

AUCTION CODE FOR POWER AUCTIONS BY NFPAS

This Auction Code sets out the rights and obligations of Buyers in relation to the conduct of one or more Auctions and the use of the Auction Site.

The Auctions have been established by the Auctioneer for the sale of electricity and associated renewable benefits on behalf of Generators

1. Definitions and Interpretation

1.1 In this Auction Code, the following words and expressions shall bear the following meanings unless the context requires otherwise:

"Act"	means the Electricity Act 1989 as amended from time to time;
"Auction"	means any of the electronic auctions as set out in Part 1 of Appendix 1 conducted by the Auctioneer under this Auction Code commencing on the date specified by the Auctioneer on the Auction Site from time to time, in accordance with this Auction Code;
"Auction Period"	means, in respect of any Auction, the time periods within which Bids may be submitted in respect of any Facility as specified by the Auctioneer on the Auction Site from time to time;
"Auction Site"	means the electronic site accessible by the Buyers on which the Auctions will be conducted;
"Auctioneer"	means NFPAS;
"Authority"	means the Gas and Electricity Markets Authority established under the Utilities Act 2000 or any successor from time to time;
"Banking Day"	means a day (other than a Saturday or a Sunday) on which banks are open for domestic business in the City of London;
"Bid"	means a Bid in pence per KWh in respect of Metered Output and associated Renewables Benefits offered for sale under the terms of the PPA for the relevant Facility;
"Bidding Hours"	means the period from 10.00 am to 5.00 pm Monday to Friday on each day of the Auction Period (excluding public holidays in England and Scotland) but shall not include any scheduled or unscheduled system downtime when the Auction Site or the Auctioneer is unable to receive or process Bids;
"BSC Framework Agreement"	means the agreement of that name, in the form approved by the Secretary of State, by which the Balancing and Settlement Code (being the code of that name prepared by National Grid Electricity Transmission plc pursuant to its transmission licence) is made binding between signatories to such agreement, as amended from time to time;
"Buyer"	means the party named as the Buyer or Supplier in the Registration Agreement and "Buyers" means all parties participating in any Auction;
"Change in Law"	means any of the following events:

- (a) the coming into effect of any Law that is not in effect prior to the start of the Auction Period;
- (b) the repeal, amendment or replacement of any Law;
- (c) a change in the interpretation or application of any Law by the Authority or any other Competent Authority;

but shall not include any of the above matters to the extent they constitute: (1) changes to income tax, PAYE or corporation tax; or (2) remedies or sanctions lawfully exercised by a Competent Authority as a result of any breach of any Law;

"Competent Authority"	means the Authority, any court of competent jurisdiction and any local, national or supra national agency or any trust, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of, or of the Government of, the United Kingdom, or of the European Union;
"Delivery Point"	means the delivery point being, as the case may be, that part of the lines or system or other premises of the Local Distributor, particulars of which are set out in the relevant agreement, at which the Energy from the Facility enters the Local Distributor's system;
"Energy"	means the electrical energy (expressed in kWh) generated by the Facility other than any such electrical energy consumed by the Facility in connection with its operation and maintenance;
"Facility"	means a generation facility whose Metered Output is being offered under an Auction;
"Final Bid Price"	means the final Bid price of the Successful Bidder which is accepted by the Auctioneer;
"FIT Order"	means the Feed-in Tariffs Order 2012, SI 2012/2782;
"Generator"	has the meaning given to such term in the PPA;
"Generator's Agent"	means NFPAS;
"Law"	means any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, any enforceable community right within the meaning of section 2 of the European Communities Act 1972, and any other applicable law including any common law proclamation, industry rules or standards or guidelines, bye-law, directive, decision, regulation, rule, notice or court ruling in each case in the United Kingdom and all other laws including any regulations, directives, statutes, subordinate legislation, common law and civil codes, all judgments, orders, ordinances, notices, instructions, decisions and awards of any court or competent authority or tribunal and all codes of practice having force of law, statutory guidance and policy notes in any jurisdiction where a party's obligations under a PPA or an On-Sale Agreement are carried out;

"Local Distributor"	means any person who is authorised by a licence under section 6(1)(c) of the Electricity Act 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 located;
"Metered Output"	means, in any Month, the aggregate amount of Energy delivered at the Delivery Point;
"NFPAS"	means NFPAS Limited (company number 04334396) whose registered office is at Washington Business Centre, 2 Turbine Way, Sunderland, SR5 3NZ;
"Orders"	means the Renewables Obligation Order 2009; the Renewables Obligation (Scotland) Order 2009; and the Renewables Obligation Order (Northern Ireland) 2009;
"PPA"	means a power purchase agreement between a Generator and the Buyer substantially in the form set out in Annex 1 of this Auction Code;
"Registration Agreement"	means the Registration Agreement executed by Buyers wishing to participate in auctions which incorporate this Auction Code;
"REGO Regulations"	means the Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations, SI 2003/2562;
"Relevant Meter Point"	means each meter point described in the relevant part of Schedule 2 of the On-Sale Agreement;
"Reserve Price"	means the price notified by the Auctioneer as the minimum at which Metered Output and associated Renewable Benefits will be sold at an Auction;
"Renewables Benefits"	means all current and future renewables benefits associated with the availability, capacity and generation of electricity from the Facility including without limitation ROCs and REGOs (and any successors to ROCs and REGOs);
"Successful Bidder"	is defined in Clause 5.1; and
"Third Party Claim"	means: <ul style="list-style-type: none"> (a) any claim by a defendant party against the other party (whether or not already a party to the legal proceedings) for any contribution or indemnity; or (b) any claim by a defendant party against the other party for any relief or remedy relating to or connected with the subject matter of the legal proceedings and substantially the same as some relief or remedy claimed by the third party; or (c) any requirement by a defendant party that any question or issue relating to or connected with the subject matter of the legal proceedings should be determined not only as

between the third party and the defendant party but also as between either or both of them and the other party (whether or not already a party to the legal proceedings).

- 1.2 In this Auction Code, unless the context requires otherwise:
- 1.2.1 references to singular shall include references in the plural and vice versa and words denoting natural persons shall include reference to a firm, body corporate, an unincorporated association, a partnership or to an individual's executors or administrators;
 - 1.2.2 references to "includes" or "including" are to be construed without limitation;
 - 1.2.3 references to any statute or statutory instrument or any section of a statute or statutory instrument shall be construed, at any particular time, as a reference to any modification, consolidation extension, re-enactment or replacement thereof then in force and to all instruments, orders or regulations then in force and made under or deriving validity from such statute or provision (as the same may have been modified, consolidated extended, re-enacted or replaced from time to time);
 - 1.2.4 except to the extent that the context requires otherwise, references to a particular Clause shall be references to that Clause in or to this Auction Code;
 - 1.2.5 if a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day;
 - 1.2.6 references to writing shall include any modes of reproducing words in any legible form and shall include e-mail except where expressly stated otherwise;
 - 1.2.7 except to the extent that the context requires otherwise, any reference to "this Auction Code" is a reference to it as amended, supplemented or novated from time to time and includes a reference to any document which amends, is supplemental to, novates, or is entered into, made or given pursuant to or in accordance with any terms of it;
 - 1.2.8 where the Buyer is a partnership or a firm, this Auction Code shall be binding upon each of the partners thereof from time to time as partners and individuals and their respective successors as partners and individuals and the executors and personal representatives of any such persons;
 - 1.2.9 where the Buyer comprises two or more persons, any obligation of the Buyer in, under or arising from this Auction Code is undertaken by or binding upon such two or more persons jointly and severally;
 - 1.2.10 headings and bold typeface are used for convenience only and shall not affect the interpretation or construction of this Auction Code.

2. Registration

- 2.1 On receipt of the Registration Agreement signed by the Buyer the Auctioneer shall issue the Buyer with a unique username and confidential security password to access the Auction Site and participate in the relevant Auctions. The Auctioneer agrees not to disclose the Buyer's username and security password to any party.
- 2.2 The Buyer shall at all times maintain the confidentiality of its username and password. The Buyer is responsible for all acts in relation to any Auction (including the submission of Bids) referable to its user name and password, regardless of whether such acts are actually or expressly authorised by the Buyer, unless such acts result directly from a breach of the Auctioneer's obligations of non-disclosure in Clause 2.1.

