

20[●]

## Backstop Power Purchase Agreement

[       ] (the Generator) <sup>(1)</sup> and  
[       ] (the Offtaker) <sup>(2)</sup>

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**THIS AGREEMENT** is dated

(the **Agreement Date**) and made between:

- (1) [●] (the **Generator**); and
- (2) [●] (the **Offtaker**).

## **BACKGROUND**

- (A) The Generator is the operator of the Facility and has satisfied the eligibility criteria for a backstop power purchase agreement under the OLR Licence Conditions.
- (B) The Offtaker is a licensed supplier and is entering into this agreement following a competitive allocation process established by or under or by virtue of the OLR Regulations.
- (C) The Parties agree to sell and buy electricity generated by the Facility in accordance with the provisions of this Agreement.

**IT IS AGREED** as follows:

## **1 Definitions and Interpretation**

1.1 In this Agreement:

<b>Account</b>	means an account on the Register in which LECs and REGOs are held;
<b>Additional BM Unit</b>	has the meaning given to it in the BSC;
<b>Affiliate</b>	means, in relation to any person, any holding company or subsidiary of that person from time to time or any company which is a subsidiary company of any holding company of that person from time to time, a reference to a holding company or a subsidiary means a holding company or subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006;
<b>Aggregate Liability Cap</b>	means the amount calculated in accordance with Clause 19.2.1 and set out as such in Schedule 1 ( <i>Project Information</i> );
<b>Agreement Date</b>	means the date of this Agreement;
<b>Allocation Date</b>	means the date on which the Authority issues the copy of this Agreement that has been signed by the Offtaker to the Generator;
<b>Applicable Law</b>	means, in respect of any person, any Law with which that person is obliged to comply, or with which that person would, acting as a Reasonable and Prudent Operator, ordinarily comply;
<b>Assumed Load Factor</b>	has the meaning given to it in the CfD Agreement;
<b>Authority</b>	means the Gas and Electricity Markets Authority established pursuant to section 1 of the Utilities Act 2000, or any successor to it;
<b>Available Data</b>	has the meaning given to it at Schedule 1 ( <i>Project Information</i> );

<b>Available Data Failure Amount</b>	means the amount calculated in accordance with Clauses 14.2.6 or 14.2.7 as appropriate;
<b>Balancing Mechanism</b>	has the meaning given to it in the CfD Agreement;
<b>Baseload Technology</b>	means any of the following technology types: Advanced Conversion Technology with CHP, Advanced Conversion Technology without CHP, Anaerobic Digestion with CHP, Anaerobic Digestion without CHP, Biomass Conversion, Dedicated Biomass with CHP, Energy From Waste with CHP, Fuel with Variable Renewable Content Facility, Geothermal with CHP, Geothermal without CHP, Landfill Gas, Sewage Gas, where each technology type shall have the meaning given to such term in the EA 2013 Regulations;
<b>Base Year CPI</b>	means the CPI figure as published for January 2012;
<b>BM Unit</b>	has the meaning given to it in the BSC;
<b>BSC</b>	means the Balancing and Settlement Code that is provided for in Standard Condition C3 (Balancing and Settlement Code (BSC)) of the Transmission Licence;
<b>Business Day</b>	means a day (other than a Saturday or a Sunday) on which banks are open for general business in London;
<b>Calculation Date</b>	means the date which is three (3) Months before the date which the Generator specified as its preferred effective date for this Agreement in its expression of interest to the Authority;
<b>Central Meter Registration Service</b>	has the meaning given to it in the BSC;
<b>CfD Agreement</b>	means the contract for difference (including the Conditions) (as amended from time to time) with the number set out in Schedule 1 ( <i>Project Information</i> );
<b>CfD Counterparty</b>	means the CfD Counterparty Company Limited (company number 08818711) or any successor as administrator of the contracts for difference under Section 7 EA 2013);
<b>Climate Change Levy</b>	means the levy of that name introduced pursuant to the Finance Act 2000 and subordinate legislation including the Climate Change Levy (General) Regulations 2001 (SI 2001/838);
<b>Collateral Amount</b>	means amount in pounds calculated in accordance with Clause 11.5 ( <i>Calculation of Collateral Amount</i> );
<b>Commencement Date</b>	means the later of the Preferred Commencement Date and the date falling five (5) days after the Agreement Date;
<b>Competent Authority</b>	means: <ul style="list-style-type: none"> <li>(a) any national, federal, regional, state, local, European Union or other court, arbitral tribunal, administrative agency or commission or other</li> </ul>

governmental, administrative or regulatory body, authority, agency or instrumentality;

(b) any private body to the extent it carries out one or more public functions; or

(c) any other body which has jurisdiction in respect of the Facility, the project, one or both of the Parties, this Agreement and/or the subject matter of this Agreement,

and includes the Authority, the Environment Agencies and the Secretary of State;

<b>Conditions</b>	has the meaning given to it in the CfD Agreement;
<b>Confidential Information</b>	has the meaning given to it in Clause 24 ( <i>Confidentiality</i> )
<b>Connection Agreement</b>	means an agreement or any alternative arrangement directly or indirectly between the Generator and the Distribution System Operator or the Transmission System Operator for the provision and maintenance of a connection of the Facility to the relevant Distribution System or the Transmission System (as the case may be);
<b>Contract Representatives</b>	means the persons nominated as such by each Party as set out in Schedule 1 ( <i>Project Information</i> );
<b>Contracted Capacity</b>	has the meaning given to it in Schedule 1 ( <i>Project Information</i> );
<b>Contracted Electrical Output</b>	means the percentage of the Electrical Output of the Facility contracted to the Offtaker under this Agreement as set out in Schedule 1 ( <i>Project Information</i> );
<b>CPI</b>	means (i) the all items index of consumer price inflation published each month by the Office of National Statistics; (ii) if that index in respect of any month has not been published, such index as is applied by the CfD Counterparty under the CfD Agreement for that month; or (iii) if there is a material changes to the basis of that index, such other index as is selected by the CfD Counterparty to apply in the place of CPI under the CfD Agreement;
<b>Credit Account</b>	means the bank account in the United Kingdom specified by the Generator and to which Credit Support (in the form of cash) may be transferred;
<b>Credit Support</b>	means:  (a) a Letter of Credit;  (b) a Parent Company Guarantee; or  (c) cash paid into the Credit Account.
<b>Curtailement</b>	means the Facility is prevented or otherwise restricted, in respect of any period, from exporting to the Transmission System or the Distribution System all (but not a lesser proportion) of the electricity which the

Facility is otherwise able to generate by the Offtaker when the Facility is otherwise available to generate, provided that:

- (a) the Facility shall not be considered to be otherwise available to generate in circumstances where the Facility has been prevented or otherwise restricted from generating due to the exercise of powers by a relevant Competent Authority as a result of any matter relating to non-compliance with Law; and
- (b) notwithstanding paragraph (a), the Facility shall be considered to be otherwise available to generate during the minimum period of time (by reference to a Reasonable and Prudent Standard) the Facility takes to ramp up and down as a consequence of the relevant Curtailment,

and Curtail or Curtailed shall be construed accordingly;

<b>Curtailment Person</b>	means the person set out as such in Schedule 1 (Project Information) as updated from time to time in accordance with Clause 22.2 (Notice Details);
<b>Data Aggregator</b>	means the Party Agent appointed in accordance with Clause 12.4.3 ( <i>Meter Operator, Data Collector and Data Aggregator</i> ) and the BSC to carry out the aggregation of metering data received from Data Collectors and to forward such aggregated data to the SVAA;
<b>Data Collector</b>	means the Party Agent appointed in accordance with Clause 12.4.3 ( <i>Meter Operator, Data Collector and Data Aggregator</i> ) and the BSC to retrieve, validate and process metering data in relation to SVA Metering Equipment;
<b>Data Estimate</b>	has the meaning given to it in Clause 14.2.5 ( <i>Data Provision</i> ) or 15.4.1 ( <i>Communication of Planned Maintenance or Forced Outage</i> ) as appropriate;
<b>Defaulting Party</b>	has the meaning given to it in Clause 17.2 ( <i>Events of Default</i> );
<b>Delivery Point</b>	means the Facility Metering Equipment;
<b>Direct Agreement</b>	means an agreement in substantially the form set out in Schedule 2 ( <i>Form of Direct Agreement</i> );
<b>Dispute</b>	means any dispute or claim (other than a Trading Dispute) in any way relating to or arising out of this Agreement, whether contractual or non-contractual (and including any dispute or claim regarding its existence, negotiation, validity or enforceability, the performance or non-performance of a Party's obligations pursuant to it, or its breach or termination);
<b>Dispute Notice</b>	has the meaning given to it in Clause 25.2;
<b>Dispute Resolution Procedure</b>	means the rules, obligations and procedures set out in Clause 25 ( <i>Dispute Resolution</i> ) including the Expert Determination Procedure;

<b>Disputed Amount</b>	has the meaning given to it in Clause 8.4.1;
<b>Distribution Connection and Use of System Agreement or DCUSA</b>	means the agreement that a Licensed Distributor is required to prepare or maintain in force in a form approved by the Authority under Standard Condition 22 (Distribution Connection and Use of System Agreement) of a Distribution Licence;
<b>Distribution Licence</b>	means a licence granted or treated as granted pursuant to section 6(1)I of the EA 1989;
<b>Distribution System</b>	has the meaning given to it in the BSC;
<b>Distribution System Operator</b>	means the person who is authorised by a licence under Section 6(1)I of the EA 1989 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 situated;
<b>Due Date</b>	has the meaning given to it in Clause 8.2.1 ( <i>Payments</i> );
<b>EA 1989</b>	means the Electricity Act 1989;
<b>EA 2013</b>	means the Energy Act 2013;
<b>EA 2013 Regulations</b>	any statutory instrument made pursuant to any of Chapters 2, 4 and 5 (including the associated schedules to any of those chapters of Part 2 of the EA 2013);
<b>Early Termination Date</b>	has the meaning given to it in Clause 17.3.1 ( <i>Termination following Event of Default</i> );
<b>Effective Discount</b>	means the amount set out in Schedule 1 ( <i>Project Information</i> ) as calculated on the basis set out in Schedule 1 by the Generator;
<b>Electrical Output</b>	means the net electrical output of the Facility delivered to the Delivery Point during the Term, as measured by the Facility Metering Equipment (expressed in MWh);
<b>Embedded Benefits</b>	means any benefit that accrues to the Generator and/or to the Offtaker as a result (whether wholly or partly) of the Facility being connected to the Distribution System and not the Transmission System, excluding Negative GDUoS Charges;
<b>Event of Default</b>	has the meaning given in Clause 17.2 ( <i>Events of Default</i> );
<b>Excess Output</b>	means, for any Settlement Period, any Electrical Output for that period in excess of an amount equal to the Final Installed Capacity (or if lower, the Contracted Capacity) multiplied by zero point five (0.5) hours;
<b>Expert</b>	means any person appointed in accordance with the Expert Determination Procedure to determine an Expert Determinable Dispute;
<b>Expert Determinable Dispute</b>	means a Dispute which: <ul style="list-style-type: none"> <li>(a) relates to matters or circumstances which are</li> </ul>

	identified in this Agreement as being capable of determination by an Expert; or
	(b) both Parties agree is suitable for determination by an Expert;
<b>Expert Determination Procedure</b>	means the rules, obligations and procedures set out in Clause 26 ( <i>Expert Determination</i> );
<b>Expression of Interest</b>	has the meaning given in the OLR Regulations;
<b>Facility</b>	has the meaning given to it in the CfD Agreement;
<b>Facility Metering Equipment</b>	means the Metering Equipment measuring the flows of electricity associated with the Facility and its Metering System.
<b>Final Installed Capacity</b>	has the meaning given to it in Schedule 1 ( <i>Project Information</i> );
<b>Financial Year</b>	means a period beginning on 1 April in a calendar year and ending on the next following 31 March;
<b>Fitch Ratings</b>	means Fitch Ratings Limited, an English corporation and any successor thereto;
<b>FM Affected Party</b>	has the meaning given to it in Clause 16.1 ( <i>Force Majeure</i> );
<b>Force Majeure</b>	means any event or circumstance that is beyond the reasonable control of the FM Affected Party (the FM Affected Party having acted as a Reasonable and Prudent Operator) which the FM Affected Party could not reasonably have avoided or overcome and which is not due to the FM Affected Party's fault or negligence (or that of its Representatives), provided always that neither non availability of funds nor the lack of funds shall ever constitute Force Majeure;
<b>Forced Outage</b>	means repairs, maintenance or other outages (including an outage due to fuel supply related issues) at the Facility that are not Planned Maintenance;
<b>Forced Outage Notice</b>	has the meaning given to it in Clause 15.2.1 ( <i>Forced Outage</i> );
<b>Forced Outage End Notice</b>	has the meaning given to it in Clause 15.2.4 ( <i>Forced Outage</i> );
<b>GDUoS Charges</b>	means the generation use of system charges levied by the Distribution System Operator in respect of the Facility pursuant to the DCUSA, which either take the form of a charge by the Distribution System Operator (where such charges are stated as a positive amount) or a payment or credit from the Distribution System Operator (where such charges are stated as a negative amount);
<b>Grid Code</b>	means the document of that name that is required to be prepared by the Transmission System Operator and approved by the Authority pursuant to Standard Condition C14 (Grid Code) of the Transmission



Licence;

**GSP Group**

has the meaning given to it at Schedule 1 (*Project Information*);

**Imbalance Charges**

means costs and charges incurred by or for the account of a Party pursuant to the Balancing Mechanism by reason of its contracted volumes not matching its metered volumes in relation to electrical output from the Facility (as determined in accordance with the BSC);

**Indexation Anniversary**

means 1 April in each calendar year;

**Industry Documents**

has the meaning given to it in the CfD Agreement;

**Inflation Factor**

means in the absence of any re-basing of the CPI which has taken effect prior to the start of the Financial Year in which the Generator submitted its Expression of Interest:

$$\Pi_t = \frac{CPI_t}{CPI_{base}}$$

where:

$\Pi_t$  is the Inflation Factor;

$CPI_t$  denotes the CPI for January immediately preceding the Financial Year in which the Generator submitted its Expression of Interest (t); and

$CPI_{base}$  denotes the Base Year CPI; or

if the CPI is re-based and such re-basing has taken effect prior to the start of the Financial Year in which the Generator submitted its Expression of Interest:

$$\Pi_t = \frac{CPI_t^{new}}{CPI_{base}^{old}} \times \frac{CPI_b^{old}}{CPI_b^{new}}$$

where:

$\Pi_t$  is the Inflation Factor;

$CPI_t^{new}$  is the CPI applicable at the date of the Expression of Interest, using the new (re-based) index;

$CPI_{base}^{old}$  is the Base Year CPI, using the original index;

$CPI_b^{old}$  is the CPI in the month in which the re-basing has occurred, using the original index; and

$CPI_b^{new}$  is the CPI in the month in which the re-

basing has occurred, using the new (re-based) index;

**Initial Discount**

means the amount of £25/MWh (based on prices as at January 2012);

**Inseparable Benefits**

means any and all benefits, certificates, reliefs and/or allowances (excluding payments or benefits received by the Generator under the CfD Agreement) (whether or not they exist at the Agreement Date) relating to:

- (a) any scheme or mechanism that incentivises or rewards sustainable or renewable forms of electricity generation; and/or
- (b) any scheme or mechanism aimed at the protection of, benefit to and/or mitigation of detrimental impact on, the environment (including carbon or other emissions reduction schemes),

in each case, which are not capable of being, or have no value if, sold separately from the Electrical Output;

**Insolvency Event**

means an entity:

- (a) is dissolved (other than pursuant to a solvent consolidation, amalgamation or merger) or becomes insolvent or unable to pay its debts within the meaning of Section 123 Insolvency Act 1986;
- (b) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a solvent consolidation, amalgamation or merger);
- (c) is subject to any event with respect to it which, pursuant to the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in sub-paragraphs (a) or (b) above,

except where such event is attributable to the other Party not paying when due any amount which is due pursuant to this Agreement;

**Intermittent Technology**

means any of the following technology types: Hydroelectricity, Offshore Wind, Onshore Wind, Solar PV, Tidal Barrage, Tidal Lagoon, Tidal Range, Tidal Stream and Wave, where each technology type shall have the meaning given to such term in the EA 2013 Regulations;

**Law**

means:

- (a) any Act of Parliament, any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, any enforceable EU right within the meaning of section 2 of the European Communities Act 1972, in each case in the United Kingdom and (to the extent directly binding on and/or enforceable against private persons within the United Kingdom) any obligations arising from a treaty or international convention to which the United Kingdom is a signatory;

(b) any condition or other requirement of any Licence or other required authorisation, licence, consent, permit or approval (or of any exemption from the requirement to have the same); and/or

(c) any provision of any Industry Document;

<b>LEC</b>	means the levy exemption certificates (in units of one Megawatt-hour (1 MWh) each) issued by the Authority or its appointed agent to the Generator as evidence that a Megawatt-hour (MWh) of electricity is wholly or partly exempt from the Climate Change Levy;
<b>Lender</b>	means any bank or financial institution (including an agent or security trustee on its behalf but excluding affiliates of the Generator) which provide debt financing or refinancing in relation to the Facility secured at least by first ranking security over all or substantially all of the assets of the Generator (including its rights in respect of the Facility);
<b>Letter of Credit</b>	means a letter issued by a Qualifying Issuer and in substantially the form set out in Schedule 6 ( <i>Form of Letter of Credit</i> );
<b>Licence</b>	means any licence granted under the EA 1989;
<b>Licensed Distributor</b>	means a person who is authorised by a Distribution Licence to distribute electricity;
<b>Loss</b>	(a) for the purposes of Clause 5 ( <i>Transfer Default and Revocation</i> ), has the meaning given to it in Clause 5.3; and  (b) for the purposes of Clause 18 ( <i>Consequences of Expiry or Termination</i> ) has the meaning given to it in Clause 18.3;
<b>Maintenance or Outage Person</b>	means the person set out as such in Schedule 1 ( <i>Project Information</i> ) as updated from time to time in accordance with Clause 22.2.3 ( <i>Notice Details</i> );
<b>Market Reference Price</b>	has the meaning given to it in the CfD Agreement;
<b>Meter Operator</b>	means the person contracted to perform the role of Meter Operator Agent under the BSC in respect of the Metering Equipment, in accordance with Clause 13 ( <i>Meter Registration</i> );
<b>Metered Volume Reallocation Notification Agent</b>	has the meaning given to it in the BSC;
<b>Metered Volume Reallocation Notification or MVRN</b>	has the meaning given to it in the BSC;
<b>Metering Equipment</b>	has the meaning given to it in the BSC;
<b>Metering System</b>	has the meaning given to it in the BSC;
<b>Minimum Credit Rating</b>	means a company having a minimum long term rating of BBB with Standard and Poor's or the equivalent ratings with Moody's or Fitch Ratings;

