

## AUCTION CODE FOR POWER AUCTIONS BY NFPA, NFPA SCOTLAND and NFPAS

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

The Auctions have been established by NFPA as the nominated person pursuant to the requirements of the 2000 Order and NFPA Scotland as the nominated person pursuant to the requirements of the 2005 Order (each a "**Nominated Person**") and also by NFPAS to undertake auctions on behalf of Generators. The Nominated Persons and NFPAS have appointed NFPA as their auctioneer in respect of the Auctions.

One of the requirements of the Orders is that the relevant Nominated Person must conduct itself in relation to the relevant Auction in a manner so as to ensure and to satisfy the Gas and Electricity Markets Authority that it does not show any undue preference or exercise any undue discrimination in relation to any licensed electricity supplier or class of licensed electricity supplier.

The Order further requires that any person who owns or has an interest in the relevant Nominated Person must not gain any advantage from his ownership or interest (save that expressly permitted by statutory instrument) in relation to the relevant Auction.

### 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:

" <b>2000 Order</b> "	means the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000 as amended from time to time;
" <b>2005 Order</b> "	means the Electricity from Non-Fossil Fuel Sources (Scotland) Saving Arrangements Order 2005 as amended from time to time;
" <b>Act</b> "	means the Electricity Act 1989 as amended from time to time;
" <b>Auction</b> "	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;
" <b>Auction Period</b> "	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;
" <b>Auction Site</b> "	means the electronic site accessible by the Suppliers on which the Auctions will be conducted;
" <b>Auctioneer</b> "	means NFPA acting on behalf of the Nominated Persons and NFPAS, as the case may be;
" <b>Authority</b> "	means the Gas and Electricity Markets Authority established under the Utilities Act 2000 or any successor from time to time;
" <b>Banking Day</b> "	means a day (other than a Saturday or a Sunday) on which banks are open for domestic business in the City of London;

<b>"Bid"</b>	means a Bid in pence per KWh in respect of Metered Output and associated Renewables Benefits offered for sale under the terms of the On-Sale Agreement or PPA for the relevant Facility;
<b>"Bidding Hours"</b>	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;
<b>"BSC Framework Agreement"</b>	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;
<b>"Change in Law"</b>	<p>means any of the following events:</p> <ul style="list-style-type: none"> <li>(a) the coming into effect of any Law that is not in effect prior to the start of the Auction Period;</li> <li>(b) the repeal, amendment or replacement of any Law;</li> <li>(c) a change in the interpretation or application of any Law by the Authority or any other Competent Authority;</li> </ul> <p>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;</p>
<b>"Competent Authority"</b>	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;
<b>"Delivery Point"</b>	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;
<b>"Energy"</b>	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;
<b>"Facility"</b>	means a generation facility whose Metered Output is being offered under an Auction;
<b>"Final Bid Price"</b>	means the final Bid price of the Successful Bidder which is accepted by the Auctioneer;

<b>"FIT Order"</b>	means the Feed-in Tariffs Order 2012, SI 2012/2782;
<b>"Generator"</b>	has the meaning given to such term in the PPA;
<b>"Generator's Agent"</b>	means NFPAS Limited whose registered office is at 4 <sup>th</sup> Floor, Higham House, New Bridge Street West, Newcastle upon Tyne NE1 8AN in its capacity as agent for a Generator under a relevant PPA;
<b>"Law"</b>	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;
<b>"Local Distributor"</b>	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;
<b>"Metered Output"</b>	means, in any Month, the aggregate amount of Energy delivered at the Delivery Point;
<b>"NFFO On-Sale Agreement"</b>	means the Renewables NFFO On-Sale Agreement for the supply of electrical energy which may be entered into by the relevant Nominated Person and the Supplier in respect of Facilities situated in England and Wales for which the Supplier is the Successful Bidder;
<b>"NFPA"</b>	means Non-Fossil Purchasing Agency Limited whose registered office is at 4 <sup>th</sup> Floor, Higham House, New Bridge Street West, Newcastle upon Tyne NE1 8AN;
<b>"NFPAS"</b>	means NFPAS Limited whose registered office is at 4 <sup>th</sup> Floor, Higham House, New Bridge Street West, Newcastle upon Tyne NE1 8AN;
<b>"NFPA Scotland"</b>	means NFPA Scotland Limited whose registered office is at 4 <sup>th</sup> Floor, Higham House, New Bridge Street West, Newcastle upon Tyne NE1 8AN;
<b>"On-Sale Agreement"</b>	means either the SRO On-Sale Agreement or the NFFO On-Sale Agreement as appropriate;