2.3 The Buyer shall notify the Auctioneer immediately if it believes that its username and password have been misused or compromised in any manner.

3. Operation of Auction

3.1 The Auction for each Facility shall be conducted on the Auction Site during the relevant Auction Period.

3.2 The Auctioneer shall endeavour to ensure that the information set out in Schedule 1 of the Auction Code for each Facility is made available to the Buyers via the Auction Site at least 7 days before the commencement of each Auction Period.

4. Submission of Bids

4.1 During the Auction Period, the Buyer may submit Bids electronically through the Auction Site in respect of any Facility, provided that all Bids submitted shall be:

4.1.1 positive and equal to or greater than the Reserve Price (where appropriate); and

4.1.2 in increments of not less than 0.02p/kWh

4.2 By submitting a Bid, the Buyer:

4.2.1 acknowledges that it has examined all information made available by the Auctioneer through the Auction Site regarding the Facility;

4.2.2 irrevocably offers to pay the Bid submitted as the price to be paid in respect of Metered Output and associated Renewables Benefits in relation to the relevant Facility in accordance with the PPA if it is the Successful Bidder; and

4.2.3 warrants that neither its Bid nor its participation in the Auction violates any laws nor breaches the terms of this Auction Code.

4.3 If a Buyer's Bid relates to Metered Output offered under a PPA, the Buyer, by submitting a Bid also irrevocably offers to enter into a PPA with the relevant Generator in relation to the relevant Facility if it is the Successful Bidder.

4.4 The Buyer acknowledges that a Bid is deemed to have been submitted only when a Bid that is in conformity with the terms of the Auction Code has been received and processed by the Auctioneer.

4.5 The Auctioneer shall use all reasonable endeavours to process and post the highest Bid received for each Facility at any point in time during the Auction Period at the Auction Site within 3 minutes of receipt. In the case of equal Bids, the earliest Bid received and processed by the Auctioneer will be deemed the higher Bid.

4.6 During the Auction Period, the Auctioneer shall send as soon as reasonably practicable a notification to the Buyer whose processed Bid is the current highest Bid and shall use all reasonable endeavours to do so within 5 minutes of posting that Bid on the Auction Site. Such notification shall be sent by e-mail, to the e-mail address specified by the Buyer in the Registration Agreement. The failure of the Buyer to receive such notification shall not release the Buyer from any obligations set out in this Auction Code.

4.7 Notwithstanding Clause 4.2.2, the Auctioneer may in its sole and absolute discretion consent to a request from a Buyer for withdrawal of a Bid on the grounds that the Bid contained an obvious typographical error. The Auctioneer is not obliged in any circumstances to consent to the withdrawal of any Bid submitted.

4.8 In the event that a posted Bid is subsequently withdrawn or removed pursuant to Clauses 4.7 or 10.3, the Auctioneer will have the right (in its absolute discretion) to cancel all Bids submitted and restart the auction process and the Auction Period in respect of such Facility.

5. Successful Bidder

5.1 The Auctioneer shall accept the Bid of the "**Successful Bidder**" which shall in respect of any Facility be the Buyer who has the highest Bid for the Facility:

5.1.1 for a continuous period of 1.5 hours during the Bidding Hours; or

5.1.2 at the end of the Auction Period.

5.2 The Successful Bidder in respect of each Facility shall be absolutely and finally determined by the Auctioneer in accordance with the criteria set out in Clause 5.1 and by relying on the computer hardware, software and systems used by it to regulate the relevant Auction.

5.3 The Auctioneer shall post the Final Bid Price for each Facility at the Auction Site as soon as reasonably practicable and in any event within 5 Banking Days of the end of the Auction Period.

5.4 The Auctioneer shall send to the Successful Bidder first an e-mail notification that it is the Successful Bidder (by e-mail to the address specified in the Registration Agreement) within 1 Banking Day of the Auctioneer's determination of that fact under Clause 5.2, followed by a confirmation email notification (sent to the email address specified in the Registration Agreement) within 5 Banking Days of such determination which shall contain the description and Final Bid Price of the Facility.

5.5 In relation to Auctions involving Metered Output being sold under a PPA, the Successful Bidder hereby:

5.5.1 acknowledges that on conclusion of the relevant Auction it has entered into a legally binding and enforceable agreement with the relevant Generator in respect of the relevant Facility and agrees to document this by immediately entering into a PPA with that Generator; and

5.5.2 authorises and directs the Auctioneer to insert in the duplicate copies of the PPA for each relevant Facility in respect of which the Buyer is the Successful Bidder:

(A) the Final Bid Price in respect of the relevant Facility as determined under the Auction;

(B) the Buyer's name, registered office and registered number; and

(C) any other variables in the relevant PPA(s),

and to forward the duplicate copies to the Buyer for signature within 7 Banking Days of the end of the Auction Period. The Buyer shall be bound to execute the PPA in respect of each Facility for which the Buyer is the Successful Bidder and return both copies, undated, to the Auctioneer within 7 Banking Days of receipt.

5.6 The Buyer acknowledges that if a PPA with a Successful Bidder terminates for any reason the Auctioneer may:

5.6.1 offer a PPA in respect of the Facility to the unsuccessful bidders (commencing with the next highest bidder and ending with the lowest bidder); or

- 5.6.2 re-auction the Facility (including in, but not limited to, situations where the Auctioneer has received a request, or is otherwise entitled, to do so under Clause 12.4 of a PPA).
- 5.7 In the event that the Generator has the right to terminate a PPA for failure to register Relevant Meter Points within the time-limits specified by the agreement the Auctioneer shall have the right to require the Buyer to transfer its future rights and obligations in respect of the Relevant Meter Points under that PPA to any buyer chosen by the Auctioneer, and the Buyer authorises and directs the Auctioneer to execute such documents and do such things on its behalf in order to give effect thereto.
- 5.8 The Buyer acknowledges that under the PPA it will be the Buyer's sole responsibility to register or procure that its agent registers the Relevant Meter Points within the time limits specified in the PPA and the Buyer will be liable to pay for electricity delivered to the Relevant Meter Points referred to in the PPA on and from the contract start date irrespective of whether meter registration has been achieved less any recovery under the terms of the PPA with the outgoing registrant.¹

6. Warranties by Buyer

- 6.1 The Buyer warrants and represents to the Auctioneer that:
- 6.1.1 it has the power to enter into, perform and comply with all its obligations under this Auction Code and PPA which it is bound by as a result of an Auction and that its entry into, performance of or compliance with its obligations under this Auction Code and PPA does not and will not violate any applicable law, ordinance, regulation or rule to which it is subject or its constitutional or enabling documents;
- 6.1.2 it and/or its agent has been granted and there subsists in respect of it a licence to supply electricity pursuant to section 6 of the Act or Article 10 of the Electricity (Northern Ireland) Order 1992 and that it has no reason to believe that it and/or its agent (or any legal successor holding a supply licence and assuming all rights and obligations of the Buyer under this Auction Code and PPA) will not continue to hold such licence for the duration of the PPA;
- 6.1.3 it shall comply with all applicable laws, statutes, ordinances and regulations relevant to its business;
- 6.1.4 it and/or its agent has entered into and remains a party to the BSC Framework Agreement; and
- 6.1.5 it shall not:
- (A) Bid in a way that is manipulative of any Auction or conspire with other Buyers to manipulate any Auction or any bidding;
 - (B) communicate in any manner with any other Buyers in relation to any Auction;
 - (C) use any mechanism, device, software, script or computer programming routine (including any virus, worm, time bomb, cancelbot or Trojan horse) that may damage, interfere with, delay, intercept, expropriate or otherwise affect the proper functioning of the Auction Site or any system, data or personal information related to the Auction Site; or

¹ The Buyer should be aware that different processes of registration take varying amounts of time to complete and the process should therefore be commenced as soon as possible where the Buyer is the Successful Bidder. The Buyer should ensure that it is fully aware of the requirements to achieve the meter registrations required under the PPA prior to bidding in the Auction.

