

**MAYOR OF LONDON**

GREATER**LONDON**AUTHORITY



Agreement Reference Number: GLA 80630

Date:

**Framework Agreement  
for the Provision of Licence Lite Generating Capacity**

**between**

**Greater London Authority**

**And**

**The London Borough of Camden**

**Version: Licence Lite Electricity Provider Framework  
[draft: 9 December 2016]**



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THIS AGREEMENT is made on

14<sup>th</sup> February 2017.

**BETWEEN:**

- (1) **The Greater London Authority** of City Hall, Queen's Walk, London SE1 2AA (the "Authority"); and
- (2) **The London Borough of Camden**, whose registered office is at 5<sup>th</sup> Floor, 5 Pancras Square, London, N1C 4AG (the "Electricity Provider").

**RECITALS:**

- A. The Parties wish to enter into a framework agreement which will enable the Authority, from time to time, to enter into a Power Purchase Agreement with the Electricity Provider, as set out in Schedule 3.
- B. The terms and conditions of this Agreement shall apply to the Electricity to be provided by the Electricity Provider under any Call-Off Contract.
- C. The terms and conditions of this Agreement provide that the Greater London Authority or any of its other functional bodies may, if the Electricity Provider so agrees, contract with the Electricity Provider on the terms set out in Schedule 3.
- D. Transport for London is acting as the Authority's agent for the purposes of this procurement

**THE PARTIES AGREE THAT:**

In consideration of the payment by the Authority to the Electricity Provider of £5.00 (the receipt and sufficiency of which is acknowledged by the Electricity Provider) and the mutual promises and covenants set out in this Agreement, the Parties agree as follows:

**1. Definitions and Interpretations**

In the Agreement (including the Recitals):

- 1.1 unless the context indicates otherwise the following expressions shall have the following meanings:

**"Agreement"** this framework agreement, including the Schedules and all other documents referred to in this Agreement;

**"Agreement Commencement"** the date for commencement of this

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<b>"Date"</b>	Agreement specified in Schedule 1;
<b>"Agreement Reference Number"</b>	the reference number for this Agreement as set out in Schedule 1;
<b>"Authority"</b>	The Greater London Authority;
<b>"Business Day"</b>	any day excluding Saturdays, Sundays or public or bank holidays in England;
<b>"Call-Off Contract"</b>	a call-off contract in the form of the Power Purchase Agreement set out in Schedule 3.
<b>"Call-Off Contract Number"</b>	the reference number for a Call-Off Contract, as specified in the relevant Call-Off Contract;
<b>"Call-Off Co-ordinator"</b>	the person named as such in a Call-Off Contract or such other person as notified to the Electricity Provider by the Authority;
<b>"Call-Off Term"</b>	the duration of a Call-Off Contract, as set out in the relevant Call-Off Contract;
<b>"Charges"</b>	the charges payable by the Authority, in consideration of the due provision of the Electricity, as specified in or calculated in accordance with a Call-Off Contract;
<b>"Confidential Information"</b>	all information (whether written or oral) that by its nature may reasonably be regarded as confidential to the other Party or any other member of the its Group (whether commercial, financial, technical or otherwise) including information which relates to the business affairs, customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of that Party or any member of its Group;
<b>"Contract Information"</b>	(i) the Agreement and any Call-Off Contract in their entirety (including from time to time agreed changes to the Agreement or to any Call-Off Contract); and

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(ii) data extracted from the invoices submitted pursuant to the Call Off Contract which shall consist of the data specified in that contract;

**“Electricity ”**

electricity to be produced for the Authority by the Electricity Provider under the Call Off Contract;

**“Electricity Provider’s Manager”**

the person who is identified as the Electricity Provider’s Manager in the Call-Off Contract for the Electricity ;

**“Key Personnel”**

the Electricity Provider’s key personnel named as such in Schedule 1 or any relevant Call-Off Contract;

**“Mini-Competition”**

The competitive process by which the Authority may from time to time utilise to select a provider or providers of Electricity from time to time;

**“Parties”**

the Authority and the Electricity Provider (including their successors and permitted assignees) and **“Party”** shall mean either of them as the case may be;

**“Procurement Manager”**

the person named as such in Schedule 1 or such other person as notified to the Electricity Provider by the Authority;