<b>"Orders"</b>	means the Renewables Obligation Order 2009; the Renewables Obligation (Scotland) Order 2009; and the Renewables Obligation Order (Northern Ireland) 2009;
<b>"PPA"</b>	means a Power Purchase Agreement between a Generator and the Supplier;
<b>"Registration Agreement"</b>	means the Registration Agreement executed by Suppliers wishing to participate in auctions which incorporate this Auction Code;
<b>"REGO Regulations"</b>	means the Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations, SI 2003/2562;
<b>"Relevant Meter Point"</b>	means each meter point described in the relevant part of Schedule 2 of the On-Sale Agreement;
<b>"Reserve Price"</b>	means the price notified by the Auctioneer as the minimum at which Metered Output and associated Renewable Benefits will be sold at an Auction;
<b>"Renewables Benefits"</b>	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);
<b>"SRO On-Sale Agreement"</b>	means the Renewables SRO On-Sale Agreement (First Edition) for the supply of electrical energy which may be entered into by the relevant Nominated Person and the Supplier in respect of Facilities situated in Scotland for which the Supplier is the Successful Bidder;
<b>"Successful Bidder"</b>	is defined in Clause 5.1;
<b>"Supplier"</b>	means the party named as the Supplier in the Registration Agreement and <b>"Suppliers"</b> means all parties participating in any Auction; and
<b>"Third Party Claim"</b>	means: <ul style="list-style-type: none"> <li>(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</li> <li>(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</li> <li>(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</li> </ul>

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 Supplier 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 Supplier comprises two or more persons, any obligation of the Supplier 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 references to a "relevant Nominated Person" are to NFPA in respect of Facilities situated in England and Wales and NFPA Scotland in respect of Facilities situated in Scotland; and
- 1.2.11 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 Supplier the Auctioneer shall issue the Supplier with a unique user name and confidential security password to access the Auction Site and participate in the relevant Auctions. The Auctioneer agrees not to disclose the Supplier's user name and security password to any party.

2.2 The Supplier shall at all times maintain the confidentiality of its user name and password. The Supplier 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 Supplier, unless such acts result directly from a breach of the Auctioneer's obligations of non-disclosure in Clause 2.1.

2.3 The Supplier shall notify the Auctioneer immediately if it believes that its user name 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 ensure that the information set out in Schedule 1 of the Auction Code for each Facility is made available to the Suppliers via the Auction Site at least 20 days before the commencement of each Auction Period or, in the case of schemes that are not expected to be commissioned at the commencement of the Auction Period, 10 days before the commencement of each Auction Period.

3.3 Notwithstanding the simultaneous nature of the Auctions and that the Auctioneer is conducting the Auctions on their behalf, NFPA and NFPA Scotland acknowledge that they each remain responsible for their obligations as nominated persons under the Orders.