- (D) take any action that places an unreasonable burden or excessive load on the computer systems supporting the Auction Site.

7. Buyer's agent

- 7.1 To the extent that the Buyer appoints an agent to act on its behalf in relation to an Auction and/or PPA, it shall:
 - 7.1.1 notify the Auctioneer of the identity of such agent as soon as reasonably practicable following such appointment and in any event within 5 days;
 - 7.1.2 notify the Auctioneer of any change in the identity of its agent as soon as reasonably practicable and in any event within 5 days; and
 - 7.1.3 make its agent aware of the terms of this Auction Code and procure that its agent complies with the terms of this Auction Code.

8. Indemnity

The Buyer agrees to indemnify and keep indemnified the Auctioneer and their respective officers, employees, agents and contractors against all liabilities, claims and expenses (including reasonable legal fees) that may arise from any breach of the terms of this Auction Code by the Buyer and/or its agent or any act referable to the Buyer's user name or password or the violation by the Buyer and/or its agent of any law or rights of the Auctioneer or any third party.

9. Suspension, Cancellation and Termination

- 9.1 The Buyer acknowledges that the Auctioneer has the right to:
 - 9.1.1 refuse, remove or require the re-submission of any Bids;
 - 9.1.2 shorten or extend any Auction Period;
 - 9.1.3 postpone, cancel or withdraw any Facility from any Auction;
 - 9.1.4 temporarily suspend, re-run or permanently terminate any Auction at any time; or
 - 9.1.5 refuse, temporarily suspend or permanently terminate the Buyer's participation in any Auction,

where the Auctioneer has in its opinion, reasonable grounds (including technical grounds) for so doing (including, but not limited to: where a Change in Law is announced or occurs during the Auction Period which would render it impossible or unlawful to give effect to a PPA render any material element required to be ascertained under a PPA impossible to ascertain, alter the electricity trading arrangements in Great Britain, cause any provisions in a PPA to be inconsistent with the Law (including where any word or expression used in a PPA is defined by reference to its meaning in any Law), or materially and adversely affect for a party to a PPA the benefits provided thereby or the balance of liability and risk in respect of the subject matter thereof; if the Buyer fails to discharge any outstanding liability to the Generator's Agent over the sum of £500,000 before the commencement of the Auction Period; if the Buyer has during the preceding six month period failed to pay when due at least three invoices issued in different months in connection with any PPA to which the Buyer is party; if the Generator's Agent suspects that the Buyer's actions may cause the Generator's Agent to be liable to another Bidder or third party; or the Buyer is in breach of any of the terms of this Auction Code).

- 9.2 Where practicable the Generator's Agent, will provide or procure that the Auctioneer provides reasonable advance notice (in the form of postings on the Auction Site) of any such steps that the Generator's Agent intends to take.

10. Disclaimer

10.1 The Auction Site is provided on an "as is", "as available" basis and the Auctioneer makes any representation or any warranty, express or implied, as to the availability, quality, accuracy, timeliness, completeness, non-infringement, performance or fitness for a particular purpose of the Auction Site. In particular the Auctioneer makes no representation or warranty that:

10.1.1 access to the Auction Site will be free from infection by viruses or anything else that has contaminating or destructive properties; and

10.1.2 access to the Auction Site and participation in any Auction (including the submission of Bids) will be secure, uninterrupted and free of errors or free of downtime, outages or technical problems that may hinder the efficacy of a Bid or any Auction (including transmission times or delays).

All such terms which would otherwise be implied into this Auction Code are hereby excluded to the fullest extent permitted by law. The Buyer warrants that it has not relied on any representations made by the Auctioneer which have not been expressly stated in this Auction Code.

10.2 The information provided for each Facility at the Auction Site is information which has been provided to the Auctioneer in respect of that Facility and has not been verified by the Auctioneer. Neither can the Auctioneer give any warranties or make any representations in respect of the future performance of, and electrical output from, any Facility.

10.3 The Auctioneer will use reasonable efforts to ensure that errors or omissions in the information provided for each Facility at the Auction Site are corrected as quickly as practicable after being notified of them. The Auctioneer shall notify the Buyer of any corrections made by posting a notice on the Auction Site. In the event of any corrections being made to the information which, in the Auctioneer's opinion, materially affect the Buyer's Bid, the Buyer may withdraw a Bid placed in that Auction before the correction is made, provided that the Buyer has not become the Successful Bidder pursuant to Clause 5.

11. Liability

11.1 Neither the Auctioneer or any of their respective officers, employees, agents or contractors will be liable to the Buyer or any third party for:

11.1.1 any losses or claims (whether in contract, tort, negligence or otherwise) arising from any inability to access the Auction Site, any interruption in the conduct of any Auction, any postponement, cancellation or withdrawal of any Facility from any Auction in accordance with Clause 9 above, any refusal, suspension or termination of the Buyer's participation in any Auction, any losses or claims arising from Facilities offered on the Auction Site; or

11.1.2 any exemplary, incidental, special, indirect or consequential loss or damage, or for any loss of data, sales, profit, revenue, opportunity, information, business or anticipated savings, or loss or wasted time, howsoever caused (whether arising out of any tort, negligence or breach of this Auction Code or otherwise arising out of or in connection with the performance of obligations under this Auction Code), even if that loss or damage was foreseeable by, or the actuality, inevitability or possibility of it was brought to the attention of the the Auctioneer,

and for the avoidance of doubt, sub-clauses 11.1.1 and 11.1.2 are severable.

11.2 Without limiting the generality of Clause 11.1, but subject to Clause 11.3 and 11.4, the liability of the Auctioneer will not under any circumstances exceed £50,000, regardless of the cause or form of action.

- 11.3 Nothing in this Auction Code shall exclude or limit the Auctioneer's liability for death or personal injury resulting from the Auctioneer's negligence or for fraudulent misrepresentation.
- 11.4 Nothing in this Auction Code is intended to limit or exclude any liability on the part of the Auctioneer where and to the extent that applicable law prohibits such exclusion or limitation.

12. Intellectual Property

The Buyer acknowledges that all copyright, trademarks, and other intellectual property rights in and relating to any Auction and the Auction Site are owned by the Auctioneer, its agents or contractors or its or their third party licensors. The Buyer agrees not to use any of such intellectual property rights nor any data or information generated or derived from the Auction Site, except to the extent necessary to participate in any Auction in the manner anticipated in this Auction Code.

13. Confidentiality

- 13.1 Subject to the exceptions provided in Clause 13.2 below the Auctioneer nor the Buyer shall, at any time, whether before or after the expiration or termination of the Auction Period, without the prior written consent of the other parties, divulge or suffer or permit its officers, employees, agents or contractors to divulge to any person (other than to any of its or their respective officers or employees who require the same to enable them properly to carry out their duties) any of the contents of this Auction Code and any commercially confidential information which may come to a party's knowledge through the Auction Site or in the course of any Auction process or otherwise concerning the operations, contracts, commercial or financial arrangements or affairs of other parties.
- 13.2 The restrictions imposed by Clause 13.1 shall not apply to the disclosure of any information:
- 13.2.1 which now or hereafter comes into the public domain otherwise than as a result of a breach of an undertaking of confidentiality or which is obtainable with no more than reasonable diligence from sources other than the parties hereto;
 - 13.2.2 which is required by law to be disclosed to any person who is authorised by law to receive the same;
 - 13.2.3 which is required to be disclosed by the regulation of any recognised exchange upon which the share capital of the party making the disclosure is or is proposed to be from time to time listed or dealt in;
 - 13.2.4 to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing party is a party;
 - 13.2.5 in accordance with the Orders;
 - 13.2.6 to any consultants, banks or professional advisers or other agent of the disclosing party provided enforceable undertakings to observe the same restrictions on the use of the relevant information as are contained in this Clause 12 have been obtained prior to such disclosure. If disclosure is made to a bank or other adviser who is not a legal or financial adviser, the disclosing party must inform the other party in advance of the disclosure and deliver the undertaking to the other party;
 - 13.2.7 by any party to any instrument, agency of government or the European Union having jurisdiction in respect of inter-state commerce, competition or energy; or
 - 13.2.8 to the Authority, the Scottish Ministers, the Secretary of State or the Department of Enterprise Trade and Investment ("DETI") and their respective agents to enable the Authority, the Scottish Ministers and the Secretary of State or the DETI to monitor

developments concerning the generation of electricity from non-fossil fuel sources or to enable those persons and entities to discharge their duties under any applicable law.