<b>Month</b>	means a calendar month;
<b>Monthly Statement</b>	has the meaning given to it in Clause 8.1.1 ( <i>Monthly Statement</i> );
<b>Moody's</b>	means Moody's Investor Services, Inc., a Delaware corporation and any successor thereto;
<b>MSID</b>	has the meaning given in the BSC;
<b>MW</b>	means a megawatt;
<b>MWh</b>	means megawatt hour(s);
<b>Notified Electrical Output</b>	means, in respect of each Settlement Unit, the Electrical Output for that Settlement Unit as reported to the Offtaker by the Data Collector, Data Aggregator or a BSC Agent;
<b>OLR Licence Conditions</b>	means Condition 38A Standard Conditions of Electricity Supply Licence;
<b>OLR Regulations</b>	means The Power Purchase Agreement Scheme Regulations 2014 made in exercise of the powers conferred by section 51(1) to (5) EA 2013;
<b>Outage Notification Failure Amount</b>	means the amount calculated in accordance with Clauses 15.4.2 and 15.4.3 as appropriate;
<b>Parent Company Guarantee</b>	means a guarantee substantially in the form set out in Schedule 6 (Form of Parent Company Guarantee) from a Qualifying Guarantor;
<b>Party Agent</b>	has the meaning given to it in the BSC;
<b>Planned Maintenance</b>	has the meaning given to it at Clause 15.1.1 ( <i>Planned Maintenance</i> );
<b>Preferred Commencement Date</b>	date specified as such in Schedule 1 ( <i>Project Information</i> );
<b>Qualified</b>	has the meaning given to it in the BSC;
<b>Qualifying Guarantor</b>	means an Affiliate of the Offtaker having the Minimum Credit Rating;
<b>Qualifying Issuer</b>	means a bank or financial institution having a minimum long term rating of A- with Standard and Poor's or the equivalent ratings with Moody's or Fitch Ratings;
<b>Reasonable and Prudent Operator</b>	means a person seeking in good faith to comply with its contractual obligations and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person complying with all applicable Laws and engaged in the same type of undertaking under the same or similar circumstances and conditions;
<b>Register</b>	means the Renewables and CHP Register established and maintained by the Authority for the purpose of identifying the holders of LECs and REGOs, and for

facilitating the transfer of the same (and includes any paper-based contingency system, and/or any successor or replacement register);

<b>Registrant</b>	has the meaning given to it in the BSC;
<b>REGO</b>	means a renewable energy guarantee of origin issued by the Authority in accordance with the Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations 2003;
<b>Renewables Benefits</b>	means:  (a) LECs;  (b) REGOs; and  (c) Inseparable Benefits;  in each case, to the extent that they relate to the Contracted Electrical Output.
<b>Revocation</b>	means, in respect of a Renewables Benefit, the Renewables Benefit is Transferred, but is subsequently revoked, declared invalid or otherwise rescinded by a Competent Authority (and <b>Revoked</b> shall be construed accordingly);
<b>Senior Representatives</b>	means the persons nominated as such by each Party as set out in Schedule 1 ( <i>Project Information</i> );
<b>Service Documents</b>	means any claim forms, application notices, orders, judgments or other documents relating to any proceeding, suit or action relating to or arising out of any Dispute;
<b>Settlement Period</b>	has the meaning given to it in the BSC;
<b>Settlement Unit</b>	has the meaning given to it in the CfD Agreement;
<b>Short Run Marginal Cost</b>	means the amount set out as such in Schedule 1 ( <i>Project Information</i> );
<b>Standard and Poor's</b>	means Standard and Poor's Ratings Service, a division of McGraw-Hill Companies Inc., and any successor thereto;
<b>Supplier Meter Registration Service</b>	has the meaning given to it in the BSC;
<b>SVA Metering Equipment</b>	has the meaning given to it in the BSC;
<b>SVAA</b>	has the meaning given to it in the BSC;
<b>System Sell Price</b>	means, in relation to any Settlement Period, the system sell price determined in accordance with the BSC for that Settlement Period;
<b>Term</b>	has the meaning given to it in Clause 2.1 ( <i>Duration and Term</i> );
<b>Termination Payment</b>	has the meaning given to it in Clause 18.2

(*Compensation on Termination*);

<b>Trading Day</b>	means a period starting at 23:00 hours on a day and ending at 23:00 hours on the following day;
<b>Transfer</b>	means a transfer by the Generator to the Offtaker of a Renewables Benefit pursuant to Clause 4 ( <i>Transfer of Renewables Benefits</i> ) (and <b>Transferred</b> shall be construed accordingly);
<b>Transfer Failure</b>	means: <ul style="list-style-type: none"><li>(a) a Renewables Benefit not being issued within thirty (30) Business Days of the date on which such Renewables Benefit would otherwise have been issued; or</li><li>(b) a Renewables Benefit that has been issued to the Generator not being Transferred to the Offtaker within thirty (30) Business Days following the date on which such Renewables Benefit was issued to the Generator,</li></ul>
<b>Transfer Request</b>	means any request made by the Generator to transfer a LEC or REGO to the Offtaker in accordance with the requirements of the Register;
<b>Transmission Licence</b>	means an electricity transmission licence granted or treated as granted pursuant to section 6(1)(b) of the EA 1989 that authorises a person to transmit electricity;
<b>Transmission Licensee</b>	means any person who is authorised by a Transmission Licence to transmit electricity;
<b>Transmission System</b>	means the system consisting (wholly or mainly) of high voltage electric lines owned by Transmission Licensees within Great Britain that is used for the transmission of electricity from one (1) generating station to a substation or to another generating station or between substations or to or from any interconnector;
<b>Transmission System Operator</b>	means the holder of a Transmission Licence in relation to which licence the Authority or any Secretary of State, where appropriate, has issued a Section C (system operator standard conditions) Direction in accordance with such licence and where that direction remains in effect.

1.2 Any reference in this Agreement to:

- 1.2.1 a Law, Directive or other similar enactment or instrument (including any European Union instrument) (each, an **enactment**) includes references to:
- (a) that enactment as amended, supplemented or applied by or pursuant to any other enactment before, on or after the Agreement Date;
  - (b) any enactment which re-enacts, restates or replaces (in each case with or without modification) that enactment; and
  - (c) any subordinate legislation made (before, on or after the Agreement Date) pursuant to any enactment, including an enactment falling within paragraphs (a) or (b);

- 1.2.2 an Industry Document includes references to such Industry Document as amended, supplemented, restated, novated or replaced from time to time, except where otherwise expressly specified.
- 1.3 Unless otherwise expressly specified:
- 1.3.1 any reference in this Agreement to:
- (a) this Agreement shall be deemed to include the Schedules;
  - (b) a **company** shall be construed as including any corporation or other body corporate, wherever and however incorporated or established;
  - (c) the expressions **holding company** and **subsidiary** shall have the meanings respectively ascribed to them by section 1159 of the Companies Act 2006;
  - (d) a **person** shall be construed as including any individual, firm, company, unincorporated organisation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or any other entity;
  - (e) a person shall be construed as including its successors, permitted assignees and permitted transferees and, where a person ceases to exist, any other person to which some or all of its duties, functions, liabilities, obligations, powers or responsibilities may from time to time be transferred;
  - (f) an **agreement** shall be construed as including any commitment or arrangement, whether legally binding or not, and references to being party to an agreement or having agreed to do anything shall be construed accordingly;
  - (g) any agreement or document shall be construed as a reference to that agreement or document as amended, supplemented, restated, novated or replaced from time to time;
  - (h) any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be treated as including what most nearly approximates in that jurisdiction to the English legal term;
  - (i) time shall be a reference to time in London, England;
  - (j) words in the singular shall be interpreted as include the plural and vice versa; and
  - (k) any gender includes the other genders;
- 1.3.2 in construing this Agreement:
- (a) the rule of interpretation known as the *ejusdem generis* rule shall not apply and, accordingly, general words introduced by the word “other” shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things; and
  - (b) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words;
- 1.3.3 any reference in this Agreement to a **Clause, Paragraph, Schedule or Annex** is a reference to clause, paragraph, schedule or Annex to, this Agreement;
- 1.3.4 any provision or definition of this Agreement which refers to, or is calculated from or by reference to, a provision of the CfD Agreement shall, if the CfD Agreement has

expired or been terminated, be interpreted as though the CfD Agreement was continuing.

- 1.4 Headings and sub-headings used in this Agreement are for ease of reference only and shall not affect the interpretation of this Agreement.
- 1.5 If there is a conflict between the main body of this Agreement and any Schedule, the main body of this Agreement shall prevail provided that if the Facility is specified in Schedule 1 (*Project Specific Information*) to be:
- 1.5.1 Intermittent Technology, the provisions of Schedule 3A shall apply and shall prevail;
  - 1.5.2 Baseload Technology, the provisions of Schedule 3B shall apply and shall prevail; or
  - 1.5.3 a Licensed Facility or Transmission Connected Facility, the provisions of Schedule 4 shall apply and shall prevail.

## **2 Commencement and Term**

- 2.1 Subject to Clause 2.2, this Agreement shall come into force on the Agreement Date and shall, unless terminated earlier in accordance with its terms, automatically expire at 23:00 on the first (1<sup>st</sup>) anniversary of the Commencement Date (the **Term**).
- 2.2 The Generator shall upon executing this Agreement notify the Offtaker in writing that the Agreement has been executed.
- 2.3 The provisions of and the rights and obligations of the Parties under this Agreement shall be conditional upon the Generator delivering an executed and dated copy of this Agreement to the Offtaker no later than three (3) Business Days after the Allocation Date.
- 2.4 The obligations of the Parties under Clause 3 (*Sale and Purchase*), Clause 4 (*Transfer of Renewables Benefits*), Clause 5 (*Transfer Default and Revocation*), Clause 6 (*Embedded Benefits and GDUoS Charges*), Clause 7 (*Payments*), Clause 8 (*Billing and Payment*), Clause 9 (*Trading Disputes*) and Clause 10 (*Set Off*) shall not come into effect on the Agreement Date, but shall take effect either:
- 2.4.1 on and from 00:00 on the Commencement Date;
  - 2.4.2 save where the Generator is to be the Registrant, where the Offtaker has not been appointed Registrant of the Facility Metering Equipment by the Commencement Date as a result of a breach by the Generator of the provisions of Clause 13.1 (*Meter Registration*), on and from the date and time at which the Offtaker is appointed Registrant of the Facility Metering Equipment; or
  - 2.4.3 where a Metered Volume Reallocation Notification has not been put in place as a result of a breach by the Generator of the provisions of paragraph 4 of Schedule 4 (*Transmission Connected and/or Licensed Facilities*) on and from the date and time on which a Metered Volume Reallocation Notification put in place in accordance with paragraph 4 of Schedule 4 (*Transmission Connected and/or Licensed Facilities*) takes effect.

## **3 Sale and Purchase**

- 3.1 Electrical Output
- 3.1.1 The Generator shall sell and deliver to the Offtaker the Contracted Electrical Output and the Offtaker shall purchase and accept the Contracted Electrical Output from the Generator, in each case in accordance with the provisions of this Agreement.
  - 3.1.2 The Contracted Electrical Output to be sold by the Generator to the Offtaker under this Agreement shall be delivered at the Delivery Point.



3.1.3 The Generator shall sell the Contracted Electrical Output with full title guarantee, free from all charges, liens, other encumbrances and third party claims.

3.1.4 Property, title and risk in the Contracted Electrical Output shall pass to the Offtaker upon delivery to the Delivery Point.

## 3.2 Renewables Benefits

3.2.1 The Generator agrees to Transfer to the Offtaker, and the Offtaker agrees to accept, the Renewables Benefits in accordance with the provisions of this Agreement.

3.2.2 Title in each Renewables Benefit shall pass from the Generator to the Offtaker at the point of Transfer (which, in respect of the Transfer of LECs and REGOs, shall be the point at which the Offtaker accepts a Transfer Request).

## 4 Transfer of Renewables Benefits

### 4.1 Transfers

If, and to the extent that, the electricity generated by the Facility during the Term (or the Facility's electricity generating capacity) is eligible for Renewables Benefits, each Party shall effect Transfers subject to and in accordance with Clauses 4.2 (*Transfer of LECs and REGOs*), 4.3 (*Transfer of Inseparable Benefits*) and 5 (*Transfer Default*).

### 4.2 Transfer of LECs & REGOs

The transfer of all LECs and REGOs which constitute Renewables Benefits pursuant to this Agreement shall be carried out in accordance with the following procedure:

4.2.1 the Generator shall, no later than five (5) Business Days following the end of each Month in which LECs and/or REGOs are registered on the Generator's Account, submit a Transfer Request in respect of those LECs and REGOs; and

4.2.2 following the issue of a Transfer Request, the Generator shall promptly notify the Offtaker that a Transfer Request has been made, and the Offtaker shall accept the Transfer Request within five (5) Business Days of it being made.

### 4.3 Transfer of Inseparable Benefits

The transfer of all Inseparable Benefits which constitute Renewables Benefits pursuant to this Agreement shall be carried out in accordance with the following procedure:

4.3.1 the Generator shall, as soon as reasonably practicable after the receipt by it of each Inseparable Benefit, transfer the same to the Offtaker in compliance with all Applicable Laws applying to the transfer of the Inseparable Benefit; and

4.3.2 the Offtaker shall (to the extent necessary) accept each such Transfer, and shall comply with any Applicable Laws applying to the transfer of such an Inseparable Benefit.

### 4.4 Further assurance

The Parties shall, in co-operation with each other as appropriate, do all such things as may be required by the Authority or any Applicable Law, directly or indirectly and whether before or after the point of Transfer, to establish the title of the Offtaker to any Renewables Benefit.

### 4.5 Provision of information to the Authority

4.5.1 If the Authority requests either Party to provide information to the Authority in respect of a Renewables Benefit which has been or may be issued by the Authority, such Party shall observe this request in such form and within such period as may be required by Applicable Law (or as the Authority may reasonably request in order to carry out any of its functions under Applicable Law); and

- 4.5.2 Upon either Party receiving a request for information from the Authority as referred to in Clause 4.5.1 the other Party agrees to provide such assistance as is reasonably necessary in order to enable the Party which received the request to comply with its obligations under Clause 4.5.1.

#### 4.6 Guidelines and procedures

Each Party shall open and maintain an Account and shall adhere to the guidelines and procedures in respect of the Register and its Account (and any other guidelines or procedures issued by the Authority in respect of the REGO scheme or the Climate Change Levy scheme), as issued and updated from time to time by the Authority, in order to effect properly any and all Transfers.

### 5 Transfer Default and Revocation

#### 5.1 Transfer Default

5.1.1 If a Transfer Failure occurs in relation to a Renewables Benefit for any reason:

- (a) the Renewables Benefit (to the extent it exists) or any replacement Renewables Benefit shall remain subject to this Agreement and the Generator shall not, without the agreement of the Offtaker, assign, sell or otherwise transfer the Renewables Benefit to any other person; and
- (b) the Generator and the Offtaker shall use their respective reasonable endeavours to rectify the Transfer Failure and transfer the Renewables Benefit to the Offtaker as soon as reasonably possible.

5.1.2 If a Transfer Failure occurs as a result of a breach by the Generator of any Applicable Law and/or any of its obligations under this Agreement:

- (a) the Generator shall pay the Offtaker, for each Renewables Benefit in respect of which a Transfer Failure has occurred, an amount equal to the Offtaker's Loss calculated in accordance with Clauses 5.3 and 5.4; and
- (b) if a Renewables Benefit which has been the subject of a Transfer Failure (or replacement Renewables Benefit) is subsequently transferred to the Offtaker, the Offtaker shall re-calculate its Loss under Clause 5.1.2(a) to reflect the transfer. If the Offtaker's recalculated Loss under this Clause 5.1.2(b) is less than the Offtaker's Loss calculated under Clause 5.1.2(a), the Offtaker shall pay the difference to the Generator.

#### 5.2 Revocation

5.2.1 If a Renewables Benefit is Revoked for any reason:

- (a) the Generator and the Offtaker shall use their respective reasonable endeavours to have the Revoked Renewables Benefit reissued;
- (b) if a Renewables Benefit which has been Revoked is reissued it shall remain subject to this Agreement and the Generator shall not, without the agreement of the Offtaker, assign, sell or otherwise transfer the Renewables Benefit to any other person; and
- (c) the Generator and the Offtaker shall use their respective reasonable endeavours to transfer the reissued Renewables Benefit to the Offtaker as soon as reasonably possible.

5.2.2 If a Renewables Benefit is Revoked as a result of a breach by the Generator of any Applicable Law and/or any of its obligations under this Agreement and the Renewables Benefit is not reissued within thirty (30) Business Days:

- (a) the Generator shall pay the Offtaker, for each Revoked Renewables Benefit, an amount equal to the Offtaker's Loss calculated in accordance with Clauses 5.3 and 5.4; and
- (b) if a Renewables Benefit which has been Revoked is subsequently reissued and transferred to the Offtaker, the Offtaker shall re-calculate its Loss under Clause 5.2.2(a) to reflect the transfer. If the Offtaker's recalculated Loss under this Clause 5.2.2(b) is less than the Offtaker's Loss calculated under Clause 5.2.2(a), the Offtaker shall repay the difference to the Generator.

### 5.3 Meaning of Loss

For the purposes of this Clause 5, Loss means an amount that the Offtaker reasonably determines in good faith to be its total losses and costs in connection with a Transfer Failure or Revocation including any loss or cost incurred as a result of its terminating, liquidating, obtaining or re-establishing any related trading position (or any gain resulting from any of them), Loss shall not include the Offtaker's legal fees and out-of-pocket expenses.

### 5.4 Calculation of Loss

The following principles shall apply to the calculation of Loss:

- 5.4.1 the Offtaker shall not be required to enter into any replacement transactions in order to determine its Loss;
- 5.4.2 the Offtaker may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading traders in the England and Wales in the relevant market who are independent of the Offtaker; and
- 5.4.3 where the Offtaker's Loss is negative it shall be deemed to be zero (0).

## 6 Embedded Benefits and GDUoS Charges

Nothing in this Agreement shall oblige either Party to transfer, accept or make any payments in respect of Embedded Benefits or GDUoS Charges to the extent that any accrue or are payable and such Embedded Benefits and GDUoS Charges shall remain with the Party to which they accrue or are charged under any Applicable Law.

## 7 Payments

### 7.1 Electrical Output and Renewables Benefits

- 7.1.1 In consideration for the mutual covenants set out in this Agreement, the Offtaker shall pay to the Generator (or, if the aggregate amount is negative, the Generator shall pay the Offtaker) the aggregate of the following amounts:
  - (a) in respect of all Contracted Electrical Output other than Excess Output, the Market Reference Price less the Effective Discount for each MWh of Contracted Electrical Output; and
  - (b) in respect of Excess Output the System Sell Price for each MWh of Excess Output and Curtailment Period Output.
- 7.1.2 No separate payment shall be due from the Offtaker to the Generator for Renewables Benefits Transferred to the Offtaker pursuant to this Agreement. The mutual covenants set out in this Agreement shall constitute sufficient consideration for such Transfer.

## 8 Billing and Payment

### 8.1 Monthly Statement

- 8.1.1 The Offtaker shall, in relation to each Month from the Commencement Date until all amounts payable under this Agreement have been invoiced, prepare and deliver a billing statement to the Generator (each, a **Monthly Statement**) in accordance with this Clause 8.
- 8.1.2 The Offtaker shall deliver each Monthly Statement to the Generator no later than ten (10) Business Days after the end of the Month to which it relates.
- 8.1.3 Each Monthly Statement shall set out or identify:
- (a) the Notified Electrical Output for each Settlement Unit of the relevant Month;
  - (b) the Market Reference Price applicable to each Settlement Unit of the relevant Month;
  - (c) the System Sell Price applicable to each Settlement Period of the relevant Month in which Excess Output was delivered to the Delivery Point;
  - (d) the net amount payable by one Party to the other Party pursuant to Clauses 7.1.1(a) and 7.1.1(b) (*Electrical Output and Renewables Benefits*) for the relevant month;
  - (e) the System Sell Price applicable to each Settlement Period of the relevant Month in which Contracted Electrical Output was delivered to the Delivery Point for
  - (f) any amounts payable by one Party to the other Party pursuant to Clause 5.1.2 (*Transfer Failure*);
  - (g) any amounts payable by one Party to the other Party pursuant to Clause 5.2.2 (*Revocation*);
  - (h) any adjustment payments (inclusive of any interest) required in accordance with Clause 8.3 (*Estimates and Adjustments*)
  - (i) the net amount payable from one Party to the other after taking into account all the matters set out above;
  - (j) subject to Clause 8.2.3 (*Payment*), any VAT payable on the above amounts; and
  - (k) any other sums owed between the Parties under this Agreement.
- 8.1.4 If the Offtaker fails to deliver a Monthly Statement within the time period specified in Clause 8.1.2, the Generator may issue a Monthly Statement to the Offtaker which shall be treated as a Monthly Statement issued by the Offtaker for the purposes of this Agreement.