### **4. Submission of Bids**

4.1 During the Auction Period, the Supplier 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 Supplier:

4.2.1 acknowledges that it has examined all information made available by the Auctioneer on behalf of the relevant Nominated Person and NFPAS 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 On-Sale Agreement or 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 Supplier's Bid relates to Metered Output offered under a PPA, the Supplier, 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 Supplier 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 Supplier 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 Supplier in the Registration Agreement. The failure of the Supplier to receive such notification shall not release the Supplier 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 Supplier 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 9.3, 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 Supplier 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 fax notification (sent to the fax number 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 Supplier is the Successful Bidder:
    - (A) the Final Bid Price in respect of the relevant Facility as determined under the Auction;

- (B) the Supplier'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 Supplier for signature within 7 Banking Days of the end of the Auction Period. The Supplier shall be bound to execute the PPA in respect of each Facility for which the Supplier is the Successful Bidder and return both copies, undated, to the Auctioneer within 7 Banking Days of receipt.

5.6 In relation to Auctions involving Metered Output being sold under an On-Sale Agreement, the Successful Bidder hereby:

5.6.1 acknowledges that on conclusion of the relevant Auction it has entered into a legally binding and enforceable agreement with the relevant Nominated Person in respect of the relevant Facility and agrees to document this by immediately entering into an On-Sale Agreement with that relevant Nominated Person; and

5.6.2 authorises and directs the Auctioneer to insert in the duplicate copies of the On-Sale Agreement for each relevant Facility in respect of which the Supplier is the Successful Bidder:

- (A) details of the Facility (including the Generator, the Relevant Facility and the Auction Price, all as defined in the On-Sale Agreement) in respect of which the Supplier is the Successful Bidder in Schedule 2 of the relevant On-Sale Agreements;
- (B) the Supplier's name, registered office and registered number; and
- (C) any other variables in the relevant On-Sale Agreement,

as determined by the relevant Auction, whereupon the relevant Nominated Person shall execute such copies of the relevant On-Sale Agreement and forward (or procure that the Auctioneer forwards) one copy of the same to the Supplier within 7 Banking Days of the end of the Auction Period.

5.7 The Supplier acknowledges that if an On-Sale Agreement or a PPA, as appropriate, with a Successful Bidder terminates for any reason the relevant Nominated Person or NFPAS, as appropriate, may:

5.7.1 offer an On-Sale Agreement or PPA, as appropriate, in respect of the Facility to the unsuccessful bidders (commencing with the next highest bidder and ending with the lowest bidder); or

5.7.2 instruct the Auctioneer to 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 or Clause 9.3 of an On-Sale Agreement).

5.8 In the event that the relevant Nominated Person or the Generator, as appropriate, has the right to terminate an On-Sale Agreement, or a PPA, as appropriate, for failure to register Relevant Meter Points within the time-limits specified by the agreement, the relevant Nominated Person or NFPAS, as appropriate, shall have the right to require the Supplier to transfer its future rights and obligations in respect of the Relevant Meter Points under that On-Sale Agreement or PPA, as appropriate, to any supplier chosen by the relevant Nominated Person or NFPAS, as appropriate, and the Supplier authorises and directs the relevant Nominated Person or NFPAS, as appropriate, to execute such documents and do such things on its behalf in order to give effect thereto.



- 5.9 The Supplier acknowledges that under the On-Sale Agreement, or PPA, as appropriate, it will be the Supplier's sole responsibility to register the Relevant Meter Points within the time limits specified in the On-Sale Agreement and the Supplier will be liable to pay for electricity delivered to the Relevant Meter Points referred to in the On-Sale Agreement on and from the contract start date irrespective of whether meter registration has been achieved less any recovery under the terms of the on-sale arrangements with the outgoing registrant.<sup>1</sup>

## **6. Warranties by Supplier**

- 6.1 The Supplier warrants and represents to the Auctioneer and the relevant Nominated Person and NFPAS that:

- 6.1.1 it has the power to enter into, perform and comply with all its obligations under this Auction Code and the On-Sale Agreement or PPA, as the case may be, 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 the On-Sale Agreement or PPA, as the case may be, 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 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 (or any legal successor holding a supply licence and assuming all rights and obligations of the Supplier under this Auction Code and the On-Sale Agreement or PPA, as the case may be) will not continue to hold such licence for the duration of the On-Sale Agreement or PPA, as the case may be;
- 6.1.3 it shall comply with all applicable laws, statutes, ordinances and regulations relevant to its business;
- 6.1.4 it 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 Suppliers to manipulate any Auction or any bidding;
  - (B) communicate in any manner with any other Suppliers 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
  - (D) take any action that places an unreasonable burden or excessive load on the computer systems supporting the Auction Site.