14. Amendments/Modifications

- 14.1 The Auctioneer reserves the right, at their discretion, to make additions, substitutions and modifications to any part of an Auction or the Auction Site.
- 14.2 This Auction Code may be amended by the Auctioneer at any time by posting details of the amendments on the Auction Site, and the Auctioneer shall use reasonable endeavours within 1 Banking Day to send an e-mail notification that they have done so to every Buyer who has submitted the Registration Agreement and accompanying documents for participation in any Auction to the Auctioneer. Unless otherwise stated, all amended terms shall automatically be effective 14 days after they are initially posted on the Auction Site. The terms of this Auction Code may not otherwise be amended except in writing signed by the Buyer and Auctioneer.

15. Notices

- 15.1 Any notice, approval, consent or other communication to be given by one party to the other under, or in connection with the matters contemplated by, this Auction Code (save for the electronic submission of Bids on the Auction Site and any notices required to be given in a prescribed manner) shall be addressed to the recipient and sent to the address or facsimile number or e-mail address of such other party given for the purpose and marked for the attention of the person so given or to such other address or facsimile number or e-mail address or marked for such other attention as such other party may from time to time specify by notice given in accordance with this Clause to the party giving the relevant notice or communication to it.
- 15.2 Any notice or other communication to be given by any party to the other under, or in connection with the matters contemplated by, this Auction Code shall be in writing in the English language and shall be given by letter delivered by hand or sent by first class prepaid post (airmail, as appropriate, if overseas) or facsimile, or sent by electronic mail and shall be deemed to have been received:
- 15.2.1 in the case of delivery by hand, when delivered; or
- 15.2.2 in the case of first class prepaid post, on the second day following the day of posting or (if sent overseas by airmail, as appropriate,) on the fifth day following the day of posting; or
- 15.2.3 in the case of facsimile, on acknowledgement of the addressee's facsimile receiving equipment (where such acknowledgement occurs before 1700 hours on the day of acknowledgement) and in any other case on the day following the day of acknowledgement; or
- 15.2.4 in the case of notice given by electronic mail, when the communication is first stored in the recipient's electronic mail box. The place of receipt of electronic mail will be deemed to be the address nominated by the recipient for the service of notices.
- 15.3 The particulars for notices of communications to be given, until otherwise notified, to:
- 15.3.1 the Buyer are set out in the Registration Agreement; and
- 15.3.2 the Auctioneer are:
- Address: Washington Business Centre
2 Turbine Way
Sunderland
SR5 3NZ

Telephone Number: 0191 245 7330
Facsimile Number: 0191 245 7331
Attention: Commercial Director
E-mail Address: hello@epower.net

16. General

16.1 Assignment

The Buyer may not assign, sub-licence or otherwise transfer a Registration Agreement, this Auction Code or any rights as a Buyer including rights of access to the Auction Site.

16.2 No other representation

Each party to a Registration Agreement and this Auction Code confirms that, except as provided herein and without prejudice to any liability for fraudulent misrepresentation, it has not relied on any representation or warranty or undertaking which is not contained in a Registration Agreement, this Auction Code or any document referred to therein or which was made by a person who is not a party to a Registration Agreement or this Auction Code and no party shall have any remedy in respect of misrepresentation or untrue statement made by another party (whether innocently or negligently) unless and to the extent that a claim lies in respect of any express representation or warranty or undertaking which is contained in a Registration Agreement or this Auction Code.

16.3 Counterparts

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

16.4 Severability

In the event that any provision of a Registration Agreement or this Auction Code is found to be invalid by any court having competent jurisdiction, the invalidity of such provision will not affect the validity of the remaining provisions of that Registration Agreement or this Auction Code which will remain in full force and effect.

16.5 Entire Agreement

This Auction Code read together with the applicable Registration Agreement is the entire agreement between the Buyer and the Auctioneer with respect to the relevant Auction and the use of the Auction Site.

16.6 Non-waiver

No delay by or omission of any party in exercising any right, power, privilege or remedy under a Registration Agreement or this Auction Code shall operate to impair such right, power privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or future exercise thereof or the exercise of any other right, power, privilege or remedy. The rights and remedies provided in a Registration Agreement and this Auction Code are cumulative and not exclusive of any rights and remedies provided by law.

16.7 No partnership

Nothing in a Registration Agreement, this Auction Code or in any document referred to therein or any arrangement contemplated thereby shall constitute a party a partner of another.

16.8 Third Party Rights

16.8.1 Subject to Clause 16.8.2, no term of a Registration Agreement or this Auction Code is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party thereto.

16.8.2 Notwithstanding Clause 16.8.1, NFPAS may enforce any provision of a Registration Agreement or this Auction Code as if they were a party thereto.

16.9 Tax

The Auctioneer does not accept any responsibility for taxes on an Auction or Bids submitted at the Auction Site.

16.10 Governing Law

Registration Agreements and this Auction Code shall be governed by and construed in accordance with English law.

16. Arbitration

16.1 Save for the recovery of an amount due and payable hereunder where the same is not disputed in good faith and save where expressly stated in a Registration Agreement or this Auction Code to the contrary and subject to any contrary provision of the Act, any licence held under the Act, the Orders, the CCL Rules, the REGO Regulations, the FIT Order or any other applicable legislation, rules or regulations, or the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act as amended from time to time, the parties irrevocably consent to and agree that any dispute or claim arising out of or in connection with a Registration Agreement, this Auction Code or their subject matter, existence, validity, termination or enforceability (including non-contractual disputes or claims) shall be and is hereby referred to arbitration pursuant to the arbitration rules in force from time to time of The Electricity Arbitration Association or, if the Electricity Arbitration Association ceases to exist, of the London Court of International Arbitration, which rules are deemed to be incorporated by reference into this Clause. The seat, or legal place of arbitration, shall be London and the language to be used in the arbitration shall be English.

16.2 Whatever the nationality, residence or domicile of any party and wherever the dispute or difference or any part thereof arose, the law of England shall be the proper law of any reference to arbitration hereunder and in particular (but not so as to derogate from the generality of the foregoing) the provisions of the Arbitration Act 1996 (notwithstanding anything in section 108 thereof) shall apply to any such arbitration wherever the same or any part of it shall be conducted.

16.3 Subject always to Clause 16.5, if any third party brings any legal proceedings in any court (as defined in the Civil Procedure Rules 1998) against one of the parties to a Registration Agreement or this Auction Code (the "**defendant party**") and the defendant party wishes to make a Third Party Claim against the another party to a Registration Agreement or this Auction Code (the "**other party**") which would but for this Clause have been a dispute or difference referred to arbitration by virtue of Clause 16.1 then Clause 16.1 shall not apply and in lieu of arbitration, the court in which the legal proceedings have been commenced shall hear and completely determine and adjudicate upon the legal proceedings and the Third Party Claim not only between the third party and the defendant party but also between either or both of them and the other party whether by way of third party proceedings (pursuant to the Civil Procedure Rules 1998) or otherwise as may be ordered by the court.

16.4 Clause 16.3 shall apply only if at the time the legal proceedings are commenced no arbitration has been commenced between the defendant party and the other party raising or involving the same or substantially the same issues as would be raised by or involved in the Third Party Claim. The tribunal in any arbitration which has been commenced prior to the commencement of legal proceedings shall determine the question, in the event of dispute, whether the issues raised or involved are the same or substantially the same.

17. Jurisdiction

Subject to Clause 16, the Courts of England shall have exclusive jurisdiction in relation to any dispute or claim arising out of or in connection with a Registration Agreement, this Auction Code or their subject matter, existence, validity, termination or enforceability (including non-contractual disputes or claims).

APPENDIX 1

PART ONE

- (a) The auction to determine the Buyer that will enter into a PPA with the relevant Generator, with NFPAS acting as the Generator's Agent, for each relevant Facility and the price such Buyer shall pay for such Facility under the PPA.

