention of:	

(B) in the case of the CfD Counterparty:

Address:	
Email address:	
For the attention of:	

**13. AGENT FOR SERVICE OF PROCESS**

13.1 *[Condition 86 (Agent for service of process) shall not apply to this Contract for Difference and there shall be no Service Agent.] I[Condition 86 (Agent for service of process) shall apply to this Contract for Difference and the Service Agent shall be [●] of [●].]*<sup>14</sup>

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<sup>14</sup> Drafting note: Delete as applicable. If retained, Service Agent information to be taken from FiT CfD Application.



**Annex 1**  
**(Description of the Facility)**

*[Drafting note: Description of the Facility to be populated using information provided in the [FiT CfD Application] and to include:*

- (i) the unique geographical coordinates of the Facility; and*
  
- (ii) an aerial view of the unique geographical location of the Facility, whether an extract from the Ordnance Survey map or equivalent, showing the proposed locations of:*
  - (a) the Facility;*
  
  - (b) the Facility Metering Equipment; and*
  
  - (c) the Offshore Transmission System.]*

**Annex 2  
(Modification Agreement)**

**Annex 3**  
**(Project Commitments)**

**Part A: General Project Commitments**

Delivery to the CfD Counterparty of the following:

- (A) a copy of a resolution of the board of directors of the Generator (or an equivalent management committee or body) resolving to:
- (i) undertake the Project;
  - (ii) approve the total financial commitments required to commission the Project (the “**Total Phase 1 Project Spend**”); and
  - (iii) approve a timetable for undertaking the Project which demonstrates that the Facility can reasonably be expected to be commissioned no later than the Longstop Date;
- (B) a copy of a resolution of the board of directors of Project Company 2 (or an equivalent management committee or body) resolving to:
- (i) undertake the Phase 2 Project;
  - (ii) approve the total financial commitments required to commission the Phase 2 Project (the “**Total Phase 2 Project Spend**”); and
  - (iii) approve a timetable for undertaking the Phase 2 Project which demonstrates that the Phase 2 Facility can reasonably be expected to be commissioned no later than the Phase 2 Longstop Date;
- (C) *[a copy of a resolution of the board of directors of Project Company 3 (or an equivalent management committee or body) resolving to:*
- (i) undertake the Phase 3 Project;*
  - (ii) approve the total financial commitments required to commission the Phase 3 Project (the “**Total Phase 3 Project Spend**”); and*
  - (iii) approve a timetable for undertaking the Phase 3 Project, which demonstrates that the Phase 3 Facility can reasonably be expected to be commissioned no later than the Phase 3 Longstop Date;]*
- (D) a Directors’ Certificate from either:
- (i) the Generator certifying that:
    - (a) it has, or will have, sufficient financial resources to meet the Total Phase 1 Project Spend;

- (b) any contract entered into by the Generator and provided as Supporting Information pursuant to the Milestone Requirements Notice is, in its reasonable opinion, by reference to the facts and circumstances then existing:
  - (1) legal, valid and binding; and
  - (2) entered into with one or more counterparties each of whom is able to perform its obligations under such contract;
- (c) it has a leasehold or freehold interest in the site where the Facility is based (the "**Facility 1 Site**") or a contract to obtain the same;
- (d) the Facility 1 Site is not subject to any covenants, restrictions, agreements, planning obligations, estate contracts, options, rights of way or other encumbrances which materially inhibit the use of the Facility 1 Site for the purposes of the Project;
- (e) there are available to the Facility 1 Site such rights, easements and services as are necessary to undertake the Project and operate the Facility;
- (f) it has identified all necessary consents and planning permissions to undertake the Project (the "**Phase 1 Necessary Consents**"); and
- (g) there is a credible strategy in place to obtain the Phase 1 Necessary Consents and the Phase 1 Necessary Consents are not subject to any condition for which there does not exist a plan approved by its board of directors to satisfy that condition, such that it is not aware of any necessary consents or planning permissions which cannot be obtained or complied with

((c) to (g), together the "**Phase 1 Facility Requirements**"); and

- (ii) Project Company 2 certifying that:
  - (a) it has, or will have, sufficient financial resources to meet the Total Phase 2 Project Spend;
  - (b) any contract entered into by Project Company 2 and provided as Supporting Information pursuant to the Milestone Requirements Notice, is, in its reasonable opinion, by reference to the facts and circumstances then existing:
    - (1) legal, valid and binding; and
    - (2) entered into with one or more counterparties each of whom is able to perform its obligations under such contract;