## 8.2 Payment

- 8.2.1 No later than the tenth (10<sup>th</sup>) Business Day after receipt of a Monthly Statement (each, a **Due Date**), the Offtaker or the Generator, as the case may be, shall pay to the Party to whom payment is due the net amount payable in accordance with the relevant Monthly Statement.
- 8.2.2 Payment shall be made by the applicable Due Date in pounds sterling by direct bank transfer or equivalent transfer of immediately available funds to the Party to whom payment is due and to the credit of the account notified by that Party.
- 8.2.3 Each Party shall provide the other with such VAT invoices as are required for the purposes of this Agreement. An amount equal to any VAT payable by a Party shall not be required to be paid before the other Party provides it with an appropriate VAT invoice in relation to that amount.

### 8.3 Estimates and Adjustments

- 8.3.1 If any information relating to the Electrical Output which is required to prepare a Monthly Statement is not available to the Party preparing the Monthly Statement at the time that Monthly Statement is prepared, then a Party may prepare that Monthly Statement based on its reasonable estimate of that information.
- 8.3.2 Subject to Clause 8.4 (*Disputed Payments*), if there is any change to the information used to prepare a Monthly Statement after that Monthly Statement is prepared, or information that was estimated in order to prepare a Monthly Statement becomes available, then either Party may, by notice to the other Party require an adjustment payment to be made to reflect the changed or newly available information. Any adjustment payment shall be included in the next Monthly Statement to be produced together with interest calculated in accordance with Clause 8.3.3.
- 8.3.3 Interest shall be payable on any adjustment payments at an annual rate equal to the rate of interest published from time to time by the Bank of England as its base rate from (and including) the Due Date for the original Monthly Statement to (but excluding) the Due Date for the Monthly Statement on which the adjustment payment is included.

### 8.4 Disputed Payments

- 8.4.1 If either Party disputes any amount shown in a Monthly Statement or notified as an adjustment under Clause 8.3 (*Estimates and Adjustments*), as being payable by that Party (each, a **Disputed Amount**), it shall make payment of any undisputed amount on or before the applicable Due Date and shall give notice of the Disputed Amount and the reasons for the Dispute to the other Party no later than the applicable Due Date. The Parties shall seek to resolve the Dispute in accordance with Clause 25 (*Dispute Resolution*) and the Dispute shall be an Expert Determinable Dispute.
- 8.4.2 Any payment in respect of a Disputed Amount (of part thereof) required to be made in accordance with the resolution of a dispute shall be made within three (3) Business Days of that resolution.
- 8.4.3 Save in respect of fraud, neither Party shall be entitled to initiate any dispute (or require an adjustment payment under Clause 8.3.2) relating to any sum included, or which could or should have been included, in any Monthly Statement more than eighteen (18) months after that Monthly Statement is, or should have been, issued.

### 8.5 Default Interest

If a Party fails to pay to the other Party any amount due by the applicable Due Date as set out in this Agreement (or otherwise determined to have been payable by any dispute resolution process), interest shall be payable on that amount at an annual rate equal to the rate of interest published from time to time by the Bank of England as its base rate plus three percent (3%) compounded monthly from (and including) the applicable Due Date to (but excluding) the date payment is made.

## 9 Trading Disputes

- 9.1 If a Trading Dispute arises, the provisions of Section W of the BSC in relation to Trading Disputes shall apply.
- 9.2 If the Generator is not a party to the BSC, the Generator shall first notify the Offtaker that the Generator wishes to invoke the Trading Dispute provisions and, subject to Clause 9.3 the Offtaker shall raise the dispute with the BSC Co on behalf of the Generator and act on behalf of the Generator in resolving the dispute under that process.
- 9.3 The Generator shall bear the costs reasonably incurred by the Offtaker acting in accordance with Clause 9.2 save for where the Trading Dispute has been caused by any act or omission of the Offtaker or its agents or contractors, in which case the Offtaker shall be liable for its own costs and the costs reasonably incurred by the Generator.

9.4 All Disputes relating to the volume of electricity transferred under this Agreement that are not Trading Disputes may be referred for determination by an Expert in accordance with Clause 26 (*Expert Determination*).

## **10 Set Off**

10.1 The Offtaker may set off any undisputed amount due and payable to the Offtaker from the Generator under this Agreement against any undisputed amount due and payable to the Generator from the Offtaker under this Agreement.

10.2 The Generator may set off any undisputed amount due and payable to the Generator from the Offtaker under this Agreement against any undisputed amount due and payable to the Offtaker from the Generator under this Agreement.

## **11 Credit Support**

### **11.1 Provision of Credit Support**

11.1.1 If, at any time, the Offtaker does not hold the Minimum Credit Rating, the Offtaker shall, within five (5) Business Days, provide Credit Support to the Generator in an amount equal to the Collateral Amount.

11.1.2 Subject to Clause 11.2 the Offtaker shall, procure that the Credit Support provided pursuant to this Clause 11 remains in place until the earlier of:

(a) 30 days after the expiry of this Agreement; or

(b) the date on which, following expiry or termination of this Agreement, all amounts owing to the Generator under this Agreement have been paid in full.

### **11.2 Replacement and substitution of Credit Support**

The Offtaker may substitute any Credit Support with any other Credit Support from time to time and the Generator shall upon request by the Offtaker surrender or procure the surrender of the Credit Support as soon as reasonably practicable and in any event within ten (10) Business Days of receipt of any substitute Credit Support.

### **11.3 Credit Event by a Qualifying Issuer or Qualifying Guarantor**

11.3.1 If, at any time, the provider of Credit Support ceases to be a Qualifying Issuer or Qualifying Guarantor, the Offtaker shall give notice to the Generator and provide, or procure replacement Credit Support from a Qualifying Issuer or Qualifying Guarantor or by paying a sum equal to the Collateral Amount into the Credit Account within ten (10) Business Days of the date on which the provider of the then current Credit Support ceased to be a Qualifying Issuer or Qualifying Guarantor.

11.3.2 Where the Credit Support is a Letter of Credit and the Generator fails to procure the replacement Credit Support within ten (10) Business Days in accordance with Clause 11.3.1, the Generator may demand payment pursuant to the then current Letter of Credit and shall hold any cash paid pursuant to the Letter of Credit in escrow as security for the Offtaker's obligations under this Agreement until such time as the replacement Credit Support is provided in accordance with Clause 11.3.1.

### **11.4 Return of Credit Support**

If the Offtaker has delivered, or procured the delivery of, replacement or substitute Credit Support in accordance with this Clause 11 or regains the Minimum Credit Rating, the Generator shall, upon request by the Offtaker, surrender or procure the surrender of the Credit Support as soon as reasonably practicable and in any event within ten (10) Business Days.

### **11.5 Calculation of Collateral Amount**

The Collateral Amount shall be calculated in accordance with the formula below:

$$\text{Collateral Amount} = CC \times ALF \times (\text{aveMRP} - \text{Effective Discount}) \times N \times HID$$

where:

*CC* is the Contracted Capacity;

*ALF* is the Assumed Load Factor;

*aveMRP* is the mean average Market Reference Price over the twelve (12) Months preceding the Calculation Date;

*N* is seventy two (72) days, representing the number of days for which collateral is required;

*HID* is the number of hours in a day, being twenty-four (24) hours;

## **12 Metering**

### **12.1 Metering Equipment**

The Generator shall ensure that at all times the Facility Metering Equipment meets all applicable rules and standards provided for in the BSC.

### **12.2 BM Unit**

If the Offtaker is the Registrant of the Facility Metering Equipment, the Offtaker shall ensure that the BM Unit or Additional BM Unit for the Facility accurately records the BM Unit Metered Volume in accordance with the requirements of the BSC.

### **12.3 Access**

The Generator shall ensure that the Offtaker or its representative shall have access to the Facility Metering Equipment (including where the Facility Metering Equipment is on property not owned by the Generator) during normal business hours and save in cases of emergency upon giving reasonable advance written notice to the Generator provided that there are no other offtakers on site at the relevant time. If there is an emergency the Offtaker may access the Facility Metering Equipment without giving advance notice and shall notify the Generator as soon as reasonably practicable. The Offtaker shall ensure that any employee, agent, contractor or invitee of the Offtaker accessing the Facility (including the Facility Metering Equipment) does not interfere with the Facility (including the Facility Metering Equipment), and complies with any reasonable site rules and instructions notified to the Offtaker.

### **12.4 Meter Operator, Data Collector and Data Aggregator**

12.4.1 The Generator shall contract with a Qualified Meter Operator to perform that role in respect of the Metering Equipment. The Generator shall ensure that it maintains a contract with a Qualified Meter Operator to perform that role in respect of the Metering Equipment throughout the Term.

12.4.2 If the Offtaker is the Registrant of the Facility Metering Equipment, the Offtaker shall appoint the person notified to it from time to time by the Generator as the Meter Operator Agent under the BSC.

12.4.3 If the Offtaker is the Registrant of the Facility Metering Equipment and the Facility Metering Equipment is SVA Metering Equipment, the Offtaker shall contract with a Qualified Data Collector and a Qualified Data Aggregator to perform those roles in respect of the Facility Metering Equipment and the associated Additional BM Unit (and shall appoint them or their replacements from time to time to such roles under the BSC).

12.4.4 If the Metering System is CVA Metering Equipment, the Qualified Data Collector and a Qualified Data Aggregator shall be nominated by the BSC Company.

- 12.4.5 The Offtaker shall compile and maintain meter records and any other records in respect of the Facility needed to record the Electrical Output and shall allow the Generator access to such records at the Offtaker's premises or the premises of the Data Collector and/or Data Aggregator during normal business hours and upon reasonable advance written notice.

## 12.5 Meter Accuracy

- 12.5.1 If a Party disputes the accuracy of the Export Meter it may give notice in writing to the other whereupon either Party shall be entitled to have the Export Meter examined and tested by an expert agreed upon by the Parties (or, in default of agreement, appointed by the President for the time being of the Institute of Electrical Engineers). The permitted margins of error for the Export Meter shall be those specified in the BSC. The costs of the expert, and of the examination and test, shall be borne by the disputing Party unless the expert determines that the Export Meter is inaccurate by a greater margin than the aforementioned permitted margins of error, in which case such costs shall be payable by the Generator.
- 12.5.2 If it is discovered that any metering information has been inaccurate or the translation of metering information into charges has been incorrect then the matter shall be treated as a Trading Dispute in accordance with Clause 9 (*Trading Disputes*).

## 13 Meter Registration

- 13.1 The Generator undertakes to provide to the Offtaker as soon as reasonably practicable all such information as is reasonably necessary to enable the Offtaker to register the Facility Metering Equipment in accordance with the BSC prior to the Commencement Date.
- 13.2 The Offtaker undertakes to activate an Additional BM Unit associated with the Facility Metering Equipment with effect from the Commencement Date.
- 13.3 As soon as reasonably practicable after the Offtaker receives the information described in Clause 13.1 from the Generator, the Offtaker undertakes to register the Facility Metering Equipment with effect from the Commencement Date, to maintain registration for the duration of the Contract Term and to provide the subsequent Offtaker (if applicable) prior to the end of the Contract Term all such information as is reasonably necessary to enable such subsequent Offtaker to register the MSIDs for the Facility in accordance with the BSC.
- 13.4 The Offtaker shall pay the charges as set out in Clause 7 (*Payments*) (calculated by reference to metering data provided by the Data Collector and/or Data Aggregator), notwithstanding any failure of the Offtaker to achieve meter registration by the Commencement Date, unless:
- 13.4.1 the failure to register is caused by a breach by the Generator of its obligation as set out in Clause 13.1; or
- 13.4.2 the Generator has received payment in respect of Electrical Output delivered to the Delivery Point from the incumbent Registrant of the Facility Metering Equipment, in which case the liability of the Offtaker will be reduced to the extent of such payment.
- 13.5 Central Meter Registration Service or the Supplier Meter Registration Service
- 13.5.1 If the Facility is directly connected to the Transmission System or the Generator holds a Generation Licence in relation to the Facility, the provisions of Schedule 4 (*Transmission Connected and/or Licensed Facilities*) shall apply.

## 14 Forecast and Data Provision

### 14.1 Forecast

- 14.1.1 On the first Business Day of the Term and on the first Business Day of each Month during the Term, the Generator shall notify the Offtaker of the Generator's non-binding estimate of the likely future availability of the Facility (each a **Forecast**) to be provided in the format reasonably requested by the Offtaker from time to time.



- 14.1.2 The Generator shall ensure that each Forecast is prepared to the standards of a Reasonable and Prudent Operator and is as accurate as reasonably practicable (having regard to the data available to the Generator from time to time), but the Offtaker acknowledges that such Forecasts shall not constitute a guarantee or warranty by the Generator of the capacity that will be available.

## 14.2 Data Provision

- 14.2.1 The Generator shall provide the Available Data to the Offtaker (at no cost to the Offtaker) provided that the Offtaker complies with any reasonable technical interface requirements of the Generator and uses such information solely for the purposes of forecasting and reporting (including for the purposes of aggregation) in relation to the Facility. The Offtaker shall put in place and maintain at its own cost the necessary equipment to receive the Available Data and the Offtaker shall comply with any reasonable technical interface requirements of the Generator for such equipment.
- 14.2.2 The Offtaker may (at the cost of the Offtaker) require the Generator to change the format in which it provides the Available Data to the Offtaker which may include the installation of new equipment.
- 14.2.3 The Generator shall not, without the Offtaker's consent (such consent not to be unreasonably withheld, conditioned or delayed), change the manner or method by which it provides the Available Data such that the Offtaker would require modified or alternative equipment to receive the same, unless such change is beyond the Generator's reasonable control.
- 14.2.4 If the Generator's usual means of providing the Available Data to the Offtaker fails, it shall use its reasonable endeavours to provide the data using an alternative means of delivery.
- 14.2.5 Subject to Clauses 14.2.8, 14.2.9 and 14.2.10, if the Generator does not provide the required Available Data in accordance with this Clause 14.2, the Generator shall pay the Offtaker, in accordance with the provisions of Clause 8 (*Billing and Payment*), the Available Data Failure Amount as liquidated damages as calculated in accordance with Clauses 14.2.6 and 14.2.7. The Parties confirm that this approach represents a genuine means of pre-estimating the Offtaker's loss. The sum payable to the Offtaker shall be calculated on the basis of the volume of electricity sold to the wholesale market by the Offtaker, provided that volume is a reasonable estimate of the metered output the Offtaker would have anticipated would be delivered by the Generator (**Data Estimate**).
- 14.2.6 If for a Settlement Period the Data Estimate exceeds the actual Electrical Output, the Available Data Failure Amount shall be calculated by the Offtaker as the System Buy Price minus the Market Reference Price for the relevant Settlement Period.
- 14.2.7 If for a Settlement Period the Data Estimate is less than the actual Electrical Output, the Available Data Failure Amount shall be calculated by the Offtaker as the Market Reference Price minus the System Sell Price for the relevant Settlement Period.
- 14.2.8 The liability of the Generator to the Offtaker under Clause 14.2.5 in pounds sterling shall not exceed the sum of the following calculation, for a single failure to provide Available Data:

Liability Cap = CC x Ave. MRP x 24 hours

Where:

CC is the Contracted Capacity in MW;

Ave. MRP is the average Market Reference Price for the twelve (12) Months immediately preceding the date on which the Offtaker calculates its loss.

- 14.2.9 The liability from the Generator to the Offtaker under Clause 14.2.5 in pounds sterling shall not exceed the sum of the following calculation, for the duration of the Term:

$$\text{Liability Cap} = \text{CC} \times 2,500$$

where:

CC is the Contracted Capacity in MW;

- 14.2.10 The Offtaker shall use its reasonable endeavours to mitigate its losses in relation to any failure by the Generator to provide Available Data.

## 15 Maintenance Outages and Availability

### 15.1 Planned Maintenance

- 15.1.1 The Generator shall use reasonable endeavours to give the Offtaker as much advance notice as reasonably practicable of its best estimate from time to time of any periods in which the Generator intends to carry out planned maintenance at the Facility or any other planned operations that may affect the levels of Electrical Output during the Contract Period (**Planned Maintenance**). Maintenance notified less than ten (10) Business Days in advance shall not constitute Planned Maintenance.
- 15.1.2 The Generator shall act as a Reasonable and Prudent Operator in deciding whether repairs and/or maintenance to the Facility are necessary and in carrying out such repairs and/or maintenance.
- 15.1.3 The Generator shall take account of any reasonable representations made by the Offtaker as to the proposed timing of repairs and/or maintenance to the Facility.
- 15.1.4 The Generator shall notify the Offtaker of any proposed changes (including postponements or cancellations) to any Planned Maintenance no later than 16:00 hours on the Business Day which is two (2) Business Days before the scheduled date of commencement of the Planned Maintenance. Any failure to provide such notice of any proposed changes to any Planned Maintenance in accordance with this Clause 15.1.4 shall result in such Planned Maintenance (in its totality) being deemed to be a Forced Outage.

### 15.2 Forced Outage

- 15.2.1 The Generator shall use its reasonable endeavours to notify the Offtaker within a reasonable time of the Generator becoming aware of a Forced Outage occurring or being required at the Facility where such Forced Outage is likely to result in a reduction in the Electrical Output from the Facility (**Forced Outage Notice**).
- 15.2.2 For the purposes of Clause 15.2.1, the Generator shall be deemed to be aware of a relevant situation to which that Clause refers provided that any of the Generator's Available Data systems, as applicable, are operational at the relevant time or the Generator has had actual notice of the situation.
- 15.2.3 The Generator shall act as a Reasonable and Prudent Operator in carrying out repairs and/or maintenance to rectify a Forced Outage.
- 15.2.4 The Generator shall use its reasonable endeavours to give the Offtaker as much advance notice as reasonably practicable of the Forced Outage ending and generation resuming (**Forced Outage End Notice**).

### 15.3 Communication of Planned Maintenance or Forced Outage

- 15.3.1 Notices to be given by the Offtaker under this Clause 15 shall be validly given if transmitted by e-mail to the Maintenance or Outage Person using the e-mail address specified at Schedule 1 (*Project Information*).

15.3.2 The Offtaker must appoint and retain a Maintenance or Outage Person for the duration of the Term. The Offtaker may change the Maintenance or Outage Person by serving notice on the Generator in accordance with Clause 22.2.3 (*Notice Details*). Such notice must contain the name, and e-mail address for the new Maintenance or Outage Person.

#### 15.4 Consequences of a failure by the Generator to provide the required notice

15.4.1 Subject to Clause 15.4.4, 15.4.5 and 15.4.6, if the Generator does not provide the required Forced Outage Notice or Forced Outage End Notice, the Generator shall pay the Offtaker, in accordance with the provisions of Clause 8 (*Billing and Payment*), the Outage Notification Failure Amount as liquidated damages as calculated in accordance with Clauses 15.4.2 and 15.4.3. The Parties confirm that this approach represents a genuine means of pre-estimating the Offtaker's loss. The sum payable to the Offtaker shall be calculated on the basis of the volume of electricity sold to the wholesale market by the Offtaker, provided that volume is a reasonable estimate of the metered output the Offtaker would have anticipated would be delivered by the Generator (**Data Estimate**).

15.4.2 If for a Settlement Period the Data Estimate exceeds the actual Electrical Output, the Available Data Failure Amount shall be calculated by the Offtaker as the System Buy Price minus the Market Reference Price for the relevant Settlement Period.

15.4.3 If for a Settlement Period the Data Estimate is less than the actual Electrical Output, the Available Data Failure Amount shall be calculated by the Offtaker as the Market Reference Price minus the System Sell Price for the relevant Settlement Period.

15.4.4 The liability of the Generator to the Offtaker under Clause 15.4.1 in pounds sterling shall not exceed the sum of the following calculation, for a single failure to provide the required Forced Outage Notice or Forced Outage End Notice:

$$\text{Liability Cap} = \text{CC} \times \text{Ave. MRP} \times 24 \text{ hours}$$

Where:

CC is the Contracted Capacity in MW;

Ave. MRP is the average Market Reference Price for the twelve (12) Months immediately preceding the date on which the Offtaker calculates its loss.