In respect of a PPA:

- (a) Name, address and contract number;
- (b) Facility description;
- (c) Delivery Point (GSP Group);
- (d) Meter registration numbers;
- (e) Installed Capacity;
- (f) Auxiliary Load (where specified);
- (g) Site Load (where specified);
- (h) Net Capacity (where appropriate);
- (i) Contractual Capacity; and
- (j) Monthly and half-hourly output data (in kWh) (where available).

Annex 1

PPA

DATED :[●]

**(1) *[Generator's
name]***

- and -

(2) *[Buyer's name]*

**POWER PURCHASE
AGREEMENT**

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THIS AGREEMENT is made

BETWEEN:

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

WHEREAS:

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

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions:

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

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

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

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

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

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

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

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

"**Balancing and Settlement Code Framework Agreement**" means the agreement of that name, in the form approved by the Secretary of State, by which the Balancing and Settlement Code (being the code of that name prepared by National Grid

Electricity Transmission plc pursuant to its transmission licence) is made binding between signatories to such agreement, as amended from time to time;

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

"Buyer's Agent" means any party appointed from time to time by the Buyer to act as its agent (if any);

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

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

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

"Change in Law" means any of the following events occurring after the date of this Agreement:

- (a) the coming into effect of any Law that is not in effect on the date of this Agreement;
- (b) the repeal, amendment or replacement of any Law;
- (c) a change in the interpretation or application of any Law by the Authority or any other Competent Authority;

but shall not include any of the above matters to the extent they constitute: (1) changes to Income Tax, PAYE or Corporation Tax; or (2) remedies or sanctions lawfully exercised by a Competent Authority as a result of any breach of any Law by a party;

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

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

"Competent Authority" means the Authority, any court of competent jurisdiction and any local, national or supra national agency or any trust, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of, or of the Government of, the United Kingdom, or of the European Union;

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

"Contract Term" means the period from the Commencement Date until the earlier of the Contract Term End Date and the date of termination of the Contract Term pursuant to clause 13;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Generator's Agent" means NFPAS;

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

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

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

"kWh" means kilowatt hour;

"Law" means any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, any enforceable community right within the meaning of section 2 of the European Communities Act 1972, and any other applicable law including any common law proclamation, industry rules or standards or guidelines, bye-law, directive, decision, regulation, rule, notice or court ruling in each case in the United Kingdom and all other laws including any regulations, directives, statutes, subordinate legislation, common law and civil codes, all judgments, orders, ordinances, notices, instructions, decisions and awards of any court or competent authority or tribunal and all codes of practice having force of law, statutory guidance and policy notes in any jurisdiction where a party's obligations under this Agreement are carried out;

"Liability Cap" means an amount representing the appropriate value over the Contract Term under this Agreement calculated as the Net Site Capacity (expressed in MW) x Contract Term in hours x 0.5 (being an assumed availability factor) x Successful Bid Price;

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

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

"Meter Operating Agent" means the person so appointed by the Buyer or Buyer's Agent from time to time;

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

"Metering Dispute" has the meaning given to that term in clause 7.4.1;

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

"Month" means a calendar month;

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

"MW" means megawatt;

"MWh" means megawatt hour;

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

"National Terms of Connection" means the national terms of connection which set out the terms and conditions of connection to the electricity distribution system between the Local Distributor and system users;

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

"NFPAS" means NFPAS Limited (company number 04334396) whose registered address is at Washington Business Centre, 2 Turbine Way, Sunderland SR5 3NZ, trading as e-power;

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

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

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

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

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

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

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

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

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

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

"RO Banding" means the RO Banding set out at Schedule 2 of this Agreement;

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

"RO Order" means the Renewables Obligation Order 2009;

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

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

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

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

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

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

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

"Unsuitable Counterparty" means a person that:

- (a) has a substantial interest in the sale, distribution or manufacture of weaponry or pornography (for the purposes of this definition, the holding of less than 50% of the ordinary shares of a company does not amount to a "substantial interest");
- (b) is (or has a holding company that is) proven by a competent authority to be currently involved in: (i) serious or systematic human rights violations, such as murder, torture, deprivation of liberty, forced labour, child labour and other child exploitation; or (ii) serious violations of individuals' human rights in situations of war or conflict.

1.2 Interpretation

In this Agreement unless the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 headings and the use of bold typeface shall be for convenience only and shall not affect the interpretation or construction of this Agreement;
- 1.2.3 references to any enactment or statutory provision shall include references to such enactment or statutory provision as it may, after the date of this Agreement, from time to time be amended, supplemented, consolidated, modified, re-enacted or replaced;
- 1.2.4 a reference to a clause, paragraph or Schedule is, unless indicated to the contrary, a reference to a clause, a paragraph or schedule to this Agreement;
- 1.2.5 if a period of time is specified as from a given day, or from the day of an act or event, shall be calculated exclusive of that day;
- 1.2.6 references to writing shall include any modes of reproducing words in any legible form and shall include email except where expressly stated otherwise;
- 1.2.7 a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association, a partnership or to an individual's executors or administrators;
- 1.2.8 a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation"; and
- 1.2.9 except to the extent that it requires otherwise, any reference to "this Agreement" or any other agreement or document (other than an enactment or statutory provision) is a reference to it as amended, supplemented or novated from time to time and includes a reference to any document which amends, is supplemental to, novates, assigns or is entered into, made or given pursuant to or in accordance with any terms of it.

2. METER REGISTRATION

- 2.1 The Generator undertakes to provide to the Buyer as soon as reasonably practicable all such information as is reasonably necessary to enable the Buyer or the Buyer's Agent to register the MPANs for the Facility in accordance with the Balancing and Settlement Code prior to the Commencement Date.
- 2.2 As soon as reasonably practicable after the Buyer receives the information described in clause 2.1 from the Generator, the Buyer undertakes to register or procure that the Buyer's Agent registers the metering points with effect from the Commencement Date, to maintain registration for the duration of the Contract Term and to provide the subsequent buyer (if applicable) prior to the end of the Contract Term all such information as is reasonably necessary to enable such subsequent buyer to register the MPANs for the Facility in accordance with the Balancing and Settlement Code.
- 2.3 The Buyer shall confirm registration by it or the Buyer's Agent to the Generator's Agent at least 5 Banking Days prior to the Commencement Date.

- 2.4 The Buyer shall pay the charges as set out in clause 9.1 (calculated by reference to metering data provided by the Generator), notwithstanding any failure of the Buyer or the Buyer's Agent to achieve meter registration by the Commencement Date, unless:
- 2.4.1 the failure to register is caused by a breach by the Generator of its obligation as set out in clause 2.1; or
 - 2.4.2 the Generator has received payment in respect of Energy including associated Renewable Benefits delivered to the Delivery Point from the incumbent meter registrant, in which case the liability of the Buyer will be reduced to the extent of such payment.

3. OPERATION OF THE FACILITY

3.1 Entitlement to Metered Output

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

3.2 Prudent Operating Practice

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

3.3 Net Site Capacity of the Facility

3.3.1 The Generator shall not materially alter the following without giving 10 Banking Days' prior written notice to the Buyer :

- (A) the declared net capacity of the Facility; or
- (B) the type or quantity of fuel used.

3.3.2 If there is a net increase in the declared net capacity of the Facility after the date hereof, the Buyer shall be under no obligation to purchase the output resulting from the increased capacity above the Net Site Capacity but it may, in its sole discretion, notify the Generator within 10 Banking Days of receipt of the Generator's notice under clause 3.3.1 (or otherwise on becoming aware of such increase), that it wishes to purchase such additional capacity and the Net Site Capacity shall be increased accordingly.

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

3.4 Force Majeure

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

- (i) as soon as reasonably practicable after the start of the event of Force Majeure the Affected party notifies the other parties in writing of the

act, event or circumstance relied on, the date on which such act, event or circumstance commenced and the effect of the event of Force Majeure on the Affected party's ability to perform its obligations under this Agreement; and

- (ii) the Affected party continues to use its Reasonable Endeavours to perform its obligations under this Agreement.