- (c) it has a leasehold or freehold interest in the site where the Phase 2 Facility is based (“**Facility 2 Site**”) or a contract to obtain the same;
- (d) the Facility 2 Site is not subject to any covenants, restrictions, agreements, planning obligations, estate contracts, options, rights of way or other encumbrances which materially inhibit the use of the Facility 2 Site for the purposes of the Phase 2 Project;
- (e) there are available to the Facility 2 Site such rights, easements and services as are necessary to undertake the Phase 2 Project and operate the Phase 2 Facility;
- (f) it has identified all necessary consents and planning permissions to undertake the Phase 2 Project (the “**Phase 2 Necessary Consents**”); and
- (g) there is a credible strategy in place to obtain the Phase 2 Necessary Consents and the Phase 2 Necessary Consents are not subject to any condition for which there does not exist a plan approved by its board of directors to satisfy that condition, such that it is not aware of any necessary consents or planning permissions which cannot be obtained or complied with;

((c) to (g), together the “**Phase 2 Facility Requirements**”); and

(iii) [*Project Company 3 certifying that:*

- (a) *it has, or will have, sufficient financial resources to meet the Total Phase 3 Project Spend;*
- (b) *any contract entered into by the Project Company 3 and provided as Supporting Information pursuant to the Milestone Requirements Notice, is, in its reasonable opinion, by reference to the facts and circumstances then existing:*
  - (1) *legal, valid and binding; and*
  - (2) *entered into with one or more counterparties each of whom is able to perform its obligations under such contract;*
- (c) *it has a leasehold or freehold interest in the site where the Phase 3 Facility is based (the “**Facility 3 Site**”) or a contract to obtain the same;*
- (d) *the Facility 3 Site is not subject to any covenants, restrictions, agreements, planning obligations, estate contracts, options, rights of way or other encumbrances which materially inhibit the use of the Facility 3 Site for the purposes of the Phase 3 Project;*

- (e) *there are available to the Facility 3 Site such rights, easements and services as are necessary to undertake the Phase 3 Project and operate the Phase 3 Facility;*
- (f) *it has identified all necessary consents and planning permissions to undertake the Phase 3 Project (the “Phase 3 Necessary Consents”); and*
- (g) *there is a credible strategy in place to obtain the Phase 3 Necessary Consents and the Phase 3 Necessary Consents are not subject to any condition for which there does not exist a plan approved by its board of directors to satisfy that condition, such that it is not aware of any necessary consents or planning permissions which cannot be obtained or complied with;*

*((c) to (g), together the “Phase 3 Facility Requirements”);]*

or

- (iv) a Parent Entity certifying the matters described in paragraphs (i),(ii) and (iii) of this paragraph (D) on behalf of the Generator [*and*[,] Project Company 2 [*and Project 3*]; and
- (E) Supporting Information evidencing:
  - (i) that:
    - (a) the Generator has, or will have, sufficient financial resources to meet the Total Phase 1 Project Spend;
    - (b) the Phase 2 Company has, or will have, sufficient financial resources to meet the Total Phase 2 Project Spend; [*and*
    - (c) *the Phase 3 Company has, or will have, sufficient financial resources to meet the Total Phase 3 Project Spend;*] and
  - (ii) the Phase 1 Facility Requirements, the Phase 2 Facility Requirements and the Phase 3 Facility Requirements.

#### **Part B: Technology Specific Project Commitments**

Delivery to the CfD Counterparty of Supporting Information evidencing any one of the following:

- (A) entry by each of the Generator[,] [*and*] Project Company 2 [*and Project Company 3*] into an engineering, procurement and construction contract providing for the supply and installation of the Material Equipment.
- (B) entry by each of the Generator[,] [*and*] Project Company 2 [*and Project Company 3*] into an agreement for the supply of the Material Equipment.

- (C) entry by each of the Generator[,]/[and] Project Company 2 [and Project Company 3] into: (i) a framework agreement for the supply of the Material Equipment; and (ii) a binding purchase order for the Material Equipment.