15.4.5 The liability from the Generator to the Offtaker under Clause 15.4.1 in pounds sterling shall not exceed the sum of the following calculation, for the duration of the Term:

$$\text{Liability Cap} = \text{CC} \times 2,500$$

where:

CC is the Contracted Capacity in MW;

15.4.6 The Offtaker shall use its reasonable endeavours to mitigate its losses in relation to any failure by the Generator to provide a Forced Outage Notice or a Forced Outage End Notice.

## 16 Force Majeure

16.1 Subject to the provisions of this Clause 16, a Party affected by Force Majeure (an **FM Affected Party**) shall be relieved from liability, and deemed not to be in breach of this Agreement, for any failure or delay in the performance of any of its obligations under this Agreement if and to the extent such failure or delay is directly attributable to the occurrence and continuance of such Force Majeure.

16.2 The FM Affected Party's relief from liability pursuant to Clause 16.1 is subject to and conditional upon:

- 16.2.1 the FM Affected Party giving notice promptly to the other Party of the nature and extent of the Force Majeure causing its failure or delay in performance; and
  - 16.2.2 the FM Affected Party using reasonable endeavours to mitigate the effects of the Force Majeure, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations under this Agreement as soon as reasonably practicable.
- 16.3 In addition to its notification obligation pursuant to Clause 16.2.1, the FM Affected Party shall give notice promptly to the other Party (to the extent that such information is available) of:
- 16.3.1 the steps being taken by the FM Affected Party to remove or mitigate the effect of the Force Majeure and to carry out its obligations under this Agreement;
  - 16.3.2 the anticipated date of resumption of performance of its obligations under this Agreement; and
  - 16.3.3 such other details relating to the Force Majeure and its effects as may be reasonably requested by the other Party,
- and, to the extent that such information is not available at the time a notice is given, the FM Affected Party shall provide such information to the other Party as soon as it becomes available.
- 16.4 The FM Affected Party shall give notice to the other Party every twenty (20) Business Days of any update to the information provided pursuant to Clause 16.3 and shall give notice promptly to the other Party upon it becoming aware of any material developments or additional material information relating to the Force Majeure and its effects.

## 17 Termination

### 17.1 Non-Default Termination

- 17.1.1 The Generator may, at any time, serve a written notice of termination on the Offtaker in accordance with this Clause 17.1.
- 17.1.2 A notice served under Clause 17.1.1 must specify the date and time on which this Agreement will terminate, which, unless otherwise agreed by both Parties, may not be earlier than:
  - (a) six (6) weeks after the date that the notice is served; and
  - (b) six (6) months following the Commencement Date.
- 17.1.3 If notice is validly given under this Clause 17.1, this Agreement will terminate on the date and time specified in the notice.

### 17.2 Events of Default

Event of Default means the occurrence at any time in relation to a Party (the **Defaulting Party**) of any of the following events:

- 17.2.1 an Insolvency Event;
- 17.2.2 the Party fails to pay any amount when due under this Agreement, and that failure is not remedied on or before the tenth (10<sup>th</sup>) Business Day after the other Party (the **Non-Defaulting Party**) serves a written demand for payment (which demand may only be made after the date on which the relevant amount became due), unless such amount is the subject of a bona fide dispute between the Parties;
- 17.2.3 the Party is in material breach of this Agreement (other than in respect of an obligation referred to in Clause 17.2.2) which is capable of remedy but is not remedied within forty (40) Business Days following the Non-Defaulting Party giving the Defaulting Party notice of that breach (which notice must refer to this Clause 17);

- 17.2.4 the Party is in material breach of this Agreement (other than in respect of an obligation referred to in Clause 17.2.2) which is incapable of remedy, provided the Non-Defaulting Party has given notice of the breach to the Defaulting Party (which notice must refer to this Clause 17);
  - 17.2.5 any representation or warranty made, or deemed to have been made, by the Party or any Qualifying Guarantor or Qualifying Issuer of the Party in this Agreement or any Credit Support document proves to have been false or materially misleading at the time it was made or deemed to be made;
  - 17.2.6 where the Party is the Generator, the Facility is disconnected or de-energised for a period of more than thirty (30) Business Days due to a breach by the Generator of the Connection Agreement;
  - 17.2.7 where the Party is the Offtaker, the Offtaker loses its Licence to supply electricity;
  - 17.2.8 the Party is in breach of the provisions of Clause 11 (*Credit Support*);
  - 17.2.9 a director, officer or senior manager of the Party commits or procures fraud, or aids, abets or counsels fraud (and fraud is in fact committed) in relation to the Agreement; and
  - 17.2.10 where the Party is the Offtaker, the Offtaker does not have an Additional BM Unit for the relevant GSP Group for which the registration has become effective under the BSC at the Commencement Date.
- 17.3 Termination following Event of Default
- 17.3.1 If, at any time, an Event of Default has occurred and is continuing in respect of the Defaulting Party, the Non-Defaulting Party may give notice to the Defaulting Party designating a date as an early termination date with respect to this Agreement (the **Early Termination Date**).
  - 17.3.2 A notice served under Clause 17.3.1 shall specify the relevant Event of Default and the Early Termination Date which may not be earlier than ten (10) Business Days after the date that the notice is served unless the Event of Default relied upon is an event set out in Clause 17.2.1 (*Insolvency*) or Clause 17.2.10 (*GSP Group*) or a breach of any of the warranties set out in Clause 27.1 or the undertaking in Clause 27.1.2(b) (*Anti-bribery and Corruption*) in which case the Early Termination Date may be such date as the Non-Defaulting Party specifies.
  - 17.3.3 If notice designating an Early Termination Date is validly given under this Clause 17.3.1 this Agreement will terminate on the Early Termination Date.

## 18 Consequences of Expiry or Termination

### 18.1 Survival of Rights

Termination or expiry of this Agreement shall be without prejudice to:

- 18.1.1 any other antecedent right, relief or remedy of the Parties arising out of or in connection with this Agreement prior to the date of termination; or
- 18.1.2 any accrued rights of the Parties under any provision of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination, including Clause 1 (*Definitions and Interpretation*), Clause 4 (*Transfer of Renewables Benefits*), Clause 5 (*Transfer Default*), Clause 6 (*Embedded Benefits and Negative GDUoS Charges*), Clause 7 (*Payments*), Clause 8 (*Billing and Payment*), Clause 9 (*Trading Disputes*), Clause 10 (*Set Off*), Clause 17 (*Termination*), Clause 18 (*Consequences of Expiry or Termination*), Clause 19 (*Limitation of Liability*), Clause 22 (*Notices*), Clause 23 (*Service of Process*), Clause 24 (*Confidentiality*), Clause 25 (*Dispute Resolution*),

Clause 26 (*Expert Determination*), Clause 27 (*General*), Clause 28 (*Governing Law and Jurisdiction*), Clause 29 (*Application of the NTC*).

## 18.2 Compensation on Termination

18.2.1 Where this Agreement is terminated in accordance with Clause 17.1 (*Non-Default Termination*), neither Party shall be entitled to any compensation for any losses caused to it by that termination.

18.2.2 Where this Agreement is terminated in accordance with Clause 17.3 (*Termination following Event of Default*), as soon as reasonably practicable after the Early Termination Date, the Non-Defaulting Party shall calculate the termination payment (**Termination Payment**), being the Loss it has suffered as a result of the termination.

## 18.3 Meaning of Loss

For the purposes of this Clause 18, **Loss** means an amount that the Non-Defaulting Party reasonably determines in good faith to be its total losses and costs in connection with:

18.3.1 the termination of this Agreement including any loss of bargain, cost of funding or, at the election of the Non-Defaulting Party (but without duplication), loss or cost incurred as a result of its terminating, liquidating, obtaining or re-establishing any related trading position (or any gain resulting from any of them) including the Non-Defaulting Party's reasonable legal fees and out-of-pocket expenses; and

18.3.2 losses and costs (or gains) in respect of any payment required to have been made and not made or non-compliance with the terms of this Agreement on or before the Early Termination Date,

Loss shall include the Non-Defaulting Party's reasonable legal fees and out-of-pocket expenses provided that such fees and expenses can be evidenced to the Defaulting Party.

## 18.4 Calculation of Loss

The following principles shall apply to the calculation of Loss:

18.4.1 a Party shall not be required to enter into any replacement agreement in order to determine its Loss;

18.4.2 the Non-Defaulting Party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading traders in the England and Wales wholesale electricity market who are independent of the Parties; and

18.4.3 where a Party's Loss is negative it shall be deemed to be zero (0).

## 18.5 Payment of Termination Payment

18.5.1 The Non-Defaulting Party shall send the Defaulting Party an invoice for the Termination Payment together with reasonable supporting evidence within twenty (20) Business Days of the termination of this Agreement pursuant to Clause 17.3.

18.5.2 The Defaulting Party shall pay to the Non-Defaulting Party an amount equal to the Termination Payment within ten (10) Business Days of receiving the invoice which shall bear interest in accordance with Clause 8.5 (*Default Interest*); and

18.5.3 The Non-Defaulting Party may set off the Termination Payment against any payment due, or that will become due, after the Early Termination Date, in respect of Electrical Output. If an amount is unascertained, the Non-Defaulting Party may reasonably estimate the amount to be set off. Where such an estimate is included, a reconciliation payment shall be made by the relevant Party once the amount is ascertained.

18.5.4 The right to receive the Termination Payment shall (without prejudice to Clause 18.1 (*Survival of Rights*)) be the Non-Defaulting Party's exclusive remedy for losses caused to it by such termination.

## 18.6 Actions on Termination

18.6.1 Five (5) Banking Days prior to the expiry of this Agreement or on earlier termination (for whatever reason), the Generator and the Offtaker shall use their respective reasonable endeavours to:

- (a) arrange for a person other than the Offtaker to be the Registrant in respect of the Facility Metering System; and
- (b) cancel or nullify, or procure the cancellation or nullification of, any Metered Volume Reallocation Notifications which reallocate Electrical Output from the Facility to the Offtaker,

in each case, as soon as reasonably practicable after the Term ends.

18.6.2 Without prejudice to Clause 18.6.1, the Offtaker shall pay the Generator the applicable System Sell Price for any Electrical Output in any period following the expiry or earlier termination of this Agreement in which:

- (a) the Offtaker remains the Registrant of the Facility Metering Equipment; or
- (b) a Metered Volume Reallocation Notification remains in place which reallocates Electrical Output from the Facility to the Offtaker.

## 19 Limitation of Liability

### 19.1 Exclusion of indirect loss

19.1.1 Subject to Clause 19.1.2, neither Party shall be liable to the other Party pursuant to this Agreement, in tort (including negligence and/or breach of statutory duty) or otherwise at law for:

- (a) any loss, damage, cost or other expense to the extent that the same does not arise naturally from the breach and cannot reasonably be supposed to have been in the contemplation of the Parties at the Agreement Date as the probable result of such breach; or
- (b) any special, indirect or consequential loss including any such loss which constitutes loss of use, loss of goodwill, loss of profit or loss of revenue, in each case incurred by the other Party in respect of any breach of the terms of this Agreement save to the extent expressly provided for in Clause 5.3 and Clause 18.3.

19.1.2 Clause 19.1.1 shall not operate so as to prejudice or override the express terms of any obligation to pay, or indemnity, or costs reimbursement provision contained within this Agreement.

### 19.2 Liability Caps

19.2.1 Each Party's liability to the other Party for loss resulting from physical damage to property arising in connection with the subject matter of this Agreement (whether resulting from breach of this Agreement, breach of statute, negligence or otherwise) shall be limited, for each incident or series of connected incidents, to an amount equal to the greater of

- (a) the Contracted Capacity multiplied by £1,000/MW; or
- (b) one hundred thousand pounds (£100,000),

(the **Aggregate Liability Cap**).

19.2.2 Each Party's liability to the other Party pursuant to, or in connection with, this Agreement shall be limited to the Aggregate Liability Cap.

### 19.3 Imbalance Charges

Without prejudice to the Offtaker's right to claim damages for breach of Clauses 14 (*Forecast and Data Provision*) and 15 (*Maintenance Outages and Availability*), the Offtaker shall be responsible for all Imbalance Charges associated with the Contracted Electrical Output.

19.4 Nothing in this Agreement shall exclude or limit the liability of a Party:

19.4.1 for death, personal injury caused by any negligent act or omission, fraud, fraudulent misrepresentation or any other liability which cannot be limited or excluded by law; or

19.4.2 to pay amounts (including interest on such amounts) pursuant to Clause 7 (*Payments*).

## 20 Warranties and Covenants

### 20.1 General Warranties

Each Party warrants to the other Party that as at the Agreement Date:

20.1.1 it is duly formed and validly existing under the laws of its jurisdiction of formation;

20.1.2 it has all requisite legal power and authority to execute this Agreement and to perform its obligations under it;

20.1.3 the execution, delivery and performance by that Party of this Agreement has been duly authorised by all requisite corporate action, and will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it is a party or by which it or its property may be bound; and

20.1.4 there are no actions, suits or proceedings pending or, to its knowledge, threatened, against or affecting it before any court or administrative body or arbitral tribunal that might materially adversely affect the ability of that Party to meet and carry out its obligations under this Agreement.

### 20.2 The Generator warrants:

20.2.1 that the information contained in Schedule 1 (*Project Information*) is true and accurate in all material respects;

20.2.2 that it calculated the Discount accurately and in good faith in accordance with the methodology for calculating the Discount set out in Schedule 1;

20.2.3 that it is the legal and beneficial owner of the Facility subject only to such the rights and benefits as have been assigned by way of security to or in favour of any Lender. (If the Facility generates using Baseload Technology, the provisions of paragraph 3 Schedule 3B shall apply); and

20.2.4 the Facility Metering Equipment will only register the output generated by the Facility and not any output from any other generating equipment.

### 20.3 General Undertakings

Each Party undertakes that it will:

20.3.1 comply with Applicable Law; and



- 20.3.2 be a party to and comply with all Industry Documents which are required for the performance of its obligations under this Agreement.
- 20.4 The Generator undertakes that it will:
- 20.4.1 at all times from the Agreement Date, be the legal and beneficial owner of the Facility subject only to any third party rights such the rights and benefits as have been assigned by way of security to or in favour of any Lender; and
- 20.4.2 keep records of the Identifiers for all LECs and REGOs transferred to the Offtaker under this Agreement for a period of 6 years following the date of the issue of the relevant certificate to which they relate.
- 20.5 The Offtaker undertakes that, where the CfD Agreement requires the Generator to provide any information or take any action, or procure the taking of any action, the Offtaker will provide such information or take such action as the Generator reasonably requires to allow it to comply with the CfD Agreement.
- 20.6 Operation of the Facility
- The Generator undertakes that it will:
- 20.6.1 operate and maintain, or procure the operation and maintenance of the Facility as a Reasonable and Prudent Operator with the aim of ensuring that that the Facility is available to generate and deliver the maximum Electrical Output at all times during the Term other than during periods of Planned Maintenance and during periods during which the operation of the Facility is curtailed in accordance with the terms of this Agreement or the provisions of Part 11 of the CfD Agreement;
- 20.6.2 acting as a Reasonable and Prudent Operator, take all reasonable steps to maximise the Electrical Output of the Facility other than during periods of Planned Maintenance, Forced Outages and during periods which the operation of the Facility is curtailed in accordance with the terms of this Agreement or the provisions of Part 11 of the CfD Agreement;
- 20.6.3 deliver all electricity generated by the Facility to the Delivery Point (less any parasitic auxiliary loads and reasonable losses incurred in delivering the electricity to the Delivery Point);
- 20.6.4 at all times procure that:
- (a) the Facility Metering Equipment at all times accurately records all output electricity generated by the Facility; and
- (b) all input electricity used by the Facility is accurately metered, excluding any electricity used by a generating station of which the Facility forms a part.
- (c) if the Facility forms part of a larger generating station, that the input electricity for the whole generating station is accurately recorded at all times;
- 20.6.5 ensure that all accreditations for Renewables Benefits are maintained until the expiry or earlier termination of this Agreement or the relevant Renewables Benefit ceasing to be the subject of this Agreement, whichever is the earlier;
- 20.6.6 without prejudice to the generality of Clause 20.6.1,
- (a) use reasonable endeavours to ensure that each and every Renewables Benefit that is capable of being received or accrued by the Generator is received or accrued by it; and
- (b) provide to the Competent Authority all the information that is necessary to enable Renewables Benefits to be received or accrued and comply with all requests from the Competent Authority.

## 21 Transfer of Rights

### 21.1 Prohibition on Assignment

Subject to Clause 21.2 (*Assignment by way of Security*) a Party may not assign or transfer to any person any of its rights or obligation in respect of this Agreement without the prior written consent of the other Party.

### 21.2 Assignment by way of Security

The Generator shall be entitled, without the consent of the Offtaker, to assign all (but not part) of its rights and benefits under this Agreement by way of security to or in favour of any Lender.

### 21.3 Direct Agreement

21.3.1 At the request of the Generator the Offtaker shall, within 5 Business Days of the Generator's written request, enter into a Direct Agreement with any Lender in whose favour the Generator assigns its rights under this Agreement in accordance with Clause 21.2 (*Assignment by way of Security*).

21.3.2 The provisions of Clauses 17 (*Termination*) and 18 (*Consequences of Termination*) shall be subject to the terms of any Direct Agreement.

## 22 Notices

### 22.1 Form of notices

Any notice to be given pursuant to this Agreement shall be effective only if it is in writing and is in English. Unless otherwise expressly stated, emails are not permitted.

### 22.2 Notice details

22.2.1 The notice details of the Parties as at the Agreement Date are set out in Schedule 1 (*Project Information*).

22.2.2 Unless otherwise expressly stated, the notice details set out as General (Offtaker) and General (Generator) in Schedule 1 (*Project Information*) shall be used for all notices under this Agreement.

22.2.3 A Party may change its notice details given Schedule 1 (*Project Information*) by giving notice to the other Party. The change shall be effective from the later of:

- (a) the date, if any, specified in the notice as the effective date for the change; or
- (b) the date falling three (3) Business Days after deemed receipt of the notice.

### 22.3 Permitted delivery methods and deemed delivery

22.3.1 This table sets out:

- (a) permitted delivery methods for sending a notice to a Party under this Agreement; and
- (b) for each permitted delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this Clause 22.3.1 have been satisfied and subject to the provisions in Clause 22.3.2.

Permitted delivery method	Deemed delivery date and time
Delivery by hand.	The time of delivery.
Pre-paid first class post or other next	09:00 on the third (3 <sup>rd</sup> ) Business Day after

Permitted delivery method	Deemed delivery date and time
working day delivery service providing proof of postage.	posting.
Pre-paid airmail	09:00 on the fifth (5 <sup>th</sup> ) Business Day after posting.
Fax	when received in legible form, the time of transmission.
Email (only where notice is expressly permitted by email)	when received in legible form.

22.3.2 For the purpose of this Clause 22.3 and calculating deemed receipt:

- (a) all references to time are to local time in the place of deemed receipt; and
- (b) if deemed receipt would occur in the place of deemed receipt on a day which is not a day on which banks are open for general business in the place of deemed receipt, receipt is deemed to take place at 09.00 on the day on which banks are next open for general business in the place of deemed receipt after the date of delivery.

22.4 Email permitted

22.4.1 Either Party may deliver a Monthly Statement pursuant to Clause 8.1 (*Monthly Statement*) by email.

22.4.2 The Generator may notify Forecasts pursuant to Clause 14.1.1 (*Forecast and Data Provision*) by email.

22.4.3 The Generator may notify Planned Maintenance and Forced Outages by email in accordance with Clause 15.3.1 (*Maintenance Outages and Availability*).

22.5 This Clause 22 shall not apply in relation to any document relating to service of process.

## 23 Service of Process

23.1 This Clause 23 shall apply to this Agreement in respect of a Party only if it is expressed to apply that Party in Schedule 1 (*Project Information*).