3.4.2 Subject to the parties' rights to terminate this Agreement pursuant to clauses 13.1.7 and 13.2.5 if an event of Force Majeure persists for a continuous period of 90 days, immediately after the end of the event of Force Majeure the Affected party shall notify the other party in writing that the event of Force Majeure has ended and shall resume performance of its obligations under this Agreement.

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

3.5 **No Interest in Facility**

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

3.6 **Ancillary Services**

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

3.7 **Triad Avoidance Benefit**

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

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

3.8 **Delivery of Energy**

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

3.9 **Use of System Charges**

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

4. FOSSIL FUEL USAGE

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

5. OUTAGES

5.1 Maintenance and Planned Outages

5.1.1 Subject to the other provisions of this Agreement, the Generator shall use Prudent

Operating Practices
when:

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

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

5.2 Forced Outages

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

6. RENEWABLES BENEFITS

6.1 Eligibility for Accreditations

6.1.1 The Generator warrants that it has obtained or will by the Commencement Date have obtained either:

- (A) RO Accreditation; or
- (B) FIT Accreditation (and served a valid Export Payment Opt Out Notification),

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

6.1.2 Where the Generator has given the warranty referred to in clause 6.1.1(A) the Generator further warrants that:

- (A) the RO Banding is correct as at the date hereof and at the Commencement Date; and
- (B) for the duration of this Agreement, it will not take or omit to take any action which would result in a change to the RO Banding.

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

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

6.3 **Maximising Renewables Benefits**

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

6.4 **Transfer of Renewables Benefits**

6.4.1 The Buyer shall notify the Generator if it requires the Generator to transfer Renewable Benefits to the Buyer's Agent in place of the Buyer and the Generator shall begin to transfer Renewable Benefits to the Buyer's Agent in accordance with clause 6.4.2 as soon as reasonably practicable following such notification.

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

6.5 **Onward Transmission of ROCs and REGOs**

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

6.6 **ROC Revocation**

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

the Generator's Agent provided the Buyer notifies the Generator within 7 Banking Days of receipt of notice of the relevant revocation.

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

7. METERING AND PROVISION OF INFORMATION

7.1 Metering Data and determination of Metered Output

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

7.1.2 If the Metering Data required for the Generator's Agent to determine the Metered Output and calculate the payments due from the Buyer to the Generator's Agent under clause 10.2 of this Agreement is not available at any time or if remotely obtained data is lost or corrupted:

- (A) the Generator's Agent may make estimates for such purpose having regard, when available, to the Metering Data before and (if appropriate) after the period of estimation and the Buyer will make payments to the Generator's Agent in accordance with such estimates; and
- (B) if or when the Metering Data for the period of estimation becomes available appropriate adjustments will be made by the Generator's Agent in the next account statement or as soon as practicable thereafter; or
- (C) if the Metering Data does not become available or cannot be recovered by the Meter Operating Agent within 1 Month of the Buyer becoming aware of the unavailability or loss of the relevant Metering Data, the Buyer shall notify the Generator and the Generator's Agent and the parties agree to use Reasonable Endeavours to seek to agree, in good faith, whether any adjustments should be made by the Generator's Agent. Adjustments shall not be binding on the parties unless or until agreed, in writing, between the parties within 1 Month of the date of receipt of the relevant notice by the Generator and the Generator's Agent. Such adjustments shall be notified to the Generator's Agent and the Generator's Agent will make those adjustments in the next account statement or as soon as practicable thereafter. Should the parties fail to reach agreement the dispute resolution provisions set out in clauses 15 and 16 shall apply.

7.2 Access to Information

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

7.3 Access to Meters

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

7.4 Metering Disputes

7.4.1 If:

- (A) the Generator disputes the accuracy of the Metering Data, the Generator must notify the Buyer and the Generator's Agent within 10 Banking Days of receipt by the Generator of the data; or
- (B) the Buyer becomes aware of any inaccuracies or incompleteness in the Metering Data provided to the Generator's Agent, the Buyer must notify the Generator and the Generator's Agent as soon as reasonably practicable,

and a "**Metering Dispute**" shall be deemed to have arisen.

7.4.2 In the event of a Metering Dispute arising, the parties agree to use Reasonable Endeavours to resolve the dispute promptly.

7.4.3 In the absence of manifest error, and subject to the requirements of the RO Order, the ROS Order, the CCL Rules and the FITs Order (and procedures issued pursuant thereto) and save as otherwise specified in this Agreement, the Buyer's Metering Data shall be used for all purposes hereunder (including for the notification by the Generator of the output to the Authority) unless and until any such dispute is resolved to the contrary, or the parties otherwise agree.

8. WARRANTIES AND UNDERTAKINGS

8.1 Warranties by the Generator

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

8.1.1 that the Facility details as set out in Schedule 2 are true;

8.1.2 as to the existence of a valid Connection Agreement and undertakes to comply with the provisions of such Connection Agreement throughout the Contract Term;

8.1.3 as to the authority of the Generator's Agent to act on its behalf in respect of this Agreement.

8.2 The Generator further warrants that it will not take, or omit to take, any action which would affect its right to be connected to the Local Distributor's distribution network under the National Terms of Connection.

8.3 Warranties by the Buyer

Without prejudice to the generality of clause 8.4.1, the Buyer warrants that it and/or the Buyer's Agent holds a supply licence under section 6 of the Act and is a party to the Balancing and Settlement Code Framework Agreement.

8.4 Warranties and undertakings by the Generator and Buyer

Each party warrants and undertakes that:

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

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

8.4.3 at the date hereof it is not, and for the duration of this Agreement it will not become, an Unsuitable Counterparty.

8.5 Generator's Agent

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

8.6 Buyer's Agent

8.6.1 The Buyer shall notify the Generator's Agent of the identity of a Buyer's Agent within 5 days of registration of the MPANs for the Facility by such Buyer's Agent.

8.6.2 The Buyer shall notify the Generator's Agent of any change in the identity of the Buyer's Agent as soon as reasonably practicable and in any event within 5 days of such change.

8.6.3 The Generator shall not be responsible for any of the costs or fees of the Buyer's Agent in respect of the Buyer's Agent's role under this Agreement.

9. CHARGES

9.1 Price for Metered Output

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

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

9.2 Payment of Triad Avoidance Benefit

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

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

10. INVOICING AND PAYMENT

10.1 Account statements and billing

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

10.2 Payment

The Generator's Agent shall submit account statements submitted to it by the Generator pursuant to clause 10.1 to the Buyer .

10.2.1 Subject to clause 10.6, the Buyer shall pay the amount due under any such account statements to the Generator's Agent within the later of:

(A) 15 Banking Days after the end of the month in which the Metered Output was generated; and

(B) 10 Banking Days after receipt of the account statement,

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

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

10.3 Value Added Tax

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

10.4 Interest

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

10.5 Disputed Items

Without prejudice to clause 7.4, if any item or part of any item included in an account statement rendered by the Generator's Agent in accordance with this clause 10 is disputed or subject to question by the Generator or Buyer, the Buyer shall not withhold payment of undisputed and unquestioned items or parts of such items. The provisions of clause 10.4 shall apply to such undisputed and unquestioned items or parts of such items

and to disputed or questioned items or parts of such items or excluded amounts to the extent that they are subsequently agreed or determined to have been properly payable to the Generator.

10.6 Generator's Agent

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

11. LIABILITY

11.1 Limitation of Liability

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

11.2 Liability for Death or Personal Injury

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

11.3 Limitation of Liability

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

12. CHANGE IN LAW

12.1 Notice for Change in Law

If either party believes that there has been a Change in Law which:

12.1.1 renders it impossible or unlawful to give effect to this Agreement;

12.1.2 renders any material element required to be ascertained under this Agreement impossible to ascertain;

12.1.3 alters the electricity trading arrangements in Great Britain;

12.1.4 causes the provisions in this Agreement to be inconsistent with the Law (including where any word or expression is defined in this Agreement by reference to its meaning in any Law); or

12.1.5 materially and adversely affects for that party the benefits provided by this Agreement or the overall balance of liability and risk in respect of the subject matter of this Agreement, in each case as applied at the date of this Agreement,

then that party may serve a notice on the other party requesting that the parties discuss such circumstances.