For the purpose of this section 2 of Part B, “**Material Equipment**” means, in respect of the Facility [or]/[,], the Phase 2 Facility [or the Phase 3 Facility] all equipment necessary for electricity generation at that facility and includes the wind turbine groups.

**Annex 4**  
**(Milestone Requirements Notice)**

**To:** [●] (the “CfD Counterparty”)  
[Address]

**From:** [[●] (“Project Company 1”)  
[●] (“Project Company 2”)  
[[●] (“Project Company 3”)]/

OR

[[●] (the “Parent Entity”)]  
[Unique reference number[s]: [●]]

**Dated:** [●]

**CONTRACT FOR DIFFERENCE – MILESTONE REQUIREMENTS NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and Project Company 1 as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 4.1 [*and Condition 4.3*].
3. This is a Milestone Requirements Notice [*provided by us on behalf of each of the Generator[,]/[and] Project Company 2 [and Project Company 3]*].
4. **[We enclose invoices, payment receipts and other Supporting Information which we consider to be relevant to evidence expenditure of ten per cent. (10%) or more of the Total Project Pre-Commissioning Costs [by Project Company 1[,]/[and/or] Project Company 2 [and/or Project Company 3]], being £[●].]/[We enclose such information as is listed as the Project Commitments and the following Supporting Information which we consider relevant to evidence compliance with or fulfilment of the Project Commitments: [●].]**
5. [We enclose:
  - (a) a Directors’ Certificate on behalf of Project Company 1 certifying that the information in, and enclosed with, this notice in respect of it is true, complete and accurate in all material respects and is not misleading; [*and*]
  - (b) a Directors’ Certificate on behalf of Project Company 2 certifying that the information in, and enclosed with, this notice in respect of it is true, complete and accurate in all material respects and is not misleading[.]/[; *and*



- (c) *a Directors' Certificate on behalf of Project Company 3 certifying that the information in, and enclosed with, this notice in respect of it is true, complete and accurate in all material respects and is not misleading.]]*

[In our capacity as Parent Entity, we enclose a Directors' Certificate certifying that the information in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.]

Yours faithfully,

.....

For and on behalf of  
**[Project Company 1**  
**Project Company 2**  
**[Project Company 3]]** OR [the **Parent Entity**]

**Annex 5**  
**(Allocation Adjustment Notice)**

**To:** [●] (the “CfD Counterparty”)  
[Address]

**From:** [●] (“Project Company 1”)  
[●] (“Project Company 2”)  
[[●] (“Project Company 3”)]  
[Unique reference number(s): [●]]

**Date:** [●]

**CONTRACT FOR DIFFERENCE – ALLOCATION ADJUSTMENT NOTICE**

Dear Sirs,

1. We refer to the following agreements between you as the CfD Counterparty and us as the Generator (the “**Agreements**”):
  - (A) the agreement between the CfD Counterparty and Project Company 1 dated [●];  
[and]
  - (B) the agreement between the CfD Counterparty and Project Company 2 dated  
[●]./[.]; and
  - (C) *the agreement between the CfD Counterparty and Project Company 3 dated  
[●].*

Terms and expressions defined in or incorporated into the Agreements have the same meanings when used in this notice.

2. We further refer you to Clause 6.5 of each of the Agreements.
3. This is an Allocation Adjustment Notice.
4. The proposed reallocation of offshore wind turbines [*between*]/[*among*] the Agreements is [●] and the effect of this reallocation is:
  - (A) Phase 1 Installed Capacity Estimate: [     ];
  - (B) Phase 2 Installed Capacity Estimate: [     ]; and
  - (C) [*Phase 3 Installed Capacity Estimate:[     ]*].
5. We enclose evidence of a change in the assets comprising the Facility arising in connection with this turbine reallocation.

6. We enclose such Supporting Information as we consider relevant to evidence this reallocation.

Yours faithfully,

.....