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<sup>1</sup> The Supplier 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 Supplier is the Successful Bidder. The Supplier should ensure that it is fully aware of the requirements to achieve the meter registrations required under the On-Sale Agreement prior to bidding in the Auction.

## **7. Indemnity**

The Supplier agrees to indemnify and keep indemnified the Auctioneer and the relevant Nominated Person or NFPAS, as the case may be, 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 Supplier or any act referable to the Supplier's user name or password or the violation by the Supplier of any law or rights of the relevant Nominated Person or NFPAS or any third party.

## **8. Suspension, Cancellation and Termination**

8.1 The Supplier acknowledges that the relevant Nominated Person or, where applicable, NFPAS (whether acting through the Auctioneer or not) has the right to:

- 8.1.1 refuse, remove or require the re-submission of any Bids;
- 8.1.2 shorten or extend any Auction Period;
- 8.1.3 postpone, cancel or withdraw any Facility from any Auction;
- 8.1.4 temporarily suspend, re-run or permanently terminate any Auction at any time; or
- 8.1.5 refuse, temporarily suspend or permanently terminate the Supplier's participation in any Auction,

where the relevant Nominated Person or, where appropriate, NFPAS 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 or an On-Sale Agreement, render any material element required to be ascertained under a PPA or an On-Sale Agreement impossible to ascertain, alter the electricity trading arrangements in Great Britain, cause any provisions in a PPA or an On-Sale Agreement to be inconsistent with the Law (including where any word or expression used in a PPA or On-Sale Agreement is defined by reference to its meaning in any Law), or materially and adversely affect for a party to a PPA or an On-Sale Agreement the benefits provided thereby or the balance of liability and risk in respect of the subject matter thereof; if the Supplier fails to discharge any outstanding liability to the relevant Nominated Person or the Generator's Agent, as the case may be, over the sum of £500,000 before the commencement of the Auction Period; if the Supplier 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 Supplier is party; if the relevant Nominated Person or the Generator's Agent, as the case may be, suspects that the Supplier's actions may cause the relevant Nominated Person or the Generator's Agent, as the case may be, to be liable to another Bidder or third party; or the Supplier is in breach of any of the terms of this Auction Code).

8.2 Where practicable, the relevant Nominated Person, or 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 relevant Nominated Person or Generator's Agent intends to take.

## **9. Disclaimer**

9.1 The Auction Site is provided on an "as is", "as available" basis and neither Nominated Person nor 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, neither Nominated Person nor the Auctioneer makes any representation or warranty that:

- 9.1.1 access to the Auction Site will be free from infection by viruses or anything else that has contaminating or destructive properties; and
- 9.1.2 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 Supplier warrants that it has not relied on any representations made by either Nominated Person or the Auctioneer which have not been expressly stated in this Auction Code.

- 9.2 The information provided for each Facility at the Auction Site is information which has been provided to the relevant Nominated Person, NFPAS or the Auctioneer in respect of that Facility and has not been verified by the relevant Nominated Person, NFPAS or the Auctioneer. Neither Nominated Person, nor NFPAS or the Auctioneer give any warranties or make any representations in respect of the future performance of, and electrical output from, any Facility.
- 9.3 The relevant Nominated Person, NFPAS and 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 Supplier 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 relevant Nominated Person's opinion, materially affect the Supplier's Bid, the Supplier may withdraw a Bid placed in that Auction before the correction is made, provided that the Supplier has not become the Successful Bidder pursuant to Clause 5.