**“Proposal”**

the Electricity Provider’s offer to provide the Electricity in response to a Request Form. A Proposal must include a Call-Off Contract signed by the Electricity Provider;

**“Request Form”**

a document produced by the Authority pursuant to clause 3, setting out its request for a Proposal, which document shall be in the form set out in Schedule 2A or Schedule 2B or in such other form as may be notified to the Electricity Provider by the Authority from time to time;

<b>"Term"</b>	the period during which this Agreement continues in force as set out in Schedule 1;
<b>"TfL"</b>	Transport for London, a statutory corporation established under the Greater London Authority Act 1999;
<b>"Transparency Commitment"</b>	means the Local Government Transparency Code 2015; and
<b>"VAT"</b>	means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature.

- 1.2 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.3 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of this Agreement;
- 1.4 a reference to any document other than as specified in Clause 1.3 and save as expressed otherwise shall be construed as a reference to the document as at the date of execution of this Agreement;
- 1.5 headings are included in the Agreement for ease of reference only and do not affect the interpretation or construction of the Agreement;
- 1.6 references to Clauses and Schedules are, unless otherwise provided, references to clauses of, and schedules to, the Agreement and any reference to a paragraph in any Schedule shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule;
- 1.7 in the event, and only to the extent, of any conflict between the Clauses and the Schedules, the Clauses prevail, except where:
  - 1.7.1 the conflicting part of the Schedule is explicitly expressed to take precedence;

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- 1.7.2 the conflict is with a provision of the Call Off Contract , in which case the provisions in the Call Off contract shall prevail;
- 1.8 except as otherwise expressly provided in any Call-Off Contract, and subject to Clause 1.7, if there is any inconsistency between any of these Clauses, the Schedules, any Call-Off Contract or any other document referred to in or incorporated into this Agreement or any Call-Off Contract, the order of priority for the purposes of construction is:
  - 1.8.1 each Call-Off Contract;
  - 1.8.2 these Clauses;
  - 1.8.3 the Schedules;
  - 1.8.4 any other document referred to in or incorporated by reference into this Agreement or any Call-Off Contract;
- 1.9 the Schedules form part of the Agreement and will have the same force and effect as if expressly set out in the body of the Agreement;
- 1.10 the expression "person" means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.11 the words "including", "includes" and "included" will be construed without limitation unless inconsistent with the context.

## 2. Framework Agreement

- 2.1 The purpose of this Agreement is to:
  - 2.1.1 provide a mechanism whereby the Parties may enter into Call-Off Contracts; and
  - 2.1.2 provide the framework to administer each Call-Off Contract.
- 2.2 The requirement for the provision of Electricity that may be requested by the Authority and provided by the Electricity Provider are of the type described in each Call-Off Contract. The Authority's requirements may vary and this Agreement shall not place the Authority under any obligation to procure electricity from the Electricity Provider at a particular time or at all. This Agreement is not an exclusive arrangement and nothing in this Agreement shall operate to prevent the Authority from engaging any other organisations or persons to provide electricity to it..
- 2.3 Clause 3 sets out the procedure by which the Parties may enter into a Call-Off Contract. Each Call-Off Contract entered into shall be a binding

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agreement on the Parties and shall incorporate the terms and conditions of this Agreement.

2.4 The Electricity Provider shall commence provision of the Electricity in accordance with the Call-Off Contract. The Electricity Provider must not provide any electricity without and other than in accordance with an agreed Call-Off Contract.

2.5 All Charges in respect of a Call-Off Contract shall be as set out in the relevant Call-Off Contract.

### 3. Call-Off Procedure

3.1 At any time during the Term, the Authority may identify requirements for Electricity which at its sole discretion it wishes to let under the terms of this Agreement.