23.2 Service Agent

The Generator or Offtaker (as applicable) irrevocably appoints the Generator Service Agent or Offtaker Service Agent (as applicable, and, in each case, a **Service Agent**) to be its agent for the receipt of Service Documents, and Service Documents may be effectively served on it in England and Wales by service on the relevant Service Agent effected in any manner permitted by the Civil Procedure Rules.

23.3 Replacement Service Agent

23.3.1 If a Service Agent at any time ceases for any reason to act as such, the Generator or Offtaker (as applicable) shall appoint a replacement agent for the receipt of Service Documents having an address for service in England or Wales and shall notify the other Party of the name and address of the replacement agent (and that replacement agent shall be the Service Agent from the date of such notice).

23.3.2 If the Generator or Offtaker (as applicable) fails to make an appointment and notification under Clause 23.3.1, the other Party shall be entitled, by notice to the defaulting Party to appoint a replacement agent to act on behalf of the defaulting Party for the receipt of Service Documents.

## 24 Confidentiality

### 24.1 Disclosure of Confidential Information

24.1.1 The Parties shall treat this Agreement and all information which is confidential or proprietary in nature and which is provided under or in connection with this Agreement (**Confidential Information**) as confidential.

24.1.2 Each Party may only use the Confidential Information of the other Party for the purposes of carrying out its obligations under this Agreement.

24.1.3 Neither Party shall disclose Confidential Information of the other Party without the prior written consent of the other Party, save that consent shall not be required for disclosure:

- (a) to directors, employees or Affiliates (including their respective directors and employees) of a Party, provided that they in turn are required by that Party to treat the Confidential Information as confidential on terms substantially the same as those set out in this Clause 24;
- (b) to persons professionally engaged by a Party, provided that they in turn are required by that Party to treat the Confidential Information as confidential on terms substantially the same as those set out in this Clause 24;
- (c) to the extent required or requested by any Competent Authority;
- (d) to any bank, other financial institution or rating agency (including their advisers) to the extent required in relation to the financing of a Party's business activities, provided that the bank, or other financial institution or rating agency (and their advisers), as the case may be, is required by that Party to treat the Confidential Information as confidential in favour of the other Party on terms substantially the same as those set out in this Clause 24;
- (e) to the extent required by any Applicable Laws or the rules and regulations of any recognised stock exchange, or to any Expert to the extent necessary for the resolution of any dispute arising under this Agreement;
- (f) by the Generator to a person intending to acquire an interest of the Facility, provided that the intending assignee or acquirer in turn is required to treat the Confidential Information as confidential in favour of the other Offtaker on terms substantially the same as those set out in this Clause 24;
- (g) to a person intending to acquire an interest in a Party or that Party's Affiliate provided that the intending assignee or acquirer in turn is required by that Party to treat the Confidential Information as confidential in favour of the other Party on terms substantially the same as those set out in this Clause 24; or
- (h) to the extent required by the Transmission System Operator, any Transmission Licensee; a Distribution System Operator, the Data Collector, the Data Aggregator, the Meter Operator, the Metered Volume Reallocation Notification Agent, the BSC Company (as such term is defined in the BSC), a BSC Agent or the Settlement Administration Agent for the purposes of the performance of this Agreement; or
- (i) to the extent that the Confidential Information is in or lawfully comes into the public domain other than by breach of this Clause 24.

24.1.4 Prior to any disclosure of any Confidential Information under Clause 24.1.3, the Party proposing to make the disclosure shall use reasonable endeavours to notify the other Party of the Confidential Information to be disclosed, provided that it is lawful and reasonably practicable in the circumstances to do so.

### 24.2 Liability for disclosure

In the case of disclosures to third parties permitted by Clauses 24.1.3(a), 24.1.3(b), 24.1.3(d), and/ or 24.1.3(f) (*Disclosure of Confidential Information*), the Party relying on such Clause shall be liable for any disclosure by such third parties otherwise than in accordance with this Clause 24.

## **25 Dispute Resolution**

- 25.1 Each Party shall, at each stage of the Dispute Resolution Procedure, endeavour in good faith to resolve all Disputes through negotiation.
- 25.2 If a Dispute arises either Party may give notice to the other Party to initiate the Dispute Resolution Procedure (**Dispute Notice**). A Dispute Notice shall include a description of the subject matter of the Dispute and the issues to be resolved.
- 25.3 Within five (5) Business Days of service by either party of a Dispute Notice, each Party shall refer the Dispute to the Senior Representatives for resolution.
- 25.4 If the Senior Representative are unable to resolve the Dispute within fifteen (15) Business Days of the date of the Dispute Notice, or within ten (10) Business Days of the reference to the Senior Representative pursuant to Clause 25.3:
- 25.4.1 if the Dispute is an Expert Determinable Dispute, Clause 26 (*Expert Determination*) shall apply; or
- 25.4.2 in respect of all other Disputes, the Dispute shall be determined by the courts in accordance with Clause 28.2 (*Governing Law and Jurisdiction*).
- 25.5 Notwithstanding any other provision of the Dispute Resolution Procedure, either Party may at any time commence or prosecute proceedings against the other Party in the Courts of England for an order for obtain urgent injunctive or equitable relief including specific performance.

## **26 Expert Determination**

### **26.1 Appointment of Expert**

- 26.1.1 Either Party may, subject to Clause 25 (*Dispute Resolution*), refer an Expert Determinable Dispute to be determined by an Expert. Such referral shall be effected by either Party giving a notice to the other Party.
- 26.1.2 The Parties shall seek to agree on the appointment of an Expert and the terms of his appointment.
- 26.1.3 If the Parties are unable to agree on an Expert or the terms of his appointment within five (5) Business Days of either Party serving details of a suggested Expert on the other, either Party shall then be entitled to request the President for the time being of the Law Society of England and Wales to appoint an Expert with an appropriate level of experience relevant to the subject matter of the Dispute and for the President for the time being of the Law Society of England and Wales to agree with the Expert the terms of his appointment. Such appointment shall be made within twenty (20) Business Days of a request being made by either Party.

### **26.2 Replacement of Expert**

- 26.2.1 If the Expert is at any time unable or unwilling to act, or does not deliver the decision within the time required by this Clause 26 then:
- (a) either Party may apply to the President for the time being of the Law Society of England and Wales to discharge the Expert and to appoint a replacement Expert with the required expertise; and
- (b) this Clause 26 shall apply to the new Expert as if he were the first Expert appointed.

## 26.3 Determination Procedure

- 26.3.1 The Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he considers just or appropriate, including instructing professional advisers, experts and/or taking Counsel's opinion to assist him in reaching his determination.
- 26.3.2 The Parties shall be entitled, but not obliged to make written submissions to the Expert and will provide (or procure that others provide) the Expert with such assistance, information and documents as the Expert reasonably requires for the purpose of reaching a decision.
- 26.3.3 Each Party shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel and/or things as the other Party may reasonably require to make a submission under Clause 26.3.2.
- 26.3.4 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the Expert Determinable Dispute which may include any issue involving the interpretation of any provision of this Agreement, his jurisdiction to determine the matters referred to him (including whether the Dispute is an Expert Determinable Dispute) and/or his terms of reference.
- 26.3.5 The Expert is required to prepare a written decision and give notice (including a copy) of the decision to the Parties within three (3) months of the matter being referred to the Expert.
- 26.3.6 The Expert's determination shall be final and binding on the Parties, except in the event of fraud or manifest error.
- 26.3.7 The Expert may, in his determination, provide that one or other or both of the Parties pay the Expert's fees and expenses and each other's costs (including the fees and expenses of external advisers and consultants) in such proportions as he may specify on the general principle that the allocation of costs should reflect the Parties' relative success and failure in the determination of the Dispute. Without such a direction, each Party shall bear its own costs and the fees and expenses of the Expert shall be paid in equal shares by the Parties.

## 27 General

### 27.1 Anti-bribery and corruption

- 27.1.1 Each Party warrants that:
- (a) its officers, directors and employees are subject to policies and procedures of which are designed to prevent the occurrence of bribery and corrupt conduct;
  - (b) it shall use reasonable endeavours to procure compliance with such policies and procedures by its officers, directors and employees; and
  - (c) neither it or any of its officers, directors or employees are subject to any current investigation being undertaken by a Competent Authority (including the Financial Conduct Authority).
- 27.1.2 Each Party:
- (a) acknowledges that its conduct may cause the other to incur liability under Applicable Laws relating to bribery and corrupt practices;
  - (b) agrees that it has not and undertakes that it shall not engage in any activity either directly or indirectly which has the purpose or effect of, or would mean acceptance of or acquiescence in, either directly or indirectly, public or commercial bribery, other unlawful or improper means of obtaining or retaining

business or commercial advantage or the improper performance of any function or activity; and

- (c) shall promptly report to the other Party:
  - (i) any breach or suspected breach of this Clause 27.1;
  - (ii) all requests or demands for any undue financial or other advantage of any kind received by it in connection with the performance of the Agreement; and
  - (iii) as soon as possible and to the extent lawful, if it or any of its officers, directors or employees become subject to any investigation being undertaken by a Competent Authority (including the Financial Conduct Authority).

## 27.2 Entire Agreement

This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes and extinguishes any agreements, understandings and/or representations previously given or made with respect thereof other than those included in this Agreement.

## 27.3 Severability

If any provision or part of a provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect in any jurisdiction, that shall not affect or impair:

27.3.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or

27.3.2 the legality, validity or enforceability in other jurisdictions of that or any other provision of this Agreement.

## 27.4 Third Party Rights

No provisions of this Agreement shall be enforceable by any person other than the Parties under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

## 27.5 No waiver

27.5.1 No waiver by either Party of any breach by the other Party of this Agreement shall operate unless expressly made in writing, and no such waiver shall be construed as a waiver of any other breach.

27.5.2 No delay or omission by either Party in exercising any right, power or remedy provided by law or pursuant to this Agreement shall:

(a) affect that right, power or remedy; or

(b) operate as a waiver of it.

27.5.3 The single or partial exercise by either Party of any right, power or remedy provided by law or pursuant to this Agreement shall not, unless otherwise expressly stated, preclude any other or further exercise of it or the exercise of any other right, power or remedy.

## 27.6 No interest in Facility

Nothing in this Agreement is intended to create, or shall create, a legal or beneficial interest in the Facility in favour of any person other than the Generator.

## 27.7 No joint venture or partnership

Nothing in this Agreement and no action taken by the Parties pursuant to this Agreement shall constitute a partnership, joint venture or agency relationship between the Parties.

27.8 Further assurance

Each Party shall, at its own cost, do or procure the doing of all things and execute or procure the execution of all further documents necessary to give full force and effect to and securing to the other Party the full benefit of the rights, powers and benefits conferred upon it under or pursuant to this Agreement.

27.9 Variation

No variation of this Agreement shall be effective unless it is in writing and signed by each Party.

27.10 Counterparts

This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, but shall not be effective until each Party has executed at least one (1) counterpart. Each counterpart shall constitute an original but all of the counterparts together shall constitute one and the same instrument.

**28 Governing Law and Jurisdiction**

28.1 This Agreement and any matter, claim or dispute arising out of or in connection with it or its subject matter or formation (including any Dispute) shall be governed by and construed in accordance with English Law.

28.2 Subject to Clause 9 (*Trading Disputes*) and Clause 25 (*Dispute Resolution*), the Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

**29 Application of the NTC**

29.1 To the extent appropriate, the Offtaker is acting on behalf of the Generator's Distribution System Operator to make an agreement with the Generator. The agreement is that both the Generator and the Distribution System Operator accept the national terms of connection and agree to keep to its conditions. This will happen from the time that the Generator enters into this Agreement. The national terms of connection is a legal agreement. It sets out the rights and duties in relation to the connection at which the Generator's Distribution System Operator accepts electricity from the Facility. If the Generator requires a copy of the national terms of connection or has any queries in relation to it the Generator is directed to contact the Energy Networks Association, 6<sup>th</sup> Floor, Dean Bradley House, 52 Horseferry Road, London SW1P 2AF or to see the website at [www.connectionterms.co.uk](http://www.connectionterms.co.uk).

This Agreement has been entered into on the date stated at the beginning of it.

Signed for and on behalf of

Signed for and on behalf of

[insert name of Generator]

[insert name of Offtaker]

Signed:

Signed:

.....

.....

Name:

.....

Name:

.....



Position: .....

Position: .....

Date: .....

Date: .....

## SCHEDULE 1

### Project Information

For the purposes of this Schedule, contractually binding language is in regular font and non-contractually binding narrative is in italics.

The Facility	
Description of Facility	<i>[Describe Facility by specifying particulars including name of Facility and number of turbines or equivalent.]</i>
CfD Agreement Number	[●]
Specified Expiry Date	<i>[As set out in the CfD Agreement]</i>
Premises	Address:
	Ordnance Survey Grid Reference or its equivalent:
Final Installed Capacity	<i>[Specify the Final Installed Capacity of the Facility as notified to the CfD Counterparty] [●] MW</i>
OLR Application Capacity (If Final Installed Capacity is less than 100MW, then this figure must be the same as the Final Installed Capacity)	<p><i>[Facilities with a capacity equal to, or greater than, 100MW may choose to opt in only a proportion of their capacity to the OLR. In this case they should enter the total capacity that the Generator wishes to be covered by one or more agreements under the OLR. This figure must be at least 50% of the Final Installed Capacity]</i></p> <p><i>If a facility's Final Installed Capacity is less than 100MW, they are not able to split their output in this way and this figure must equal the Final Installed Capacity.] [●]MW</i></p>
Contracted Capacity	<p><i>[If the Final Installed Capacity is less than 100MW then this figure should equal the Final Installed Capacity.</i></p> <p><i>If the Final Installed Capacity is equal to, or greater than, 100MW this figure is calculated as follows:</i></p> <p><i>OLR Application Capacity / Number of BPPAs</i></p> <p style="padding-left: 40px;"><i>Where the number of BPPA is equal to:</i></p> <p style="padding-left: 40px;"><i>(OLR Application Capacity / 100) x 3 / 2,</i></p> <p style="padding-left: 40px;"><i>rounded to the nearest whole number as follows. Where the first figure after the decimal point is 5 or more, round the number up, otherwise, round it down.</i></p> <p><i>The figure entered for Contracted Capacity should be consistent with the Accuracy Level of Metering, as stated below]</i></p> <p>[●]MW</p>

Contracted Electrical Output	<p><i>[State the percentage of the output of the Facility that will be transferred to the Offtaker under this Agreement. This should be Contracted Capacity / the Final Installed Capacity. This should be expressed as a percentage to the nearest whole percent because that is how the MVRN process under the BSC operates and MVRNs are the means will be used to effect the transfers.</i></p> <p><i>If the Final Installed Capacity is less than 100MW then this figure should be 100%.] [●]%</i></p>		
Effective Discount	<p><i>The Generator will need to calculate the Effective Discount on the following basis and will insert the relevant figure in this Schedule below.</i></p> <p><i>The Generator must base the Effective Discount on the CPI for January immediately preceding the start of the Financial Year in which the Generator submits its Expression of Interest. For the avoidance of doubt, if the Expression of Interest is submitted on 1 April, then the Effective Discount is calculated by reference to CPI for January in that calendar year.</i></p> <p><i>The Effective Discount, if correctly calculated prior to the Agreement Date, will apply throughout the Term.</i></p> <p><i>The Generator must calculate the Effective Discount in accordance with the following formula:</i></p> <p><i>Effective Discount = Dbase * <math>\Pi_t</math></i></p> <p><i>where:</i></p> <p><i>Dbase is the Initial Discount; and</i></p> <p><i><math>\Pi_t</math> is the Inflation Factor calculated by reference to the most recent Indexation Anniversary.</i></p> <p><i>Effective Discount: £[●]/MWh.</i></p>		
Technology Type	<p><i>Indicate relevant technology type from the list below (each technology type shall have the meaning given to such term in the EA 2013 Regulations):</i></p>		
	<p><b>Baseload Technology</b></p>		<p><b>Intermittent Technology</b></p>
	<p>Advanced Conversion Technology with CHP</p>		<p>Hydroelectricity</p>
	<p>Advanced Conversion Technology without CHP</p>		<p>Offshore Wind</p>
	<p>Anaerobic Digestion with CHP</p>		<p>Onshore Wind</p>
	<p>Anaerobic Digestion without CHP</p>		<p>Solar PV</p>
	<p>Biomass Conversion</p>		<p>Tidal Barrage</p>

	Dedicated Biomass with CHP	Tidal Lagoon
	Energy From Waste with CHP	Tidal Range
	Geothermal with CHP	Tidal Stream
	Geothermal without CHP	Wave
	Landfill Gas	
	Sewage Gas	
Do you hold a Generation Licence?	Yes/No	
Metering Arrangements	Are you connected to the Transmission System or to the Distribution System	[Transmission System / Distribution System]
	Metering arrangements:	[SVA / Offtaker CVA / Generator CVA]
	GSP Group (if connected to the Distribution System):	<i>[The Generator will be able to obtain this information from the relevant DNO.]</i>
	A.BMU Details (if connected to the Distribution System):	<i>[This should be filled in by the Offtaker, as the Generator will not know the A.BMU details prior to knowing the identity of the Offtaker]</i>
	BMU Details (if connected to the Transmission System):	
	MSID Details:	
	Make of meter:	
	Model/type of meter:	
	Details of any metering standards to which the metering conforms:	

	Accuracy level of metering:	
LEC / REGO Accreditation Details		
Negative Price Trigger (applicable only to Facilities that operate Intermittent Technology)	<i>[Specify the price below which the Generator does not wish to be obliged to generate power] £[●]/MWh (in £5 increments)</i>	
Ramp Up Rate (applicable only to Facilities that operate Intermittent Technology)	<i>[Specify the rate at which the Generator can reasonably return the Facility to being fully operational following a Curtailment]</i>	
Ramp Down Rate (applicable only to Facilities that operate Intermittent Technology)	<i>[Specify the rate at which the Generator can reasonably decrease generation by the Facility prior to a Curtailment commencing]</i>	
<b>Timing</b>		
Preferred Commencement Date	[●] <i>[this date must be within the parameters set out in the relevant licence conditions]</i>	
<b>Data</b>		
Available Data	<i>[Specify for example Cumulative Output/Turbine Output/Turbine Availability/Wind Speed/ Wind Direction]</i>	
Transfer Method	<i>[Specify for example SCADA/File Transfer Protocol (FTP)]</i>	
Data Format	<i>[Specify for example applicable SCADA data protocol or xml/csv for FTP transfer]</i>	
Historical output data for Intermittent Technology projects	<i>[The Generator shall provide to the Offtaker historic data, detailing the electrical export of the Facility for a period of not less than the preceding two calendar years. If the Facility, commissioned less than two calendar years before Agreement Date, the Generator shall provide such data as is available from the period commencing on the date the Facility began commercial operations to the Agreement Date.]</i>	
<b>Planned Maintenance</b>		
[Date]	<i>[Planned Activity and impact on output]</i>	
<b>Caps</b>		

Aggregate Liability Cap	<i>[The Generator should refer to Clause 19.2.1 for the calculation to complete this field]</i> £[●]	
<b>Notice Details</b>		
General (Offtaker)	Name:	[●]
	Address:	[●]
General (Generator)	Name:	[●]
	Address:	[●]
Curtailed Person (if applicable)	Name:	[●]
	Telephone no. monitored 24/7:	[●]
	E-mail address monitored 24/7:	[●]
Maintenance and Outage Person	Name:	[●]
	Telephone no. monitored 24/7:	[●]
	E-mail address monitored 24/7:	[●]
Senior Representatives (Offtaker)	Name:	[●]
	Address:	[●]
Senior Representatives (Generator)	Name:	[●]
	Address:	[●]
<b>The Generator</b>		
Full legal name of Generator		
Type of entity	<i>[For example state if it is a limited company, public limited company, partnership]</i>	
Proof of existence	<i>[For example for an incorporated entity provide the Certificate of</i>	

	<i>Incorporation]</i>
Jurisdiction in which the entity is incorporated	
Most recent Audited Accounts/Annual Financial report	
Copy of the VAT Certificate and VAT number	
List of Directors	
List of shareholders (in the form of an official document or certified copy of the shareholders register) and voting rights, if not in the same proportion to the shareholding	
Correspondence address and proof of address	
Constitutional documentation relating to the legal entity - memorandum and articles of association (or equivalent)	
Ownership structure through to ultimate beneficial owner(s)	<i>[Provide an organogram or similar document that explains the corporate structure together with a list of the directors for each "component"]</i>
Beneficial owners standing behind any nominee director or shareholder in the ownership structure (if applicable)	

## SCHEDULE 2

### Direct Agreement

**THIS DIRECT AGREEMENT** (this **Deed**) is dated [●] and made as a deed between:

- (1) [●] (the **Offtaker**);
- (2) [●] as security trustee for and on behalf of the Finance Parties (the **Security Trustee**); and
- (3) [●] (the **Generator**).