## **10. Liability**

- 10.1 Neither Nominated Person, nor NFPAS, the Auctioneer or any of their respective officers, employees, agents or contractors will be liable to the Supplier or any third party for:
  - 10.1.1 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 8 above, any refusal, suspension or termination of the Supplier's participation in any Auction, any losses or claims arising from Facilities offered on the Auction Site; or
  - 10.1.2 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 relevant Nominated Person or NFPAS or the Auctioneer,and for the avoidance of doubt, sub-clauses 10.1.1 and 10.1.2 are severable.
- 10.2 Without limiting the generality of Clause 10.1, but subject to Clause 10.3 and 10.4, the liability of the relevant Nominated Person, or NFPAS, as the case may be, or the Auctioneer will not under any circumstances exceed £50,000, regardless of the cause or form of action.

- 10.3 Nothing in this Auction Code shall exclude or limit the relevant Nominated Person's or NFPAS, as the case may be, or the Auctioneer's liability for death or personal injury resulting from the relevant Nominated Person's or the Auctioneer's negligence or for fraudulent misrepresentation.
- 10.4 Nothing in this Auction Code is intended to limit or exclude any liability on the part of the relevant Nominated Person or NFPAS, as the case may be, or the Auctioneer where and to the extent that applicable law prohibits such exclusion or limitation.

## **11. Intellectual Property**

The Supplier acknowledges that all copyright, trademarks, and other intellectual property rights in and relating to any Auction and the Auction Site are owned by NFPA, its agents or contractors or its or their third party licensors. The Supplier 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.

## **12. Confidentiality**

- 12.1 Subject to the exceptions provided in Clause 12.2 below, neither Nominated Person (or NFPAS) nor the Auctioneer nor the Supplier 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.
- 12.2 The restrictions imposed by Clause 12.1 shall not apply to the disclosure of any information:
- 12.2.1 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;
  - 12.2.2 which is required by law to be disclosed to any person who is authorised by law to receive the same;
  - 12.2.3 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;
  - 12.2.4 to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing party is a party;
  - 12.2.5 in accordance with the Orders;
  - 12.2.6 to any consultants, banks or professional advisers 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;
  - 12.2.7 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

12.2.8 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.

### **13. Amendments/Modifications**

- 13.1 The Nominated Persons reserve the right, at their discretion, to make additions, substitutions and modifications to any part of an Auction or the Auction Site.
- 13.2 This Auction Code may be amended by the Nominated Persons at any time by posting (or procuring that the Auctioneer posts) details of the amendments on the Auction Site, and the Nominated Persons shall use reasonable endeavours within 1 Banking Day to send (or procure that the Auctioneer sends) an e-mail notification that they have done so to every Supplier 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 Supplier and each of the Nominated Persons.

### **14. Notices**

- 14.1 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.
- 14.2 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:
- 14.2.1 in the case of delivery by hand, when delivered; or
- 14.2.2 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
- 14.2.3 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
- 14.2.4 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.
- 14.3 The particulars for notices of communications to be given, until otherwise notified, to:
- 14.3.1 the Supplier are set out in the Registration Agreement; and

14.3.2 either Nominated Person, the Auctioneer or NFPAS are:

Address: 4<sup>th</sup> Floor,  
Higham House,  
Higham Place  
New Bridge Street West,  
Newcastle upon Tyne  
NE1 8AN

Telephone Number: 0191 245 7330

Facsimile Number: 0191 245 7331

Attention: Commercial Director

E-mail Address: [administration@nfpa.co.uk](mailto:administration@nfpa.co.uk)

## **15. General**

### **15.1 Assignment**

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

### **15.2 Nominated Person's agent or sub-contractor**

15.2.1 Either Nominated Person may appoint the other as its agent or sub-contractor for any purpose concerning any Auction or the Auction Site or otherwise concerning a Registration Agreement or this Auction Code.