3.2 Where the Authority opts to appoint the Electricity Provider direct without the need for a Mini-Competition, it will issue to the Electricity Provider a Request Form substantially in the form set out in Schedule 2A, specifying the Electricity to be provided, in which event:

3.2.1 the Electricity Provider shall promptly confirm receipt of such Request Form;

3.2.2 the Electricity Provider shall respond to the Request Form by completing a Proposal, with an offer capable of acceptance, or by notifying the Authority in writing that it does not intend to submit a Proposal. The Electricity Provider shall so respond to the Authority by the date specified in the Request Form or, if no such date is specified, within 10 Business Days of receiving the Request Form, or by such other date as may be agreed with the Call-Off Co-ordinator. A Proposal must remain valid for at least 90 Business Days from the date it is submitted to the Authority;

3.2.3 after receipt of an acceptable Proposal, the Authority will forward to the Electricity Provider two copies of the Call-Off Contract. The Electricity Provider shall sign both copies and return the same to the Authority within 10 Business Days of receipt. The Call-Off Co-ordinator will arrange for both copies of the Call-Off Contracts to be signed by the Authority and will send a completed signed Call-Off Contract to the Electricity Provider.

3.3 Where the Authority opts to undertake a Mini-Competition it will issue to those Electricity Providers on the framework that are the subject of this framework, that it assesses in its sole discretion, are capable of providing the Electricity to the Authority's satisfaction, a Request Form as set out in Schedule 2B, specifying the Electricity to be provided. In the event that the Electricity Provider receives such a Request Form:

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- 3.3.1 the Electricity Provider shall immediately confirm receipt of such Request Form;
  - 3.3.2 the Electricity Provider shall respond to a Request Form by completing a Proposal with an offer capable of acceptance or by notifying the Authority in writing that it does not intend to submit a Proposal. The Electricity Provider shall respond to the Authority by the date specified in the Request Form or, if no such date is specified, within 10 Business Days of receiving the Request Form, or by such other date as may be agreed with the Call-Off Co-ordinator. A Proposal must remain valid for at least 90 Business Days from the date it is submitted to the Authority;
  - 3.3.3 the Authority will award the relevant Call-Off Contract to the Proposal that is the most economically advantageous with reference to the assessment criteria set out in the Request Form as they relate to the requirement for the Electricity in question.
- 3.4 Each Call-Off Contract entered into shall be a binding agreement on the Parties and shall incorporate the terms and conditions of this Agreement, as may have been amended in such Call-Off Contract and such documentation shall together form a separate agreement between the Parties.
- 3.5 A Request Form and anything prepared or discussed by the Authority shall constitute an invitation to treat and shall not constitute an offer capable of acceptance by the Electricity Provider. The Authority shall not be obliged to consider or accept any Proposal submitted by the Electricity Provider.
- 3.6 A draft Call-Off Contract shall only become a Call-Off Contract upon execution of the draft Call-Off Contract by the Authority.
- 3.7 The Authority is not obliged to approve or sign any Call-Off Contract.
- 3.8 Unless otherwise expressly agreed in writing with the Authority, the Electricity Provider shall not be entitled to charge under this Agreement for any work involved in any receipt and/or confirmation of any Request Form, and/or any response to any Request Form as contemplated in this clause 3.
- 4. Term of Agreement and Call-Off Contracts**
- 4.1 This Agreement (but not a Call-Off Contract) commences on the Agreement Commencement Date and continues in force for the Term unless terminated earlier, either in whole or in part, in accordance with this Agreement.
- 4.2 Each Call-Off Term shall be set out in the relevant Call-Off Contract. Unless stated otherwise in a Call-Off Contract, the Call-Off Term and the

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Services provided pursuant to a Call-Off Contract may extend beyond the termination or expiry of this Agreement, in which case the provisions of this Agreement shall survive such expiry or termination to the extent that such provisions are relevant to any such Call-Off Contract.

- 4.3 A Call-Off Contract may expire or be terminated in accordance with its terms but such expiry or termination shall not, in and of itself, give rise to an expiry or termination of any other Call-Off Contract or this Agreement.

## **5. The Electricity**

### **5.1 The Electricity Provider:**

5.1.1 shall provide the Electricity specified in any Call-Off Contract that it enters into to the Authority in accordance with the terms of the relevant Call-Off Contract;

5.1.2 acknowledges that it has sufficient information about the Authority and the Specification and that it has made all appropriate and necessary enquiries to enable it to provide the Electricity in accordance with the relevant Call-Off Contract that it enters into;

5.1.3 shall comply with all lawful and reasonable directions of the Authority relating to the provision of the Electricity under any Call-Off Contract that it enters into.

- 5.2 Notwithstanding anything to the contrary in this Agreement, the Authority's discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of this Agreement or relevant Call-Off Contract.