For and on behalf of  
**Project Company 1**  
**Project Company 2**  
**[Project Company 3]**

**Annex 6**  
**(Initial TLM(D) Charges)**

Year	Initial TLM(D) Charge
2010	0.0068
2011	0.0083
2012	0.0083
2013	0.0083
2014	0.0084
2015	0.0085
2016	0.0085
2017	0.0087
2018	0.0088
2019	0.0089
2020	0.0089
2021	0.0090
2022	0.0090
2023	0.0090
2024	0.0090
2025	0.0090
2026	0.0091
2027	0.0091
2028	0.0091
2029	0.0091
2030	0.0092
2031	0.0092
2032	0.0092
2033	0.0093
2034	0.0093
2035 and each calendar year thereafter	0.0093

**Annex 7  
(Novation Agreement)**

**THIS NOVATION AGREEMENT** (the “**Agreement**”) is dated [●] and made as a deed

**BETWEEN:**

- (1) [insert name and details of the generator] (the “**Transferor**”);
- (2) [insert name and details of the transferee] (the “**Transferee**”); and
- (3) **CFD COUNTERPARTY COMPANY LIMITED**, a company incorporated under the laws of England and Wales whose registered office is 3 Whitehall Place, London SW1A 2AW and whose company number is 08818711 (the “**CfD Counterparty**”),

(each a “**Party**” and together the “**Parties**”).

**BACKGROUND**

- (A) The CfD Counterparty and the Transferor have entered into a contract for difference dated [●] (the “**Contract for Difference**”).
- (B) The CfD Counterparty has consented to a novation of the Contract for Difference and the other CfD Documents in favour of the Transferee under clause 11 (*Transfers*) of the Contract for Difference.
- (C) The parties to the Contract for Difference have therefore agreed that the Contract for Difference and the other CfD Documents shall be novated to the CfD Counterparty and the Transferee with effect from the Effective Date, subject to the terms of this Agreement.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement and the recitals:

“**CfD Documents**” means the Contract for Difference and each of the agreements entered into between the CfD Counterparty and the Transferor which are listed in Annex 1 to this Agreement;

“**Conditions Precedent**” means delivery to the CfD Counterparty of the following:

- (A) a legal opinion addressed to the CfD Counterparty, in form and content reasonably satisfactory to the CfD Counterparty, from the legal advisers to the Transferee confirming that the Transferee:
  - (i) is duly formed and validly existing under the laws of the jurisdiction of formation; and

- (ii) has the power to enter into and perform, and has taken all necessary action to authorise its entry into and performance of, this Agreement; and
- (B) evidence, in form and content satisfactory to the CfD Counterparty, acting reasonably, of compliance by the Transferee with “know your customer” or similar identification procedures or checks under all applicable laws and regulations pursuant to the transactions contemplated by this Agreement; and
- (C) if the Generator has provided the CfD Counterparty with a Further CP Notice in respect of the Further Condition Precedent listed at Paragraph (1)(A) of Part B of Schedule 1 (*Conditions Precedent*), the CfD Counterparty having received written confirmation from the CfD Settlement Services Provider that:
  - (i) it has received the CfD Settlement Required Information which is required from the Transferee; and
  - (ii) the Transferee has in place the systems and processes which are necessary for the continued provision of the CfD Settlement Required Information; and

“**Effective Date**” means the date on which the CfD Counterparty notifies the Transferee that the CfD Counterparty considers that the Transferee has fulfilled the Conditions Precedent.

1.2 Unless a contrary indication appears:

- (A) words and expressions defined, or defined by reference, in the Contract for Difference have the same meanings in this Agreement and the recitals;
- (B) Conditions 1.3 and 1.4(A)-(B) of the Contract for Difference shall apply to this Agreement; and
- (C) any reference in this Agreement to a “**Clause**” is a reference to a Clause of this Agreement.

## 2. **CFD COUNTERPARTY RELEASE AND DISCHARGE**

With effect from the Effective Date, the CfD Counterparty releases and discharges the Transferor from all liabilities, duties and obligations of every description, whether deriving from contract, common law, statute or otherwise, whether present or future, actual or contingent, ascertained or disputed, owing to the CfD Counterparty and arising out of or in respect of the CfD Documents.

## 3. **TRANSFEROR RELEASE AND DISCHARGE**

3.1 With effect from the Effective Date, the Transferor releases and discharges the CfD Counterparty from all liabilities, duties and obligations of every description, whether deriving from contract, common law, statute or otherwise, whether present or future,

actual or contingent, ascertained or disputed, owing to the Transferor and arising out of or in respect of the CfD Documents.

- 3.2 The Transferor's obligations under Condition 71 (*Confidentiality*) of the Contract for Difference shall continue in effect notwithstanding any other provision of this Agreement.