12.2 Negotiations to amend Agreement

Within 10 Banking Days of receipt of a notice served under clause 12.1, the parties shall commence negotiations to seek to agree, in good faith, such amendments to this Agreement as are necessary to achieve (in so far as possible) the same overall balances of benefits, liabilities and risk between the parties in respect of the subject matter of this Agreement as applied at the date of this Agreement. For the avoidance of doubt:

12.2.1 these amendments may include, but are not limited to, amendments to the Successful Bid Price payable in accordance with clause 9.1.1 or any other payments that may be due under clauses 9 or 10 or any other benefits, liabilities and risks accruing to the parties under this Agreement; and

12.2.2 subject to clauses 13.1.8 and 13.2.6, the parties shall continue to perform any obligations under this Agreement that remain possible to perform despite any Change in Law.

12.3 NFPAS Assistance

If the parties are unable reach an agreement pursuant to clause 12.2, then the parties shall be entitled to seek assistance from NFPAS in negotiating an agreement. NFPAS may propose any amendments to this Agreement in order to achieve the same overall balances of benefits, liabilities and risk between the parties in respect of the subject matter of this Agreement in accordance with clause 12.2. NFPAS' proposed amendments shall not be binding on the parties unless or until agreed between the parties in writing.

12.4 Re-auction

Upon termination of this Agreement pursuant to clauses 13.1.8 or 13.2.6, the parties agree that the Generator shall be entitled to request the Auctioneer (as defined in the Auction Code) to conduct another Auction in respect of the Generator's Facility in relation to the Metered Output under this Agreement in order to identify another Successful Bidder (as defined in clause 5 of the Auction Code).

12.5 Miscellaneous

Notwithstanding any other provision in this clause 12, the parties acknowledge that neither party shall be in breach of this Agreement to the extent that such breach is caused by a Change in Law and neither party shall be liable to the other for a failure to perform any obligation under this Agreement which becomes prohibited or impossible to perform by reason of a Change in Law.

13. TERMINATION

13.1 Termination by the Buyer The Buyer may by notice to the Generator forthwith terminate the Contract Term if:

13.1.1 the Generator fails to obtain and maintain at all relevant times during the Contract Term RO Accreditation or FIT Accreditation and a valid Export Payment Opt Out Notification, (whichever is the subject of this Agreement) as set out in clause 6.1;

13.1.2 the Generator fails to promptly transfer to the Generator's Agent for onwards transmission to the Buyer all relevant ROCs, REGOs or other Renewables Benefits, and, in the case of a Generator with FIT Accreditation, where

requested, a valid Export Payment Opt Out Notification, in accordance with the terms of this Agreement;

13.1.3 the Generator is in material breach of its obligations under this Agreement and such breach is continuing and remains unremedied after the expiry of 28 Banking Days following the giving of written notice by the Buyer requiring the Generator to discontinue or remedy its material breach;

13.1.4 the Connection Agreement is terminated (and not replaced) for any reason;

13.1.5 the Generator's acts or omissions cause the Buyer to be in breach of its obligations under its supply licence granted under section 6 of the Act or the Balancing and Settlement Code;

13.1.6 the Generator is subject to an Insolvency Event;

13.1.7 the Generator fails to perform its obligations under this Agreement to any material extent for a continuous period of 90 days as a result of an event of Force Majeure; or

13.1.8 following a Change in Law in respect of which a notice is served under clause 12.1, the parties fail to reach an agreement under clauses 12.2 or 12.3 within 30 Banking Days of receipt of that notice.

13.2 Termination by the Generator

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

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

13.2.2 or the Buyer's Agent at any time during the Contract Term ceases to hold a supply licence under section 6 of the Act;

13.2.3 is in material breach of its obligations other than its payment obligations under this Agreement and such breach is continuing and remains unremedied after the expiry of 28 Banking Days following the giving of written notice by the Generator requiring the Buyer to discontinue or remedy its material breach;

13.2.4 or the Buyer's Agent is subject to an Insolvency Event; or

13.2.5 fails to perform its obligations under this Agreement to any material extent for a continuous period of 90 days as a result of an event of Force Majeure; or

13.2.6 following a Change in Law in respect of which a notice is served under clause 12.1, the parties fail to reach an agreement under clauses 12.2 or 12.3 within 30 Banking Days of receipt of that notice.

13.3 Survival Rights on Termination

Termination of this Agreement shall be without prejudice to any accrued rights or obligations of the parties up to the date of termination (provided that each party shall have a right of set-off in respect of amounts due from the other party) and the provisions of

clauses 6.4, 6.6, 9, 10, 11, 14, 15, 16.9, 16.10 shall remain in full force and effect notwithstanding termination.

14. CONFIDENTIALITY AND ANNOUNCEMENTS

14.1 General Restriction

Subject to the exceptions provided in clause 14.2, neither party shall, at any time prior to or within 2 years after the termination or expiry of this Agreement, without the prior written consent of the others, divulge or suffer or permit its officers, employees, agents or sub-contractors to divulge to any person (other than to any of its or their respective officers or employees who require the same to enable them properly to carry out their duties) any of the contents of this Agreement or any commercially confidential information relating to the negotiations concerning the same or any commercially confidential information which may come to a party's knowledge in the course of such negotiations or otherwise concerning the operations, contracts, commercial or financial arrangements or affairs of the other party.

14.2 Exceptions

The restrictions imposed by clause 14.1 shall not apply to the disclosure of any information:

14.2.1 which now or hereafter comes into the public domain otherwise than as a result of a breach of an undertaking of confidentiality or which is obtainable with no more than reasonable diligence from sources other than the parties hereto;

14.2.2 which is required by law to be disclosed to any person who is authorised by law to receive the same;

14.2.3 which is required to be disclosed by the regulations of any recognised exchange upon which the share capital of the party making the disclosure is or is proposed to be from time to time listed or dealt in;

14.2.4 to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing party is a party;

14.2.5 in accordance with the provisions of the RO Order, the ROS Order, the RONI Orders, the CCL Rules, the REGO Regulations, the FIT Order, the Connection Agreement or pursuant to any licence held under the Act;

14.2.6 in accordance with the Balancing and Settlement Code Framework Agreement;

14.2.7 to any consultants, banks or professional advisors of the disclosing party, provided enforceable undertakings to observe the same restrictions on the use of the relevant information as are contained in this clause 14 have been obtained prior to such disclosure. If disclosure is made to a bank or other adviser who is not a legal or financial adviser, the disclosing party must inform the other party in advance of the disclosure and deliver the undertaking to the other party;

14.2.8 from any party to any instrument or agency of Government or the European Union having jurisdiction in respect of inter-state commerce, competition or energy;

14.2.9 to the Authority, the Scottish Ministers, the Secretary of State or the Department of Enterprise, Trade and Investment ("**DETI**") and their respective agents to enable the Authority, the Scottish Ministers, the Secretary of State or the DETI to monitor developments concerning the generation of electricity from non-

fossil fuel sources or to enable those persons and entities to discharge their duties under the Act, the RO Order, the ROS Order, the RONI Order, the CCL Rules, the FITs Order or the REGO Regulations;

- 14.2.10 to or by the Generator's Agent as necessary to facilitate the performance of this Agreement;
- 14.2.11 by the Generator's Agent to any person as to the total number ROCs, LECs or REGOs that have, or FIT accredited output that has, been sold to Successful Bidders in any Auction and the total amount payable by Successful Bidders to the Generator's Agent in respect of such ROCs, REGOs or FIT accredited output or details of any ROCs, REGO or FIT Accreditation that has been revoked; and
- 14.2.12 by the Generator's Agent to its sub-contractors to the extent required to enable such sub-contractor to carry out the Generator's Agent's obligations under this Agreement and who shall be made aware by the Generator's Agent of its obligations under this Agreement and shall be required by the Generator's Agent to observe the same restrictions on the use of the confidential information as are contained in this clause 14.
- 14.2.13 to or by the Buyer's Agent where the Buyer has appointed the Buyer's Agent to register the MPAN's or for other purposes in connection with the delivery of Metered Output to the Buyer under this Agreement.