15.2.2 NFPAS may appoint NFPA as its agent or sub-contractor for any purpose concerning any Auction or the Auction Site or otherwise concerning a Registration Agreement or this Auction Code.

15.2.3 Subject to the provisions of any applicable Registration Agreement or this Auction Code, each Nominated Person or NFPAS, as the case may be, shall be responsible for the performance of its obligations pursuant thereto (including any performance on its behalf by the other Nominated Person).

### **15.3 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.

### **15.4 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.

## **15.5 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.

## **15.6 Entire Agreement**

This Auction Code read together with the applicable Registration Agreement is the entire agreement between the Supplier, the Auctioneer and the relevant Nominated Person or NFPAS, where appropriate, with respect to the relevant Auction and the use of the Auction Site.

## **15.7 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.

## **15.8 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.

## **15.9 Third Party Rights**

15.9.1 Subject to Clause 15.9.2, 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.

15.9.2 Notwithstanding Clause 15.9.1, either Nominated Person and NFPAS may enforce any provision of a Registration Agreement or this Auction Code as if they were a party thereto.

## **15.10 Tax**

Neither Nominated Person, nor the Auctioneer or NFPAS accept any responsibility for taxes on an Auction or Bids submitted at the Auction Site.

## **15.11 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 2000 Order, the 2005 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 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 Supplier with which NFPA Scotland will enter into the SRO On-Sale Agreement for each relevant Facility and the price which such Supplier shall pay for such Facility under the SRO On-Sale Agreement.
- (b) The auction to determine the Supplier with which NFPA will enter into the relevant NFFO On-Sale Agreement for each relevant Facility and the price which such Supplier shall pay for such Facility under the NFFO On-Sale Agreement.
- (c) The auction to determine the Supplier 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 Supplier shall pay for such Facility under the PPA.

## **SCHEDULE 1**

### **In respect of each SRO Facility:**

- (a) SRO Order;
- (b) Name, address and contract number;
- (c) Facility description and Technology Band taken from the relevant Replacement Power Purchase Agreement (the "**RPPA**");
- (d) Applicable Percentage (where applicable);
- (e) Number of Phases (where applicable);
- (f) Date each Phase was commissioned or anticipated commissioning date for the first phase;
- (g) Delivery Point (GSP Group);
- (h) Meter registration numbers;
- (i) Installed Capacity;
- (j) Auxiliary Load (where specified);
- (k) Site Load (where specified);
- (l) Net Capacity (where appropriate);
- (m) Contracted Capacity specified in RPPA;
- (n) Annual/half-hourly capping arrangements (where appropriate);
- (o) Facility Operating Parameters;
- (p) Monthly and half-hourly output data (in kWh) (where available);
- (q) Whether the RPPA involves the sale of Additional Metered Output; and
- (r) Whether the RPPA involves Triad Avoidance Benefit arrangements.

### **In respect of each NFFO Facility:**

- (a) NFFO Order;
- (b) Name, address and contract number;
- (c) Facility description and Technology Band taken from the relevant Replacement Power Purchase Agreement (the "**RPPA**");
- (d) Applicable Percentage (where applicable);
- (e) Number of Phases (where applicable);
- (f) Date each Phase was commissioned or anticipated commissioning date for the first phase;
- (g) Delivery Point (GSP Group);

- (h) Meter registration numbers;
- (i) Installed Capacity;
- (j) Auxiliary Load (where specified);
- (k) Site Load (where specified);
- (l) Net Capacity (where appropriate);
- (m) Contracted Capacity specified in RPPA;
- (n) Annual/half-hourly capping arrangements (where appropriate);
- (o) Facility Operating Parameters;
- (p) Monthly and half-hourly output data (in kWh) (where available);
- (q) Whether the RPPA involves the sale of Additional Metered Output; and
- (r) Whether the RPPA involves Triad Avoidance Benefit arrangements.

**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).