- 5.3 The Electricity Provider shall provide the Electricity under each Call-Off Contract that it enters into:

5.3.1 in conformance in all respects with the Specification and so that they fulfil the purpose indicated by or to be reasonably inferred from the Specification; and

5.3.2 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner.

## **6. Charges**

- 6.1 The Electricity Provider shall invoice the Authority in accordance with the procedures set out in the relevant Call Off Contract and in consideration of, and subject to the terms of the relevant Call Off Contract by the Electricity Provider, the Authority shall pay the Electricity Provider the

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Charges in accordance with those procedures and any other terms and conditions of the relevant Call-Off Contract.

- 6.2 The Electricity Provider is not entitled to reimbursement for expenses other than as specified in a Call-Off Contract.
- 6.3 All Charges exclude any VAT which may be chargeable, which will be payable in addition to the sum in question at the rate and in the manner for the time being prescribed by law on delivery of a valid VAT invoice.

## **7. Payment Procedures and Approvals**

The Electricity Provider shall invoice the Authority in respect of the Charges in accordance with the relevant Call Off Contract.

## **8. Contractual Management**

- 8.1 The Authority authorises the Procurement Manager to act as the Authority's representative for all purposes of this Agreement and the Electricity Provider shall deal with the Procurement Manager (or his or her nominated representative) in respect of all matters arising under this Agreement, unless notified otherwise. The Authority will appoint a Call-Off Co-ordinator in respect of each Call-Off Contract in relation to matters arising under a Call-Off Contract, unless otherwise notified by the Authority.
- 8.2 The Electricity Provider's Manager shall act as the Electricity Provider's representative for all purposes of this Agreement. In respect of each Call-Off Contract entered into, the Electricity Provider shall provide the Key Personnel. The Electricity Provider's Manager and the Key Personnel and shall procure that they:
- 8.2.1 diligently supervise the performance of the provision of the Electricity;
  - 8.2.2 attend all contract meetings with the Authority (the location, frequency and time of which shall be specified by the Procurement Manager or the relevant Call-Off Co-ordinator from time to time); and
  - 8.2.3 be available to the Authority to resolve any issues arising in connection with this Agreement or any relevant Call-Off Contract(s) at such time periods as are specified in the relevant Call-Off Contract(s).
- 8.3 The Electricity Provider may only make any changes to the Electricity Provider's Manager or Key Personnel (except in the event of sickness, incapacity or resignation) with the prior consent of the Authority (which shall not be unreasonably withheld).

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**9. Conflict of Interest**

9.1 The Electricity Provider warrants that it does not and will not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Electricity or the Authority, save to the extent fully disclosed to and approved by the Authority.

9.2 The Electricity Provider shall check for any conflict of interest at regular intervals throughout the duration of this Agreement and in any event not less than once in every six months and shall notify the Authority in writing immediately upon becoming aware of any actual or potential conflict of interest with the provision of the Electricity or the Authority and shall work with the Authority to do whatever is necessary (including the separation of staff working on, and data relating to, the provision of the Electricity from the matter in question) to manage such conflict to the Authority's satisfaction, provided that, where the Authority is not so satisfied, it may terminate this Agreement and all Call-Off Contracts, in existence, in accordance with Clause 19.

**10. Compliance with Policies and Law**

The Electricity Provider, at no additional cost to the Authority, shall comply with all matters of policies and law set out in clause 12 of the call-off contract at Schedule 3, for each relevant Call Off Contract(s) that it enters into.

**11. Corrupt Gifts and Payment of Commission**

The Electricity Provider shall not, and shall ensure that its employees, agents and sub-contractors do not, pay any commission, fees or grant any rebates to any employee, officer or agent of the Authority or any member of the TfL Group nor favour any employee, officer or agent of the Authority or any member of the TfL Group with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of the Authority or any member of the TfL Group other than as a representative of the Authority and except in accordance with a permitted and lawful contract or sub-contract, without the Authority's prior written approval.

**12. Quality and Best Value**

The Electricity Provider acknowledges that the Authority is a best value authority for the purposes of the Local Government Act 1999 and as such the Authority is required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness, as such, the Electricity Provider shall, where reasonably requested by the Authority, participate in any relevant best value review. Where the Electricity Provider is a local authority, the Authority acknowledges that the

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Electricity Provider is also a best value authority for the purposes of the Local Government Act 1999 and that this clause 12 shall apply mutatis mutandis to the Electricity Provider.