14.3 Announcements

- 14.3.1 Subject to clause 14.3.2, neither party shall issue public announcements regarding this Agreement without first having obtained prior approval of a copy of the announcement from the other party (such approval not to be unreasonably withheld).
- 14.3.2 The restrictions imposed by clause 14.3.1 shall not apply to the disclosure of any information which is required to be disclosed by the regulations of any recognised exchange upon which the share capital of the party making the disclosure is or is proposed to be from time to time listed or dealt in.

15. ARBITRATION

15.1 Reference to Arbitration

Save for the recovery of an amount due and payable hereunder where the same is not disputed in good faith and save where expressly stated in this Agreement to the contrary and subject to any contrary provision of the Act, any licence held under the Act, the RO Order, the ROS Order, the RONI Order, the CCL Rules, the REGO Regulations, the FIT Order or any other applicable legislation, rules or regulations, or the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, the parties irrevocably consent to and agree that any dispute or claim arising out of or in connection with this Agreement or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims) shall be and is hereby referred to arbitration pursuant to the arbitration rules in force from time to time of The Electricity Arbitration Association or, if the Electricity Arbitration Association ceases to exist, of the London Court of International Arbitration, which rules are deemed to be incorporated by reference into this clause. The seat, or legal place of arbitration, shall be London and the language to be used in the arbitration shall be English.

15.2 Arbitration Act

Whatever the nationality, residence or domicile of any contracting party and wherever the dispute or difference or any part thereof arose, the law of England shall be the proper law of any reference to arbitration hereunder and in particular (but not so as to derogate from the generality of the foregoing) the provisions of the Arbitration Act 1996 (notwithstanding anything in section 108 thereof) shall apply to any such arbitration wherever the same or any part of it shall be conducted.

15.3 Third Party Claims

Subject always to clause 15.5, if any third party brings any legal proceedings in any court (as defined in the Civil Procedure Rules 1998) against one of the parties to this Agreement (the "**defendant contracting party**") and the defendant contracting party wishes to make a third party claim (as defined in clause 15.4) against the other party to this Agreement (the "**other contracting party**") which would but for this clause have been a dispute or difference referred to arbitration by virtue of clause 15.1 then clause 15.1 shall not apply and in lieu of arbitration the court in which the legal proceedings have been commenced shall hear and completely determine and adjudicate upon the legal proceedings and the third party claim not only between the third party and the defendant contracting party but also between either or both of them and the other contracting party whether by way of third party proceedings (pursuant to the Civil Procedure Rules 1998) or otherwise as may be ordered by the court.

15.4 Interpretation

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

15.4.1 any claim by a defendant contracting party against a contracting party (whether or not already a party to the legal proceedings) for any contribution or indemnity; or

15.4.2 any claim by a defendant contracting party against such a contracting party for any relief or remedy relating to or connected with the subject matter of the legal proceedings and substantially the same as some relief or remedy claimed by the third party; or

15.4.3 any requirement by a defendant contracting party that any question or issue relating to or connected with the subject matter of the legal proceedings should be determined not only as between the third party and the defendant contracting party but also as between either or both of them and a contracting party (whether or not already a party to the legal proceedings).

15.5 Arbitration Commenced

Clause 15.3 shall apply only if at the time the legal proceedings are commenced no arbitration has been commenced between the defendant contracting party and the other contracting party raising or involving the same or substantially the same issues as would be raised by or involved in the third party claim. The tribunal in any arbitration which has been commenced prior to the commencement of legal proceedings shall determine the question, in the event of dispute, whether the issues raised or involved are the same or substantially the same.

16. MISCELLANEOUS

16.1 No other Representation

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

16.2 Notice

16.2.1 Any notice, approval, consent or other communication to be given by one party to the other under, or in connection with the matters contemplated by, this Agreement shall be sent to the address or facsimile number or e-mail address of such other party given in Schedule 1 for that purpose and marked for the attention of the person so given or to such other address or facsimile number or e-mail address or marked for such other attention as such other party may from time to time specify by notice given in accordance with this clause 16.2.

16.2.2 Any notice or other communication to be given by any party to the other in connection with the matters contemplated by this Agreement shall be in writing in the English language and shall be given by letter delivered by hand or sent by first class prepaid post (airmail, as appropriate, if overseas) or facsimile, or sent by electronic mail and shall be deemed to have been received:

- (A) in the case of delivery by hand, when delivered; or
- (B) in the case of first class prepaid post, on the second day following the day of posting or (if sent overseas by airmail, as appropriate,) on the fifth day following the day of posting; or
- (C) in the case of facsimile, on acknowledgement of the addressee's facsimile receiving equipment (where such acknowledgement occurs before 1700 hours on the day of acknowledgement) and in any other case on the day following the day of acknowledgement; or
- (D) in the case of notice given by electronic mail, when the communication is first stored in the recipient's electronic mail box. The place of receipt of e-mail will be deemed to be the postal address nominated by the recipient for the service of notices in Schedule 1.

16.3 Counterparts

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

16.4 Variation and Waiver

16.4.1 No delay by or omission of any party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any

other or future exercise thereof or the exercise of any other right, power, privilege or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

16.4.2 No variation to this Agreement shall be effective unless made in writing and signed by or on behalf of the Generator, the Buyer and the Generator's Agent.

16.4.3 The Generator's Agent shall not unreasonably withhold or delay its consent to any variation pursuant to clause 16.4.2.

16.5 Assignment

16.5.1 Subject to clauses 16.5.2, 16.5.3 and 16.5.4, neither party may transfer or otherwise assign any of its rights or obligations under this Agreement nor enter into any sub-contracted relationships with any person relating to the performance of its obligations under this Agreement or delegate the performance of any of its obligations under this Agreement without in any case the prior written consent of the other party and the Generator's Agent (such consent not to be unreasonably withheld or delayed).

16.5.2 The Buyer shall not assign or transfer this Agreement to anyone other than a person holding a supply licence or a person appointing an agent that holds a supply licence under section 6 of the Act.

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

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

16.6 Third Party Rights

16.6.1 Subject as provided in clause 16.6.2, no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

16.6.2 Notwithstanding clause 16.6.1, the Generator's Agent may enforce the provisions concerning the Generator's Agent set out in clauses 7, 8.5, 10, 16.4 and 16.5.

16.7 No Partnership

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

16.8 Severance

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

16.9 Law

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

16.10 Jurisdiction

Subject to clause 15, the Courts of England shall have exclusive jurisdiction in relation to any dispute or claim arising out of or in connection with this Agreement or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims).

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

Generator

SIGNED by;

Signature: _____

Print name: _____

Date: _____

In the presence of (witness)

Signature: _____

Print name: _____

Date: _____

For (company name): _____

Buyer

SIGNED by;

Signature:

Print name:

Date:

In the presence of (witness)

Signature:

Print name:

Date:

For (company name):

**SCHEDULE 1:
PARTIES**

GENERATOR

Name:

Registered Office:

Registered Number:

BUYER

Name:

Registered Office:

Registered

Number:

Service of notices

It being agreed that delivery to the following person and email address shall constitute valid notice to the parties in accordance with clause 16.2

Attention: e-POWER Commercial Director

Email: hello@epower.net

SCHEDULE 2: PARTICULARS

1. SITE DESCRIPTION

- a) Site Address:
- b) Facility description (including purpose of Fossil Fuel use where applicable)

2. FUEL

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

3. CAPACITY

- a) Installed capacity (kW):
- b) Net Site Capacity (kW):

4. COMMISSIONING

- a) Date Commissioned:

5. METER REGISTRATION

- a) GSP Group:
- b) MPANs:
- c) Connection Voltage:
- d) Local Distributor:

6. RO OR FIT ACCREDITATION

- a) Facility eligible for RO Accreditation? (Yes/No)
- b) RO Banding
- c) Facility eligible for FIT Accreditation? (Yes/No)
 - If yes, unique identifier for accredited FIT installation:

7. ANCILLARY SERVICES

8. PRICES

Bid Price (pence per kWh):

9. CONTRACT TERM