#### **4. TRANSFEREE ASSUMPTION OF LIABILITIES**

With effect from the Effective Date, the Transferee undertakes to assume all the liabilities, duties and obligations of the Transferor of every description contained in the CfD Documents, whether deriving from contract, common law, statute or otherwise, whether present or future, actual or contingent, ascertained or unascertained or disputed, and agrees to perform all the duties and to discharge all the liabilities and obligations of the Transferor under the CfD Documents and to be bound by their terms and conditions in every way as if the Transferee were named in each CfD Document as a party in place of the Transferor from the date of each such CfD Document.

#### **5. CFD COUNTERPARTY AGREEMENT TO PERFORM**

With effect from the Effective Date, the CfD Counterparty agrees to perform all its duties and to discharge all its obligations under the CfD Documents and to be bound by all the terms and conditions of the CfD Documents in every way as if the Transferee were named in each CfD Document as a party in place of the Transferor from the date of each CfD Document.

#### **6. REPLACEMENT OF TRANSFEROR BY TRANSFEREE**

As from the Effective Date, reference to the Transferor (by whatsoever name known) in each CfD Document shall be deleted and replaced by reference to the Transferee.

#### **7. TRANSFEREE'S REPRESENTATIONS AND WARRANTIES**

The Transferee shall on the Effective Date represent and warrant to the CfD Counterparty that:

- (A) as at the Effective Date, the representations and warranties set out at Conditions 28.1 and 28.2 of the Contract for Difference are, in respect of the Transferee, true, accurate and not misleading on the basis that references to the Generator shall be deemed to be references to the Transferee; and
- (B) it is an Eligible Generator.

#### **8. CONTINUANCE OF THE CONTRACT FOR DIFFERENCE**

It is hereby agreed and declared that the CfD Documents as novated shall continue in full force and effect and that, as from the Effective Date, the terms and conditions of the CfD Documents have only changed to the extent set out in this Agreement.

## 9. FURTHER ASSURANCE

With effect from the Effective Date, the Parties shall enter into such further agreements and do all such other things as are necessary to substitute the Transferee for the Transferor in respect of the rights, benefits, obligations or liabilities that are, or are to be, the subject of this Agreement and to give effect to any consequential amendments to the Contract for Difference or any other CfD Document that are necessary to give effect to this Agreement.

## 10. CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

This Agreement does not create any rights under the Contract (Rights of Third Parties) Act 1999 enforceable by any person who is not a party to it.

## 11. VARIATIONS

No variation of this Agreement shall be effective unless it is in writing and is signed by or on behalf of each of the parties to this Agreement.

## 12. NOTICES

Any notices to be served on the Transferee pursuant to this Agreement or the Contract for Difference shall be served in accordance with Condition 79 (*Notices*) of the Contract for Difference and to:

Address:	
Email address:	
For the attention of:	

## 13. COUNTERPARTS

This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

## 14. GOVERNING LAW AND JURISDICTION

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with the laws of England and the Parties hereby submit to the exclusive jurisdiction of the courts of England.

**IN WITNESS WHEREOF** this Agreement has been executed and delivered as a deed on the date first stated above.



**The TRANSFEROR**

**EXECUTED** and delivered as a **DEED** by )  
**[name of Transferor]** )  
acting by its director/duly appointed attorney ) .....  
Director/Attorney

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation: .....

**The TRANSFEREE**

**EXECUTED** and delivered as a **DEED** by )  
**[name of Transferee]** )  
acting by its director/duly appointed attorney ) .....  
Director/Attorney

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation: .....

**The CfD COUNTERPARTY**

**EXECUTED** and delivered as a **DEED** by )  
**CFD COUNTERPARTY COMPANY LIMITED** )  
acting by its director/duly appointed attorney ) .....  
Director/Attorney

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation: .....

**Annex 1 to Novation Agreement  
CfD Documents**

*[List of other CfD Documents to be inserted here]*

EXECUTION PAGE

**The GENERATOR**

SIGNED BY )  
 )  
 [*name of signatory*] )  
 for and on behalf of ) .....  
 [*name of the Generator*] (Signature of named signatory)

**The CfD COUNTERPARTY**

SIGNED BY )  
 )  
 [*name of signatory*] )  
 for and on behalf of ) .....  
 **CfD Counterparty Company** (Signature of named signatory)  
 **Limited**