### **13. Records, Audit and Inspection**

13.1 The Electricity Provider shall, and shall procure that its sub-contractors shall:

13.1.1 maintain a complete and correct set of records pertaining to all activities relating to the provision of the Electricity and the Electricity Provider's obligations under this Agreement and the any relevant Call-Off Contract(s) and all transactions entered into by the Electricity Provider for the purposes of this Agreement;

13.1.2 retain all Records during the Term and Call-Off Term and for a period of not less than 6 years (or such longer period as may be required by law) following termination or expiry of this Agreement or relevant Call-Off Contract ("Retention Period").

13.2 The Authority and any person nominated by the Authority has the right to audit any and all Records at any time during the Retention Period on giving to the Electricity Provider what the Authority considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the Electricity Provider's provision of the Electricity and the Electricity Provider shall give all reasonable assistance to the Authority or its nominee in conducting such inspection, including making available documents and staff for interview.

### **14. Insurance**

14.1 The Electricity Provider will at its sole cost maintain public liability insurance to cover injury and loss to third parties and such other insurance cover as may be required from time to time under any Call-Off Contract.

14.2 The insurance cover will be maintained with a reputable insurer (such approval not to be unreasonably withheld or delayed).

14.3 The Electricity Provider will produce evidence to the Authority on reasonable request of the insurance policies set out in Clause 14.1 and payment of all premiums due on each policy.

14.4 The Electricity Provider warrants that nothing has or will be done or be omitted to be done which may result in any of the insurance policies set out in Clause 14.1 being or becoming void, voidable or unenforceable.

## **15. Limitation of liability**

With the exception of claims for death or personal injury resulting from the Electricity Provider's negligence, the Electricity Provider's total liability under or in connection with this Agreement whether for any breach of contract, breach of statutory duty or delay, any equipment failure, tort (including negligence) or any other reason whatsoever shall be limited to £100,000 in any 12 (twelve) month period of operation of this Agreement.

## **16. Confidentiality, Announcements and Transparency**

16.1 Subject to Clause 16.3 and Clause 17, each Party will keep confidential:

25.1.1 the terms of this Agreement ; and

25.1.2 any and all Confidential Information that it may acquire in relation to the other Party .

16.2 Neither Party will use the other Party's Confidential Information for any purpose other than to perform its obligations under this Agreement and any Call-Off Contract. Each Party will ensure that its officers and employees comply with the provisions of Clause 16.1.

16.3 The obligations on a Party set out in Clause 16.1 will not apply to any Confidential Information which:

16.3.1 it can demonstrate is in the public domain (other than as a result of a breach of this Clause 16); or

16.3.2 it is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure; or

16.3.3 to the extent that such disclosure is to any person or body who has statutory responsibilities in relation to it and its employees, agents and subcontractors.

16.4 Each Party shall keep secure all materials containing any information in relation to the Agreement or to any Call-Off Contract and its performance.

16.5 Neither Party shall communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of the Agreement or in relation to any matter under or arising from the Agreement where the other Party's identity is revealed (or could reasonably be inferred) unless specifically granted permission to do so in writing by the other Party. The other Party shall have the right to approve any such announcement before it is made.

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- 16.6 The Electricity Provider acknowledges that the Authority is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 16.1 and Clause 17, the Electricity Provider hereby gives its consent for the Authority to publish the Contract Information to the general public.
- 16.7 The Authority may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Authority may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation (as defined in Clause 17.1 below). The Authority may in its absolute discretion consult with the Electricity Provider regarding any redactions to the Contract Information to be published pursuant to Clause 16.6. The Authority shall make the final decision regarding publication and/or redaction of the Contract Information.
- 16.8 Where the Electricity Provider is a local authority, the Authority acknowledges that the Electricity Provider is also subject to the requirements of the Transparency Commitment and:
- 16.8.1 the provisions of clause 16.6 and 16.7 shall apply mutatis mutandis to the Electricity Provider; and
- 16.8.2 the Parties agree to co-operate prior to any publication of any Contract Information, to the extent permitted by law.
- 16.9 The provisions of this Clause 16 will survive for a period of 6 years from the later of: (i) the termination of this Agreement; and (ii) the termination of any Call-Off Contract.
- 17. Freedom of Information**
- 17.1 For the purposes of this Clause 17:
- 17.1.1 **"FOI Legislation"** means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department for Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;
- 17.1.2 **"Information"** means information recorded in any form held by the Authority or by the Electricity Provider on behalf of the Authority; and
- 17.1.3 **"Information Request"** means a request for any information under the FOI Legislation.