### BACKGROUND

- (A) The Offtaker has entered into the Contract with the Generator.
- (B) [The Generator has entered into the Facilities Agreement with, amongst others, the Security Trustee and the Lenders pursuant to which the Lenders have agreed, on and subject to the terms and conditions of the Facilities Agreement, to make available the loan facilities specified therein.
- (C) It is requirement for the continued availability of funding under the Facilities Agreement that the Parties enter into this Deed.
- (D) The Security Trustee is entering into this Deed as [agent for the Finance Parties and as trustee and holder of the security created by the Generator in favour of the Finance Parties]/[security trustee for the Finance Parties].<sup>1</sup>
- (E) The Parties intend this document to take effect as a deed.

**IT IS AGREED** as follows:

- 1 Definitions and Interpretation
- 1.1 Definitions

In this Deed, unless otherwise defined herein or the context requires otherwise:

<b>Affiliate</b>	means, in relation to a Party, any holding company or subsidiary company of the relevant Party from time to time or any company which is a subsidiary company of a holding company of that Party from time to time (and the expressions "holding company" and "subsidiary" shall have the meanings respectively ascribed to them by section 1159 of the Companies Act 2006);
<b>Appointed Representative</b>	means the Representative identified in the Step-In Notice;
<b>Business Day</b>	means a day (other than a Saturday or Sunday) on which banks are open for general business in London;
<b>Offtaker Enforcement Action</b>	(a) the termination or revocation of the Contract by the Offtaker (including the giving of any notice under or pursuant to clause 17.3.1 ( <i>Termination following Event of Default</i> ) of the Contract by the Offtaker to the Generator terminating the Contract;
	(b) the suspension or withholding (as applicable) by

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<sup>1</sup> Note to draft: Recitals and related definitions to conform to underlying funding arrangements.



the Offtaker of [any payments under the Contract] [payments under or pursuant to [●] of the Contract]; and

- (c) the commencement by the Offtaker of any proceedings for, or the petitioning by the Offtaker for, the winding-up, administration, dissolution or liquidation of the Generator (or the equivalent procedure under the law of the jurisdiction in which the Generator is incorporated, domiciled or resident or carries on business or has assets);

<b>Offtaker Enforcement Notice</b>	means a notice given by the Offtaker to the Security Trustee specifying the Offtaker Enforcement Action which the Offtaker intends to take and, in reasonable detail, the grounds for such intended action;
<b>Contract</b>	means the Backstop Power Purchase Agreement dated [●] between the Offtaker and the Generator in relation to the Facility;
<b>Contract Default</b>	has the meaning given to event of default in the Contract;
<b>Event of Default</b>	means any event or circumstance the occurrence of which is treated as an event of default under the Facilities Agreement;
<b>Facilities Agreement</b>	means the facilities agreement dated [●] between, amongst others, the Lenders, the Security Trustee, the Facility Agent and the Generator; <sup>2</sup>
<b>Facility</b>	has the meaning given to that term in the Contract;
<b>Facility Agent</b>	means the Facility Agent appointed under the Facilities Agreement;
<b>Finance Documents</b>	means the Facilities Agreement and the other documents defined as Finance Documents in the Facilities Agreement; <sup>3</sup>
<b>Finance Parties</b>	means the parties with the benefit of security under the Security Documents and “ <b>Finance Party</b> ” means any of them; <sup>4</sup>
<b>Finance Party Discharge Date</b>	means the date on which all of the Finance Party Obligations have been fully and irrevocably paid or discharged and no further Finance Party Obligations are capable of becoming outstanding;
<b>Finance Party Obligations</b>	means any obligations owed to the Finance Parties in connection with the Finance Documents;
<b>Generator’s Proceeds Account</b>	means the account [called [●]] held by the Generator at [ <i>insert name of bank</i> ] with the account number [●] and sort code [●] or such other account and bank as the

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<sup>2</sup> Note to draft: Definition to conform to underlying funding arrangements.

<sup>3</sup> Note to draft: Definition to conform to underlying funding arrangements.

<sup>4</sup> Note to draft: Definition to conform to underlying funding arrangements.

	Generator and the Security Trustee may notify to the Offtaker from time to time; <sup>5</sup>
<b>Lender</b>	means each Lender under the Facilities Agreement; <sup>6</sup>
<b>Novation Agreement</b>	means a novation agreement entered into pursuant to Clause 9.3 ( <i>Substitution Procedure</i> ) between the Offtaker, the Generator and the Substitute substantially in the form set out in Annex 2 ( <i>Form of Novation Agreement</i> );
<b>Novation Date</b>	has the meaning given to that term in Clause 9.3.2 ( <i>Substitution Procedure</i> );
<b>Novation Notice</b>	means a notice given by the Security Trustee to the Offtaker pursuant to Clause 9.1 ( <i>Proposed Substitution</i> ) specifying: <ul style="list-style-type: none"> <li>(a) the identity of the proposed Substitute; and</li> <li>(b) the Proposed Novation Date;</li> </ul>
<b>Party</b>	means a party to this Deed;
<b>Proposed Novation Date</b>	means the date proposed by the Security Trustee in a Novation Notice for the novation to a Substitute of the Generator's rights and obligations under the Contract;
<b>Proposed Step-In Date</b>	means the date proposed by the Security Trustee in a Step-In Notice upon which the Appointed Representative shall give a Step-In Undertaking as contemplated by Clause 6.2 ( <i>Step-In Undertaking</i> );
<b>Representative</b>	means: <ul style="list-style-type: none"> <li>(a) the Facility Agent, the Security Trustee, any Finance Party and/or any of their Affiliates;</li> <li>(b) an administrator, administrative receiver, receiver, receiver and manager or any other insolvency official of the Generator and/or any or all of its assets appointed under the Finance Documents;</li> <li>(c) a person directly or indirectly owned or controlled by the Facility Agent, the Security Trustee and/or the Finance Parties or any of them; or</li> <li>(d) any other person approved by the Offtaker;</li> </ul>
<b>Security Documents</b>	means any documents creating or evidencing any existing or future security interest granted by the Generator to the Security Trustee to secure the payment and discharge of any or all Finance Party Obligations;
<b>Step-In Date</b>	means the date on which the Appointed Representative gives a Step-In Undertaking to the Offtaker as contemplated by Clause 6.2 ( <i>Step-In</i>

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<sup>5</sup> Note to draft: Definition to conform to underlying funding arrangements.

<sup>6</sup> Note to draft: Definition to conform to underlying funding arrangements.

*Undertaking*);

**Step-In Decision Period**

means a period commencing on the date of receipt by the Security Trustee from the Offtaker of any Offtaker Enforcement Notice and ending on the first to occur of the Step-In Date, the Novation Date and the date falling one hundred and twenty (120) days after the commencement of the Step-In Decision Period;

**Step-In Notice**

has the meaning given to that term in Clause 6.1 (*Step-In Notice*);

**Step-In Period**

means the period from the Step-In Date to and including the first to occur of:

- (a) the expiry of the notice period in any notice given under Clause 8 (*Step-Out*);
- (b) the Novation Date;
- (c) the Finance Party Discharge Date; and
- (d) the date of any termination or revocation of the Contract by the Offtaker in accordance with this Deed and the Contract;

**Step-In Undertaking**

means an undertaking substantially in the form set out in Annex 1 (*Form of Step-In Undertaking*) given by the Appointed Representative;

**Step-Out Date**

means the date upon which a Step-In Period ends;

**Step-Out Notice**

has the meaning given to that term in Clause 8.1 (*Step-Out*);

**Substitute**

means a person nominated by the Security Trustee pursuant to Clause 9.1 (*Proposed Substitution*) or Clause 9.2 (*Objection to Substitute*), as the case may be, as the transferee of the Generator's rights and obligations under the Contract; and

1.2 Interpretation

1.2.1 Unless a contrary indication appears, any reference in this Deed to:

- (a) the "**Offtaker**", the "**Security Trustee**", the "**Generator**", any "**Lender**", any "**Finance Party**" or any "**Appointed Representative**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (b) an agreement includes a deed and instrument;
- (c) an agreement is a reference to it as amended, supplemented, restated, novated or replaced from time to time;
- (d) a provision of law is a reference to that provision as amended, extended or re-enacted and includes all laws and official requirements made under or deriving validity from it;
- (e) any "**obligation**" of any person under this Deed or any other agreement or document shall be construed as a reference to an obligation expressed to be assumed by or imposed on it under this Deed or, as the case may be, that other agreement or document (and "**due**", "**owing**" and "**payable**" shall be similarly construed);

- (f) a “**Clause**”, “**paragraph**” or “**Annex**” is a reference to a clause or paragraph of, or an annex to, this Deed;
- (g) a “**person**” includes any individual, firm, company, corporation, unincorporated organisation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or any other entity;
- (h) time is a reference to time in London, England; and
- (i) words in the singular shall be interpreted as including the plural, and *vice versa*.

1.2.2 The words “**include**” and “**including**” shall be construed without limitation to the generality of the preceding words.

1.2.3 Headings are for ease of reference only.

## 2 Consent to Security and Payment Instructions

### 2.1 Consent to Security

2.1.1 The Generator hereby gives notice to the Offtaker that, under or pursuant to the Security Documents, the Generator has assigned or charged by way of security to the Security Trustee its rights, title and interest in and to the Contract.

2.1.2 The Offtaker acknowledges receipt of notice of, and consents to, the grant of the security interests referred to in paragraph 2.1.1 above.

2.1.3 The Offtaker acknowledges that neither the Security Trustee nor any Finance Party shall have any obligations or liabilities to the Offtaker (whether in place of the Generator or otherwise) in respect of the Contract as a result of any security interest created under the Security Documents except to the extent that the Security Trustee or such Finance Party incurs such obligations or liabilities pursuant to Clause 6 (*Step-In*), Clause 7 (*Step-In Period*), Clause 8 (*Step-Out*) or Clause 9 (*Novation*).

### 2.2 No other Security Interests

The Offtaker confirms that, as at the date of this Deed, it has not received notice of any other security interest granted over the Generator's rights, title and interest in and to the Contract [other than [●]].<sup>7</sup> The Offtaker agrees to notify the Security Trustee as soon as reasonably practicable if it receives any such notice.

### 2.3 Payment of Monies

2.3.1 Each of the Generator and the Security Trustee irrevocably authorises and instructs the Offtaker, and the Offtaker agrees, to pay the full amount of each sum which it is obliged at any time to pay to the Generator under or in respect of the Contract (whether before or after termination of the Contract) to the Generator's Proceeds Account or, following the occurrence of an Event of Default and at any time thereafter,<sup>8</sup> to such other account in the United Kingdom that the Security Trustee may direct in writing to the Offtaker on not less than ten (10) Business Days' notice.

2.3.2 Each payment made in accordance with paragraph 2.3.1 above shall constitute a good discharge *pro tanto* of the obligation of the Offtaker to make the relevant payment to the Generator.

<sup>7</sup> Note to draft: To be included if this is in fact the case.

<sup>8</sup> Note to draft: Delete/include as applicable.

2.3.3 The authority and instructions set out in paragraph 2.3.1 above shall not be revoked or varied by the Generator without the prior written consent of the Security Trustee, copied to the Offtaker.

## 2.4 Contract

The Parties agree and acknowledge that the exercise of the rights of the Security Trustee or the Appointed Representative, as the case may be (a) under the Contract during the Step-in Period; and (b) in connection with the security interests granted by the Generator shall not amend, waive or suspend the provisions of the Contract and the rights of the Offtaker under the Contract, except as expressly set out under this Deed and any Step-In Undertaking.

## 2.5 Statement as to Event of Default conclusive

The Offtaker may treat any statement or notice from the Security Trustee or the Lenders that an Event of Default has occurred as conclusive evidence of the occurrence of the Event of Default.

## 3 Notification by Offtaker

### 3.1 Notification of Default

3.1.1 The Offtaker shall, as soon as reasonably practicable, send to the Security Trustee a copy of any notice of default under the Contract served by the Offtaker on the Generator.

3.1.2 The Offtaker shall have no obligation to notify the Security Trustee of a default under the Contract where the Offtaker has not served a notice of default on the Generator.

### 3.2 Cure Right

The Security Trustee may, at any time outside a Step-In Period, take or procure the taking of any action on behalf of the Generator in circumstances where:

3.2.1 the Generator's failure to take such action would be a breach of the Contract or would be or could reasonably be expected to contribute towards the occurrence of a Contract Default; or

3.2.2 the Generator has breached the Contract or a Contract Default has arisen,

and any such action will be deemed to have been taken by the Generator for the purposes of the Contract and any breach or Contract Default will be cured, remedied or will not arise (as appropriate) if such breach or Contract Default would have been cured or remedied or would not have arisen (as appropriate) if the Generator had taken such action itself.

### 3.3 Offtaker Enforcement Action

Subject to Clause 7.2 (*Offtaker Enforcement Action during a Step-In Period*), the Offtaker shall not take any Offtaker Enforcement Action without first giving an Offtaker Enforcement Notice to the Security Trustee.

### 3.4 No Waiver

The provisions of this Clause 3 shall not constitute any waiver as against the Generator of the grounds for the intended exercise of the Offtaker's rights to take any Offtaker Enforcement Action or any of its other rights regarding such Offtaker Enforcement Action and the giving of a Offtaker Enforcement Notice shall not release the Generator from its obligations or liabilities under the Contract.

## 4 Notification by the Security Trustee

### 4.1 Notice of Event of Default

The Security Trustee shall, as soon as reasonably practicable, send to the Offtaker a copy of any notice of an Event of Default served by or on behalf of the Lenders on the Generator.

#### 4.2 Notices from the Security Trustee

After receiving notification of an Event of Default from the Security Trustee, the Offtaker shall accept as validly given by the Generator any notices or demands pursuant to and in accordance with the Contract given or made by the Security Trustee or Appointed Representative, as the case may be, provided, in each case, such notice or demand would have been validly given had it been given by the Generator itself. The Generator consents to the giving of such notices or demands and acknowledges and agrees that the service of such notices or demands by the Security Trustee or Appointed Representative, as the case may be, shall not affect the rights and remedies of the Offtaker under the Contract.

### 5 Step-In Decision Period

#### 5.1 Suspension of Rights and Remedial Action

During a Step-In Decision Period the Offtaker shall not take any Offtaker Enforcement Action (other than any Offtaker Enforcement Action taken pursuant to Clause 5.3 (*Revival of Remedies*) in relation to any prior Step-In Decision Period).

#### 5.2 Statement of Amounts Due

5.2.1 As soon as reasonably practicable, and in any event within thirty (30) days, after the commencement of a Step-In Decision Period, the Offtaker shall give the Security Trustee a statement of any amounts owed by the Generator to the Offtaker and any outstanding performance obligations of the Generator under the Contract of which the Offtaker is aware as at the date of the Offtaker Enforcement Notice.

5.2.2 For the avoidance of doubt, a failure by the Offtaker to include in any such statement an amount owed or a performance obligation outstanding under the Contract shall not limit in any way the obligations or liabilities of the Generator under the Contract or the obligations or liabilities of the Security Trustee or any Appointed Representative or Substitute under or pursuant to this Deed.

#### 5.3 Revival of Remedies

5.3.1 If a Offtaker Enforcement Notice has been given and:

- (a) neither the Step-In Date nor the Novation Date has occurred before expiry of the Step-In Decision Period; or
- (b) the Step-In Date has occurred before expiry of the Step-In Decision Period but a Step-Out Date has subsequently occurred without there being a Novation Date,

the Offtaker shall be entitled to take Offtaker Enforcement Action without serving a further Offtaker Enforcement Notice if the default, event or circumstance in respect of which the Offtaker gave the Offtaker Enforcement Notice is subsisting or has not been remedied or cured (whether by the Generator, Security Trustee or any other person).

### 6 Step-In

#### 6.1 Step-In Notice

6.1.1 At any time during a Step-In Decision Period, the Security Trustee may give notice to the Offtaker (a **Step-In Notice**) specifying:

- (a) the Appointed Representative who will give a Step-In Undertaking to the Offtaker; and

- (b) the Proposed Step-In Date (which shall be a date no earlier than five (5) Business Days after the date of the Step-In Notice).

6.1.2 The Proposed Step-In Date must fall on or prior to the expiry of the Step-In Decision Period.

6.1.3 The Security Trustee may revoke a Step-In Notice at any time prior to the Step-In Date by notice to the Offtaker, provided that the relevant Step-In Decision Period shall be deemed to have expired on delivery of such notice to the Offtaker.

## 6.2 Step-In Undertaking

Unless otherwise agreed by the Offtaker in its sole and absolute discretion, the Security Trustee shall procure that the Appointed Representative gives a Step-In Undertaking to the Offtaker on the Proposed Step-In Date.

## 7 Step-In Period

### 7.1 Step-In Period

During the Step-In Period:

7.1.1 the Offtaker shall deal only with the Appointed Representative and not the Generator and the Offtaker shall have no liability to the Generator for compliance with the instructions of the Appointed Representative or the Security Trustee in priority to those of the Generator;

7.1.2 the Offtaker agrees that payment by the Appointed Representative to the Offtaker of any sums due under the Contract, or performance by the Appointed Representative of any other of the Generator's obligations under the Contract, shall comprise good discharge *pro tanto* of the Generator's payment and other obligations under the Contract; and

7.1.3 the Offtaker shall owe its obligations under the Contract to the Generator and the Appointed Representative jointly but performance by the Offtaker in favour of the Appointed Representative alone shall be a good discharge *pro tanto* of its obligations under the Contract.

### 7.2 Offtaker Enforcement Action during a Step-In Period

7.2.1 During the Step-In Period, the Offtaker shall be entitled to take Offtaker Enforcement Action if:

- (a) the Appointed Representative breaches the terms of the Step-In Undertaking; and
- (b) such breach would, save for the terms of Clause 5.1 (*Suspension of Rights and Remedial Action*), entitle the Offtaker to take the relevant Offtaker Enforcement Action under or in connection with the Contract.

7.2.2 The provisions of Clause 3.3 (*Offtaker Enforcement Action*) shall not apply to any Offtaker Enforcement Action taken pursuant to this Clause 7.2.

## 8 Step-Out

8.1 The Appointed Representative or the Security Trustee shall give the Offtaker at least ten (10) Business Days' prior written notice of the date on which the Appointed Representative will step out (a **Step-Out Notice**).

8.2 Upon the Step-Out Date (howsoever occurring):

8.2.1 all of the Appointed Representative's obligations and liabilities to the Offtaker under the Step-In Undertaking will be cancelled, other than those for which the Appointed

Representative is liable under the Step-In Undertaking and which arose or accrued prior to the Step-Out Date;

8.2.2 all of the Appointed Representative's rights against the Offtaker under the Step-In Undertaking will be cancelled, other than those which arose or accrued prior to the Step-Out Date; and

8.2.3 without prejudice to sub-paragraph 8.2.1 above, the Appointed Representative will be released from all obligations and liabilities to the Offtaker under the Contract and this Deed.

8.3 The Generator shall continue to be bound by the terms of the Contract notwithstanding the occurrence of the Step-Out Date and the Offtaker shall continue to be entitled to exercise and enforce all of its rights and remedies under the Contract as against the Generator.

## 9 Novation

### 9.1 Proposed Substitution

9.1.1 Subject to paragraph 9.1.2 below, at any time:

(a) during a Step-In Decision Period or a Step-In Period; or

(b) during which an Event of Default is subsisting (and the Offtaker may treat as conclusive evidence that an Event of Default is subsisting any notice served by the Security Trustee pursuant to this paragraph 9.1.1),

the Security Trustee may give a Novation Notice to the Offtaker.

9.1.2 The Security Trustee shall give the Offtaker not less than fifteen (15) Business Days' prior notice of the Proposed Novation Date.

### 9.2 Objection to Substitute

The Offtaker may only object to a proposed Substitute if the entry into a Novation Agreement or the Contract with the proposed Substitute would be unenforceable or illegal and the Offtaker gives notice of its objection to the Security Trustee within ten (10) Business Days of receipt by the Offtaker of the Novation Notice, in which case the Security Trustee may propose an alternative Substitute.

### 9.3 Substitution Procedure

9.3.1 On the Proposed Novation Date or such later date (if any) as the identity of the Substitute is determined pursuant to Clause 9.2 (*Objection to Substitute*) the Offtaker and the Generator shall each enter into a Novation Agreement with the Substitute.

9.3.2 The novation of the Generator's rights and obligations under the Contract pursuant to a Novation Agreement shall be effective from the date (the **Novation Date**) which is the latest of the Proposed Novation Date, such later date (if any) as the identity of the Substitute is determined pursuant to Clause 9.2 (*Objection to Substitute*) and the date upon which each of the following conditions is satisfied, namely:

(a) the Offtaker having received, in form and content satisfactory to the Offtaker acting reasonably:



- (i) a certified copy of the constitutional documents and certificate of incorporation and any certificate of incorporation on change of name of the Substitute; and
    - (ii) evidence of compliance by the Substitute with “know your customer” or similar identification procedures or checks under all applicable laws and regulations pursuant to the transactions contemplated by the Novation Agreement and the Contract;
  - (b) the Offtaker having received a legal opinion addressed to the Offtaker, in form and content reasonably satisfactory to the Offtaker, from the legal advisers to the Substitute confirming that the Substitute:
    - (i) is duly formed and validly existing under the laws of the jurisdiction of its 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, the Contract;
  - (c) the Offtaker being satisfied acting reasonably that the Substitute has all necessary licences and consents in place to perform its obligations in the Contract; and
  - (d) the Substitute being or having become the legal and beneficial owner of the Facility, subject only to any third party rights arising by reason of any security interest created or subsisting over or in respect of the Facility.
- 9.3.3 The Offtaker shall notify the Security Trustee and the Substitute of the Novation Date as soon as reasonably practicable after it has occurred.
- 9.3.4 At the Security Trustee’s cost, the Offtaker shall, subject to and in accordance with clause 21.3 (*Direct Agreement*) of the Contract, enter into a direct agreement with the Security Trustee (or such other representative of the lenders lending to such Substitute) and the Substitute on substantially the same terms as this Deed and effective from the Novation Date.

## 10 Duration

- 10.1 This Deed shall commence on the date hereof and shall continue in full force and effect until the first to occur of:
- 10.1.1 the Finance Party Discharge Date;
  - 10.1.2 expiry of the term of the Contract; and
  - 10.1.3 the termination or revocation of the Contract (in accordance with the Contract and this Deed),

in each case without prejudice to any accrued rights and obligations arising pursuant to this Deed existing at the date of termination. The Security Trustee shall promptly notify the Offtaker of the occurrence of the Finance Party Discharge Date.

## 11 Changes to Parties

### 11.1 Benefit of Deed

This Deed shall benefit and be binding on the Parties, their respective successors and any permitted assignee or transferee of all or some of a Party’s rights and obligations under this Deed.

### 11.2 Assignment

Save as provided in Clause 9 (*Novation*) or Clause 11.3 (*Assignment by the Security Trustee*), neither the Security Trustee nor the Generator may assign, transfer, novate or otherwise dispose

of all or any of their respective rights, benefits or obligations under this Deed without the prior consent of the other Parties.

### 11.3 Assignment by the Security Trustee

The Security Trustee may assign or transfer its rights under this Deed to any successor Security Trustee without the consent of the Offtaker.

### 11.4 Generator's Acknowledgement

The Generator joins in this Deed to acknowledge and consent to the arrangements set out in it and agrees not knowingly to do or omit to do anything that may prevent either of the other Parties from enforcing its rights under this Deed.

## 12 Notices

### 12.1 Communications in Writing

Any communications to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### 12.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is as follows:

#### 12.2.1 Offtaker

Address: [●]

Fax No: [●]

Attention: [●]

#### 12.2.2 Security Trustee

Address: [●]

Fax No: [●]

Attention: [●]

#### 12.2.3 Generator

Address: [●]

Fax No: [●]

Attention: [●]

or any substitute address, fax number or department or officer as the Party may notify to the other Parties on not less than five (5) Business Days' notice.

### 12.3 Delivery

Any communication or document made or delivered to a Party under or in connection with this Deed will only be effective:

12.3.1 if by way of fax, when received in legible form; or

12.3.2 if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post (postage prepaid) in an envelope addressed to it at that address,

12.3.3 and, if a particular department or officer is specified as part of its address details provided under Clause 12.2 (*Addresses*), if addressed to that department or officer.

## 13 Miscellaneous

### 13.1 Amendments

This Deed may not be amended, waived, supplemented or otherwise varied unless in writing and signed by or on behalf of all of the Parties.

### 13.2 Remedies and Waivers

No failure to exercise, nor any delay in exercising, any power, right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

### 13.3 Partial Invalidity

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

### 13.4 No Partnership

Neither this Deed nor any other agreement or arrangement of which it forms part, nor the performance by the Parties of their respective obligations under any such agreement or arrangement, shall constitute a partnership between the Parties.

### 13.5 Counterparts

This Deed 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 Deed.

### 13.6 Third Party Beneficiaries

13.6.1 Save as provided in paragraph 13.6.2 below, this Deed is intended for the sole and exclusive benefit of the Parties.

13.6.2 The Contracts (Rights of Third Parties) Act 1999 is expressly excluded save for:

- (a) any rights of any Appointed Representative on and after the issue of a Step-In Undertaking by that Appointed Representative; or
- (b) any rights of any Substitute on and after any Novation Date under or in connection with Clause 9 (*Novation*),
- (c) in each case, as if they were a party to this Deed.

13.6.3 This Deed may be varied in any way and at any time by the Parties without the consent of any third party.

### 13.7 Entire Agreement

This Deed and the Contract constitute the entire agreement between the Parties with respect to the subject matter of this Deed.

13.8 Effect of this Deed

13.8.1 The Parties acknowledge and agree that the express or implied terms and conditions of this Deed shall, in the event of any inconsistency or conflict with the express or implied terms and conditions of the Contract, prevail over the relevant terms and conditions of the Contract.

13.8.2 Nothing in this Deed or the arrangements contemplated hereby shall prejudice the rights of any of the Finance Parties under the Finance Documents or any Security Documents or shall be construed as obliging the Security Trustee to exercise any of its rights under the Security Documents or under this Deed.

14 Governing Law and Jurisdiction

14.1 This Deed 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.

14.2 The Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligations arising out of or in connection with this Deed).

**IN WITNESS WHEREOF** this Deed has been duly executed and delivered as a deed on the date stated at the beginning of this Deed.<sup>9</sup>

**Offtaker**

---

<sup>9</sup> Note to draft: execution blocks to be amended as appropriate.

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

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation: .....

**Security Trustee**

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

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation: .....

**Generator**

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

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation: .....

**Annex 1**

**Form of Step-In Undertaking**

*[From the Appointed Representative]*

[Offtaker]

**[insert address]**

For the attention of:     the Directors

**[Date]**

Dear Sirs,

**DIRECT AGREEMENT (the Agreement)**

1. In accordance with clause 6 (*Step-In*) of the Agreement, we undertake to you that we will:
  - (a) pay, or procure payment, to you within three (3) Business Days of the date hereof any sum that is due and payable to you by the Generator but unpaid as of the date hereof;
  - (b) pay, or procure payment, to you any sum which becomes due and payable by the Generator to you pursuant to the terms of the Contract during the Step-In Period which is not paid by the Generator on the due date;
  - (c) perform or discharge, or procure the performance or discharge of, all outstanding performance obligations of the Generator which have arisen or fallen due prior to the date hereof:
    - (i) within ten (10) Business Days of the date hereof; or
    - (ii) if the performance or discharge of any obligation is being disputed pursuant to the provisions of the Contract, within ten (10) Business Days of the same being agreed or finally determined; and
  - (d) perform or discharge, or procure the performance or discharge of, any performance obligations of the Generator under the Contract which arise during the Step-In Period,

in each case in accordance with and subject to the terms of the Contract as if we were a party to the Contract in place of the Generator.

2. This Step-In Undertaking may be terminated by the giving of a Step-Out Notice to you in accordance with clause 8 (*Step-Out*) of the Agreement and shall automatically terminate upon the Step-Out Date, save that we shall continue to be liable to you for outstanding obligations and liabilities arising prior to termination in accordance with clause 8.2 (*Step-Out*) of the Agreement.
3. All capitalised terms used in this letter shall have the meanings given them in the Agreement.
4. This Step-In Undertaking 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 courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with it.

Yours faithfully,

.....  
For and on behalf of  
[Appointed Representative]

## Annex 2

### Form of Novation Agreement

**THIS NOVATION AGREEMENT** is dated [●] and made as a deed between:

- (1) [●] (the **Offtaker**);
  - (2) [●] (the **Generator**); and
  - (3) [●] (the **Substitute**),
- (together referred to as the **Parties**).

#### **BACKGROUND**

- (A) The Generator, the Offtaker and the Security Trustee have entered into an agreement (the **Direct Agreement**) dated [●] pursuant to which the Security Trustee has the right to require the rights and obligations of the Generator under the Contract to be novated to a Substitute.
- (B) The Substitute has been identified as the Substitute for the purposes of clause 9 (Novation) of the Direct Agreement.
- (C) This is the Novation Agreement referred to in clause 9.3 (*Substitution Procedure*) of the Direct Agreement.

**IT IS AGREED** as follows:

#### 1 Definitions and Interpretation

Unless a contrary indication appears, words and expressions defined, or defined by reference, in the Direct Agreement have the same meanings in this Agreement.

#### 2 Offtaker Release and Discharge

With effect from the Novation Date, the Offtaker releases and discharges the Generator 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 Offtaker and arising out of or in respect of the Contract, save for the Generator's obligations under clause 24 (*Confidentiality*) of the Contract. For the avoidance of doubt, the Offtaker does not release and discharge the Generator in relation to Liabilities, duties and obligations relating to the period prior to the Effective Date.

#### 3 Generator Release and Discharge

With effect from the Novation Date, the Generator releases and discharges the Offtaker 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 Generator and arising out of or in respect of the Contract. For the avoidance of doubt, the Offtaker does not release and discharge the Generator in relation to Liabilities, duties and obligations relating to the period prior to the Effective Date.

#### 4 Substitute Assumption of Liabilities

The Substitute undertakes to assume all the liabilities, duties and obligations of the Generator of every description contained in the Contract, 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 Generator under the Contract and to be bound by their terms and conditions in every way as

if the Substitute were named in the Contract as a party in place of the Generator from the date of the Contract.

## 5 Offtaker Agreement to Perform

The Offtaker agrees to perform all its duties and to discharge all its obligations under the Contract and to be bound by all the terms and conditions of the Contract in every way as if the Substitute were named in the Contract as a party in place of the Generator from the date of the Contract.

## 6 Replacement of Generator by Substitute

As from the Novation Date, reference to the Generator (by whatsoever name known) in the Contract shall be deleted and replaced by reference to the Substitute.

## 7 Outstanding Offtaker Claims

7.1 The Offtaker shall not take any Offtaker Enforcement Action by reason of any event notified in a Offtaker Enforcement Notice or any act or omission by the Security Trustee, any Appointed Representative and/or the Generator occurring prior to the Novation Date provided that the foregoing shall be without prejudice to the Offtaker's remedies (including without limitation the right to take Offtaker Enforcement Action) in respect of:

7.1.1 outstanding amounts properly due and payable to the Offtaker on the Novation Date and which remain unpaid on the expiry of three (3) Business Days' notice from the Offtaker to the Substitute that such amounts are due and payable; and

7.1.2 to the extent not covered by paragraph 7.1.1 above, any breach of a Step-In Undertaking or the Contract by an Appointed Representative, the Generator or the Security Trustee occurring prior to the Novation Date which has not been remedied upon the expiry of ten (10) Business Days' notice from the Offtaker to the Substitute that such breach has not been remedied.

## 8 Continuance of the Contract

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

## 9 Further Assurance

The Parties shall perform such further acts and execute and deliver such further documents as may be required by law or reasonably requested by each other to implement the purposes of and to perfect 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 Substitute pursuant to the Contract shall be served in accordance with clause 22 (*Notices*) of the Contract and to:

*[insert Substitute contact details]*

## 13 Counterparts



This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original but all the counterparts together shall constitute one and the same instrument.

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.<sup>10</sup>

**Offtaker**

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

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation: .....

**Generator**

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

in the presence of

Signature: .....

Print Name: .....

Address: .....

---

<sup>10</sup> Note to draft: execution blocks to be amended as appropriate.

Occupation: .....

**Substitute**

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

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation: .....

## SCHEDULE 3A

### Optional Clauses: Facility that operates Intermittent Technology

- 1 Purpose
- 1.1 The purpose of this Schedule is to specify additional provisions that relate to a Facility where it generates electricity from Intermittent Technology.
- 1.2 Defined terms used in this Schedule have the meanings given to them in Clause 1 and as follows:
- |                                  |  |
|----------------------------------|--|
| <b>Curtailment Period Output</b> | means any Contracted Electrical Output delivered to the Delivery Point during a Settlement Period specified in a valid Negative Price Notice;  |
| <b>Negative Price Notice</b>     | has the meaning given at paragraph 2 ( <i>Negative Revenue Protection</i> );   |
| <b>Negative Price Trigger</b>    | means any of the indices used to calculate the Market Reference Price falling below the level set out as such in Schedule 1 ( <i>Project Information</i> ) subject to any amendment under Clause 2.6 ( <i>Negative Revenue Protection</i> ); |
| <b>Ramp Down Rate</b>            | has the meaning given to it at Schedule 1 ( <i>Project Information</i> );  |
| <b>Ramp Up Rate</b>              | has the meaning given to it at Schedule 1 ( <i>Project Information</i> );  |
- 2 Negative Revenue Protection
- 2.1 If the Generator has specified a Negative Price Trigger and the Negative Price Trigger is reached, the Offtaker shall:
- 2.1.1 give notice to the Generator (**Negative Price Notice**); and
- 2.1.2 not sell the Contracted Electrical Output for the relevant Settlement Period.
- 2.2 A Negative Price Notice must be received by the Generator no later than 13:00 hours on the Trading Day preceding the Trading Day to which that notice applies.
- 2.3 When issuing a Negative Price Notice, the Offtaker shall specify the Settlement Periods on the relevant day for which the Negative Price Trigger has been reached.
- 2.4 Following receipt of a Negative Price Notice, the Generator may elect to Curtail the Facility for the specified Settlement Period(s).
- 2.5 A notice will only be validly issued under paragraph 2.1 if:
- 2.5.1 it is made by telephone to the Curtailment Person using the telephone number specified at Schedule 1 (*Project Information*); and
- 2.5.2 no more than one hour later, is made by e-mail to the Curtailment Person using the e-mail address specified at Schedule 1 (*Project Information*).

- 2.6 If the Generator does not cease the Curtailment and make the Facility available to generate following the final Settlement Period for which Curtailment is required according to the Negative Price Notice, this shall be treated as a Forced Outage in accordance with Clause 15.2 (*Forced Outage*).
- 2.7 The Generator shall be entitled to change the amount set out as the Negative Price Trigger in Schedule 1 (*Project Information*) by giving notice to the Offtaker in accordance with Clause 22 (*Notices*) which shall have effect on and from the later of the date of expiry or termination of the CfD Agreement;
- 2.8 If the Generator Curtails the Facility in accordance with a Negative Price Notice, the Offtake acknowledges that the Generator may decrease generation during the Settlement Period(s) prior to the Curtailment commencing at the Ramp Down Rate.
- 2.9 At the end of any Curtailment or other outage, the Offtaker acknowledges that the Generator shall return the Facility to operation at the Ramp Up Rate.
- 2.10 The Offtaker may give a Negative Price Notice pursuant to Clause 2.5.2 (*Negative Revenue Protection*) by email.
- 3 Payments
- 3.1 Where this Schedule applies, sub-clauses 7.1.1(a) and 7.1.1(b) shall be amended as follows:
- 7.1.1(a) in respect of all Contracted Electrical Output other than Excess Output and Curtailment Period Output, the Market Reference Price less the Effective Discount for each MWh of Contracted Electrical Output; and
- 7.1.1(b) in respect of Excess Output and Curtailment Period Output, the System Sell Price for each MWh of Excess Output and Curtailment Period Output.

## SCHEDULE 3B

### Optional Clauses: Facility that operates Baseload Technology

- 1 Purpose
  - 1.1 The purpose of this Schedule is to specify additional provisions that relate to a Facility where it generates electricity from Baseload Technology.
  - 1.2 Defined terms used in this Schedule have the meanings given to them in Clause 1.
- 2 Forecast and Data Provision
  - 2.1 The provisions of Clause 14.1 (*Forecast and Data Provision*) shall not apply and the following provisions shall apply in their place:
    - 14.1.1 On the first Business Day of the Term and on the first Business Day of each Month during the Term, the Generator shall notify the Offtaker of the Generator's non-binding estimate of the likely future availability and output of the Facility (each a **Forecast**) to be provided in the format reasonably requested by the Offtaker from time to time.
    - 14.1.2 The Generator shall ensure that each Forecast is prepared to the standards of a Reasonable and Prudent Operator and is as accurate as reasonably practicable (having regard to the data available to the Generator from time to time), but the Offtaker acknowledges that such Forecasts shall not constitute a guarantee or warranty by the Generator of the capacity that will be available and output.
- 3 Maintenance Outages and Availability
  - 3.1 The provisions of Clause 15.1.1 (*Planned Maintenance*) shall not apply and the following provisions shall apply in their place:
    - 15.1 The Generator shall use reasonable endeavours to give the Offtaker as much advance notice as reasonably practicable of its best estimate from time to time of any periods in which the Generator intends to carry out planned maintenance at the Facility or any other planned operations that may affect the levels of Electrical Output during the Contract Period (**Planned Maintenance**). Maintenance notified less than one season in advance shall not constitute Planned Maintenance.
- 4 Termination
  - 4.1 The provisions of Clause 17.1 (*Termination*) shall not apply.
- 5 Warranties and Covenants
  - 5.1 The provisions of Clause 20.2 (*Warranties and Covenants*) shall not apply and the following provisions shall apply in their place:
    - 21.2 The Generator warrants that:
      - 21.2.1 that the information contained in Schedule 1 (*Project Information*) is true and accurate in all material respects;
      - 21.2.2 it is the legal and beneficial owner of the Facility subject only to such the rights and benefits as have been assigned by way of security to or in favour of any Lender;
      - 21.2.3 the Facility Metering Equipment will only register the output generated by the Facility and not any output from any other generating equipment; and

21.2.4 it has in place one or more contracts to meet its entire requirement for fuel that would enable the Generator to operate the Facility at the Contracted Capacity during each Settlement Period throughout the Term at the Final Installed Capacity.

## SCHEDULE 4

### Optional Clauses: Transmission Connected and/or Licensed Facilities

#### Part A: Additional Provisions

- 1 Purpose
- 1.1 The purpose of Part A of this Schedule is to specify additional provisions that apply where the Facility is directly connected to a Transmission System or the Generator holds a Licence in relation to the operation of the Facility.
- 1.2 Defined terms used in this Schedule have the meanings given to them in Clause 1 or paragraph 2, as appropriate.
- 2 Additional Definitions
- 2.1 The following definitions shall apply for the purposes of this Schedule:
- |                       |  |
|-----------------------|--|
| <b>Energy Account</b> | has the meaning given to it in the BSC; and              |
| <b>Offtaker MVRN</b>  | has the meaning given at paragraph 4.1 of this Schedule. |
- 3 Meter Operator, Data Collector and Data Aggregator
- 3.1 Where the Facility is registered in the Central Meter Registration Service, the Parties acknowledge that the appointment of the Data Collector and Data Aggregator shall be undertaken by BSCCo and the provisions of Clause 12.4.3 shall not apply.
- 4 MVRN
- 4.1 Where the Generator is the Registrant of the Facility Metering Equipment, the Parties shall ensure that at all times an MVRN is in place with the effect that the Contracted Electrical Output is transferred to the Energy Account of the Offtaker (**Offtaker MVRN**).
- 4.2 The Parties agree that they will take all steps that are required to keep the Offtaker MVRN in place throughout the Term.
- 4.3 The Parties will notify each other forthwith on becoming aware of any event occurring in relation to the Offtaker MVRN that has the effect of causing the Offtaker MVRN to cease to be in full force and effect and both Parties will use all reasonable endeavours to ensure that the Offtaker MVRN is restored within twenty four hours.
- 4.4 Neither Party shall be entitled to issue a volume notification nullification request in relation to the Offtaker MVRN or otherwise cancel the Offtaker MVRN unless they have validly given notice to terminate the Agreement.
- 4.5 In the event that either Party seeks to issue a volume notification nullification request in respect of or otherwise cancel the Offtaker MVRN (other than those permitted by paragraph 5.4 above), it is agreed that the other Party shall be entitled to seek equitable remedies of specific performance and/or an injunction to reinstate the Offtaker MVRN or prevent its removal and the other Party shall not object to the granting by a relevant court of such equitable remedies.
- 5 Events of Default
- 5.1 A new Clause 17.2.7 shall be added before the existing Clause 17.2.8 (which shall become the new Clause 17.2.8) as follows:
- "where the Party is the Generator, the Generator loses its Licence to generate electricity; and"

#### Part B: Multiple Offtakers for one Facility

- 15 Purpose
- 1.1 The purpose of Part B of this Schedule is to specify additional provisions that relate to a Facility where more than one Backstop Power Purchase Agreement may be in effect at any one time.
- 1.2 Defined terms used in this Schedule have the meanings given to them in Clause 1 or paragraph 2, as appropriate.
- 2 Additional Definitions
- 2.1 The following definitions shall apply for the purposes of this Schedule:
- Lead Party** has the meaning given to it in the BSC; and
- Trading Dispute** has the meaning given to it in the BSC.
- 2.2 Where this Schedule applies, the definition of Excess Output shall be amended to read as follows:
- "Excess Output means, for any Settlement Period any Electrical Output for that period in excess of an amount equal to the sum of the (Final Installed Capacity \* Contracted Electrical Output) \* zero point five (0.5) hours;"
- 3 Transfer of Renewable Benefits
- 3.1 The provisions of Clause 4 shall only apply to the extent that the LECs, REGOs and Inseparable Benefits apply to the Contracted Electrical Output and the Offtaker acknowledges that save where a transfer occurs in breach of the terms of this Agreement, the LECs, REGOs and other Inseparable Benefits that apply to any output transferred to any other Offtaker shall not be subject to the terms of this Agreement.
- 4 Lead Party
- 4.1 In all circumstances, the Parties shall ensure that the Generator is appointed as the Lead Party in respect of the BM Unit associated with the Facility.
- 5 Termination of previous Backstop PPA
- 5.1 Where this Schedule applies and this Agreement has been entered into following the termination of a previous Backstop PPA by the Generator as a result of an event of default by the offtaker under that Backstop PPA then the provisions of Clause 2.1 shall be amended to read as follows:
- "Subject to Clause 2.2 this Agreement shall come into force on the Agreement Date and shall, unless terminated earlier in accordance with its terms automatically expire on the date that the Backstop PPAs that were in force on the date this Agreement came into effect expire."



## SCHEDULE 5

### Optional Clauses: Private Network Generator

#### 1 Purpose

1.1 The purpose of this Schedule is to specify additional provisions that relate to a Facility where the Generator is a Private Network Generator.

1.2 Defined terms used in this Schedule have the meanings given to them in Clause 1 or paragraph 2, as appropriate.

#### 2 Additional Definitions

2.1 The following definitions shall apply for the purposes of this Schedule:

**Boundary Point Metering System** has the meaning given in the Conditions;

**Dual Scheme Facility** has the meaning given in the Conditions;

**Imported Input Electricity** has the meaning given in the Conditions;

**Private Network Generator** The Generator shall be deemed to be a **Private Network Generator** if:

(a) it is exempt from the requirement to hold a licence for the generation of electricity pursuant to the Electricity (Class Exemptions from the Requirement for a License) Order 2001;

(b) the Facility generates electricity solely or partly for supply to a Private Network; and

(c) the Facility Metering Equipment is not, and is not required to be, registered in accordance with the BSC (except, where the Facility is a Dual Scheme Facility, in respect of the Boundary Point Metering System used to measure the Imported Input Electricity).

**Private Network** has the meaning given to it in the BSC; and

#### 5 Operation of the Facility

5.1 Where this Schedule applies, an additional Clause 20.6.7 shall be included as follows:

20.6.7 provide to the Offtaker all the information that is reasonably necessary to enable the Offtaker to verify that the Generator is complying with Clauses 20.6.1 and 20.6.2 notwithstanding that the Generator is a Private Network Generator.

## SCHEDULE 6

### Form of Parent Company Guarantee

This PARENT COMPANY GUARANTEE (this **Guarantee**) is made on ..... 20●

Between:

- (1) [●] (the **Guarantor**); and
- (2) [●] (the **Generator**);

**WHEREAS**, the Generator and [*insert name of Offtaker*] (a company incorporated in ●, company number ●) (the **Offtaker**) have entered into a Backstop Power Purchase Agreement dated on or around the date of this Guarantee (such agreement as from time to time modified, amended and supplemented, being the **Agreement**).

**NOW THEREFORE**, the Guarantor hereby covenants and agrees as follows:

#### 1 Guarantee and Indemnity

1.1 Subject to the provisions hereof and to the applicable payment periods in the Agreement, the Guarantor hereby irrevocably and unconditionally:

- (a) guarantees the timely payment when due of all amounts payable by the Offtaker to the Generator under or in relation to the Agreement (the **Payment Obligations**); and
- (b) (as a separate and independent obligation) undertakes to indemnify the Generator against all costs, expenses losses and liabilities suffered or incurred by the Generator as a direct result of any failure by the Offtaker to fully and promptly comply with the Payment Obligations.

1.2 The obligations of the Guarantor under this Guarantee do not constitute an obligation of performance, and shall be specifically limited to payments due to be made by the Offtaker to the Generator under or in relation to the Agreement (including interest due on overdue payments, and payments due by way of damages). Except to the extent specifically provided for in the Agreement, in no event shall the Guarantor be liable hereunder for any consequential loss, punitive damages, or legal costs or expenses.

1.3 Notwithstanding any other provision of this Guarantee, the aggregate liability of the Guarantor under or in relation to this Guarantee shall not exceed £[●] (● Pounds Sterling).

1.4 All payments made under this Guarantee shall be denominated in the same currency as the Payment Obligations and shall be made free and clear of any deduction or withholding for or on account of any present or future taxes, levies, imposts, duties, charges or fees (together, **Deductions**). If the Guarantor is compelled by law to make any such Deductions, the Guarantor will (subject to Clause 1.3) gross up the payment so that the net sum received by the Generator is equal to the full amount which the Generator would have received had no such Deduction been made.

#### 2 Notice of Payment Demand

2.1 If the Offtaker fails or refuses to comply with any of the Payment Obligations when due, the Generator may make a demand upon the Guarantor substantially in the form as set out in the appendix to this Guarantee (a **Payment Demand**).

2.2 The Guarantor shall have no obligation under this Guarantee in respect of any Payment Obligation until the Guarantor receives a Payment Demand in respect of that Payment Obligation.

2.3 The Guarantor shall pay any amount due under this Guarantee within five (5) Business Days after receipt of the Payment Demand. **Business Day** means a day on which commercial banks are open for general business in London.

### 3 Representations and Warranties

3.1 The Guarantor represents and warrants that on the date hereof:

- (a) it is a company duly organised and validly existing under the laws of [England and Wales]<sup>11</sup> and has the corporate power and authority to execute, deliver and carry out the terms and provisions of this Guarantee;
- (b) no authorisation, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution and delivery of this Guarantee; and
- (c) this Guarantee, when executed and delivered, will constitute a valid and legally binding agreement of the Guarantor, enforceable in accordance with its terms, except as the enforceability of this Guarantee may be limited by the effect of any applicable bankruptcy, insolvency, reorganisation, moratorium or similar laws affecting creditors' rights generally.

### 4 Set-offs, Counterclaims and Defences & Waivers thereof

4.1 The Guarantor reserves to itself (and shall be entitled to rely upon) all rights, set-offs, counterclaims and defences which the Offtaker is or may be entitled to arising out of the Agreement or otherwise; save that the Guarantor's obligations under this Guarantee shall not be discharged, reduced, released or invalidated by any of the following:

- (a) any insolvency, dissolution, administration, reconstruction or liquidation of the Offtaker;
- (b) any arrangement or agreement made between the Offtaker and a receiver, administrative receiver, administrator, liquidator or similar officer of the Offtaker;
- (c) any lack of power or authority or incapacity relating to the Offtaker or the manner in which it entered into the Agreement;
- (d) subject to Clause 4.2, any illegality, invalidity or unenforceability of the Agreement or any obligation thereunder;
- (e) any forbearance, waiver or concession granted by the Generator to the Offtaker as to the amount or the timing of the Payment Obligations; and/or
- (f) any renegotiation, substitution, alteration, amendment or variation (however fundamental) to or of the Agreement;
- (g) (subject to Clause 4.3) any other fact, circumstance, act, event, omission or provision of statute or law which but for this Clause 4.1(g) might operate to discharge, reduce, release or invalidate any of the obligations of the Guarantor under this Guarantee.

4.2 Notwithstanding any other provision of this Guarantee, the Guarantor shall not be liable to the Generator in respect of any Payment Obligation that is (or becomes) illegal, invalid or unenforceable due to the act or omission of the Generator.

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<sup>11</sup> Note to draft: amend as appropriate.

- 4.3 Notwithstanding Clause 4.1, the Guarantor's obligations under this Guarantee are in respect of the Payment Obligations as from time to time modified (including as modified in the manner described in Clauses 4.1(e) and 4.1(f)).
- 5 Continuing Guarantee
- 5.1 Without prejudice to Clauses 1.3 and 6, this Guarantee is a continuing guarantee, and shall continue in effect notwithstanding any intermediate payment or partial settlement by the Guarantor.
- 6 Expiry
- 6.1 This Guarantee shall expire shall expire 30 days after the first anniversary of the Agreement Date (as defined in the Agreement) (the **Expiration Date**) without any requirement for written notice being served upon the Generator.
- 6.2 Clause 11 (*Credit Support*) of the Agreement allows for the replacement of this Guarantee with substitute Credit Support (as defined in the Agreement). This Guarantee shall automatically terminate on the later of: (a) such replacement Credit Support coming into effect; and (b) such replacement Credit Support being actually received by the Generator in accordance with the Agreement.
- 6.3 Expiry or termination of this Guarantee in accordance with Clause 6.1 or 6.2 (as applicable) shall be without prejudice to any Payment Demands validly made prior to such expiry or termination, but subject thereto the Guarantor shall have no further obligations to the Generator following such expiry or termination.
- 7 Notices
- 7.1 Any Payment Demand or other notice or document to be given under or in relation to this Guarantee by one of the Generator or the Guarantor to the other (herein collectively called a **Notice**) shall be in writing and delivered personally, by recorded pre-paid post or fax, as follows:
- To the Guarantor:
- []
- Fax: []
- To the Generator:
- []
- Fax: [ ]
- 7.2 Notice given by personal delivery or recorded pre-paid post shall be effective upon actual receipt. Notice given by fax shall be effective on the date it is received by the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's fax machine).
- 7.3 The Guarantor or the Generator may change any address to which a Notice is to be given to it by giving notice of such change in accordance with this Clause 7.
- 8 Process Agent
- 8.1 Without prejudice to any other mode of service allowed under any relevant law, the Guarantor appoints [*insert company name and address for Guarantor's agent*] (or such other person and/or address as the Guarantor may notify to the Generator from time to time) as the Guarantor's agent for service of process in relation to any proceedings before the English courts in connection with this Guarantee.
- 8.2 The Guarantor agrees that failure by the process agent to notify the Guarantor of the process will not invalidate the proceedings concerned.

## 9 Waivers

9.1 The Guarantor hereby waives any requirement for the Generator to bring any action or proceeding against the Offtaker prior to issuing any Payment Demand, or prior to bringing any action or proceeding against the Guarantor in respect of any Payment Demand.

9.2 No waiver by either Party of any breach by the other Party of this Agreement shall operate unless expressly made in writing, and no such waiver shall be construed as a waiver of any other breach.

9.3 No delay or omission by either Party in exercising any right, power or remedy provided by law or pursuant to this Guarantee shall:

9.3.1 affect that right, power or remedy; or

9.3.2 operate as a waiver of it.

9.4 The single or partial exercise by either Party of any right, power or remedy provided by law or pursuant to this Guarantee shall not, unless otherwise expressly stated, preclude any other or further exercise of it or the exercise of any other right, power or remedy.

## 10 Entire Agreement

10.1 This Guarantee constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes and extinguishes any agreements, understandings and/or representations previously given or made with respect thereof other than those included in this Guarantee (including any previous guarantees provided by the Guarantor to the Generator in respect of the Agreement).

## 11 Assignment

11.1 Subject to Clause 11.2, the Generator may not assign or otherwise transfer its rights or interests under this Guarantee without the written consent of the Guarantor.

11.2 The Generator may, by giving notice in writing to the Guarantor, assign or transfer its rights under this Guarantee to any person to whom the Agreement has been so assigned or transferred in accordance with its terms.

11.3 The Guarantor may, by giving notice in writing to the Generator, transfer this Guarantee (and its rights and obligations hereunder) pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, an entity which, at the time of such consolidation, amalgamation, merger or transfer, has a credit rating that is equal to or higher than the credit rating then assigned to the Guarantor by Standard & Poor's Rating Group (or its successor in title) or Moody's Investor Services (or its successor in title).

11.4 Where the Generator or the Guarantor makes any transfer or assignment in accordance with this Clause 11, the references to the Generator and the Guarantor herein shall be construed accordingly.

## 12 Third Party Rights

12.1 No provisions of this Guarantee shall be enforceable by any person other than the Parties under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

## 13 Interpretation

13.1 In this Guarantee, unless the context otherwise requires: (a) reference to the singular includes a reference to the plural and vice versa; (b) reference to the masculine includes a reference to the feminine and neuter gender; (c) references to persons shall include bodies corporate, unincorporated associations and partnerships; (d) all references to Clauses are to the clauses of this Guarantee; and (e) the words "other" and "including" shall not limit the generality of any preceding words, or be construed as limiting any following words to the same class as the preceding words where a wider construction is possible.

14 Counterparts

14.1 This Guarantee may be executed in any number of counterparts and by the Parties to it on separate counterparts, but shall not be effective until each Party has executed at least one (1) counterpart. Each counterpart shall constitute an original but all of the counterparts together shall constitute one and the same instrument.

15 Governing Law And Jurisdiction

15.1 This Guarantee and any matter, claim or dispute arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with English Law.

15.2 The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

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

**Guarantor**

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

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation: .....

**Generator**

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

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation: .....

**Appendix**  
**Form of Payment Demand**

[]

[DATE]

Dear Sirs,

We refer to the guarantee given by you to us dated [ ] (the **Guarantee**), a copy of which is attached. Unless otherwise defined herein, all capitalised terms used herein and defined in the Guarantee shall have the meanings given to them in the Guarantee.

The Offtaker is in breach of the Payment Obligations under clause(s) [ ] of the Agreement, and accordingly the sum of [£ ] is properly due to us.

This amount was included in the invoice issued by us to the Offtaker dated [DATE], was due to be paid on [DATE], and has not been paid as at the date hereof.

Payment of the relevant amount should be made to the following account:

Name: *[account name]*

Account number: *[insert details]*

Bank: *[name and code]*

Yours faithfully

[ ]

for and on behalf of [Generator]

.....  
Name

.....  
Title

## SCHEDULE 7

### Form of Letter of Credit

#### Our irrevocable standby letter of credit number ●

To: [●] (the **Beneficiary**);

Dear Sirs

With reference to the Backstop Power Purchase Agreement dated *[insert date]* between *[insert name of the Offtaker]* (a company incorporated in ●, company number ●) (the **Applicant**) and the Beneficiary (the **Agreement**) and at the request, and on the instructions, of the Applicant, we *[Insert full name and address of Issuing Bank]* (**Issuer**) hereby open, for your benefit, and in your favour, our irrevocable Standby Letter of Credit number *[insert Standby Letter of Credit reference]* on the following terms:

1. This Standby Letter of Credit is for an amount not exceeding £*[insert Collateral Amount]* pounds sterling (the **Maximum Aggregate Liability**). All payments made under this Standby Letter of Credit shall be made in pounds sterling without any set-off or counterclaim whatsoever and free and clear of all deductions or withholdings whatsoever unless such deduction or withholding is required under applicable law.
2. The bona fide holder of this Letter of Credit may request a drawing under this Standby Letter of Credit by presenting to us a duly completed demand for payment substantially in the form attached as Appendix 1 (**Demand for Payment**).
3. Demand for Payment may be presented to us in person, by courier, by mail or by fax, to the address or fax number (as the case may be) set out below:  
Address : *[Insert address]*  
  
Fax number : *[Insert fax]*
4. A Demand for Payment shall be taken to be duly presented:
  - (a) in the case of delivery in person, by courier, by certified or registered mail (airmail if overseas) or by the equivalent, on the date it is delivered or its delivery is attempted; or
  - (b) in the case of delivery by fax, at the time of transmission,  
provided that if a Demand for Payment is taken to be duly presented after 17:00 hours on a Business Day, the Demand for Payment shall be taken to have been duly presented on the next Business Day.
5. Upon presentation of a Demand for Payment we agree with the bona fide holder of this Standby Letter of Credit that we will pay the amount requested under the Demand for Payment, in immediately available cleared funds at sight, into the account specified in the Demand for Payment not later than 13:00 hours London time one Business Day immediately following the date the Demand for Payment is presented as aforesaid (or such later date as the holder may specify).

Our obligations under this Standby Letter of Credit shall expire 30 days after the first anniversary of the Agreement Date (as defined in the Agreement) (the **Expiration Date**), but such expiration shall not affect any liability that we have to you following presentation by you to us of any Demand for Payment where the relevant Demand for Payment is presented to us on or prior to the Expiration Date.

#### Special Conditions

1. We may not transfer, assign or novate any of our rights, benefits or obligations under this Agreement.
2. You shall be at liberty to transfer by way of assignment or novation your rights, benefits or obligations to any person to whom your rights, benefits or obligations in or under the Agreement



have been transferred, assigned or novated or to any person to whom your rights under the Agreement have been assigned by way of security and we shall take (at no cost to you) all steps necessary to give effect to any such transfer.

3. Partial and multiple drawings are permitted.
4. This Standby Letter of Credit is issued subject to the international standby practices 1998 (**ISP98**) (insofar as they are applicable to and are not modified by the terms of this Standby Letter of Credit) and the laws of England and Wales.
5. Courts of England and Wales shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Standby Letter of Credit.

Yours faithfully

As duly authorised signatory for *[name and address of Issuer]*