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17.2 The Electricity Provider acknowledges that the Authority:

- 17.2.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Authority to enable the Authority to comply with its obligations under the FOI Legislation; and
- 17.2.2 may be obliged under the FOI Legislation to disclose information without consulting or obtaining consent from the Electricity Provider.

17.3 Without prejudice to the generality of Clause 17.2, the Electricity Provider shall:

- 17.3.1 transfer to the Procurement Manager (or such other person as may be notified by the Authority to the Electricity Provider) each Information Request relevant to this Agreement or a Call-Off Contract, the provision of Electricity that it or they (as the case may be) receive as soon as practicable and in any event within 2 Business Days of receiving such Information Request; and
- 17.3.2 in relation to Information held by the Electricity Provider on behalf of the Authority, provide the Authority with details about and/or copies of all such Information that the Authority requests and such details and/or copies shall be provided within 5 Business Days of a request from the Authority (or such other period as the Authority may reasonably specify), and in such forms as the Authority may reasonably specify.

17.4 The Authority shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Electricity Provider shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Authority.

17.5 Where the Electricity Provider is a local authority, the Authority acknowledges that the FOIA Legislation applies also to the Electricity Provider and the Parties agree that the provisions of this clause 17 shall apply mutatis mutandis in respect of an Information Request received by the Electricity Provider.

## 18. Dispute Resolution

18.1 The Authority and the Electricity Provider shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Agreement ("**Dispute**") before resorting to litigation.

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- 18.2 If the Dispute is not settled through discussion between the Contract Manager and a representative of the Electricity Provider within a period of seven Business Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) ("**Senior Personnel**") of each of the Parties for resolution.
- 18.3 If the Dispute is not resolved within 14 Business Days of referral to the Senior Personnel, either Party may propose by notice to the other Party ("**Notice**") that a structured mediation or negotiation be entered into with the assistance of a mediator.
- 18.4 If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within 28 Business Days of the service of the Notice, either Party may apply to the Centre for Effective Dispute Resolution ("**CEDR**") in London to appoint a mediator. The costs of that mediator shall be divided equally between the Parties or as the Parties may otherwise agree in writing.
- 18.5 Where a dispute is referred to mediation under Clause 18.3, the Parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedures as the mediator may recommend.
- 18.6 If the Parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, shall be final and binding on the Parties.
- 18.7 If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within 40 Business Days of the service of the Notice either Party may exercise its rights under Clause 19.
- 18.8 For the avoidance of doubt, the Electricity Provider shall continue to provide the Electricity in accordance with the Call-Off Contract and without delay or disruption while the Dispute is being resolved pursuant to this Clause 18.
- 18.9 Neither Party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this Clause 18 and Clause 18 shall not apply in respect of any circumstances where such remedies are sought.
- 18.10 Any dispute relating to the terms of or performance under the Call Off Contract shall be governed by the dispute resolution procedure contained in clause 10 of the relevant Call Off Contract(s).

## **19. Breach and Termination of Agreement**

- 19.1 Without prejudice to the Authority's right to terminate at common law, the Authority may terminate this Agreement:

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19.1.1 on giving not less than 6 (six) months' written notice, termination to take effect on the later of:

19.1.1.1 the date 6 (six) months from service of such notice; and

19.1.1.2 the date of expiry of the last of any subsisting Call-Off Contract;

19.1.2 immediately upon giving written notice to the Electricity Provider if:

19.1.2.1 the Electricity Provider has committed any material or persistent breach of this Agreement or any Call-Off Contract and in the case of such a breach that is capable of remedy fails to remedy that breach within 10 Business Days (or such other timeframe as specified in writing by the Authority) from the date of written notice to the Electricity Provider giving details of the breach and requiring it to be remedied; or

19.1.2.2 the Electricity Provider is subject to an Insolvency Event; or

19.1.2.4 the Authority is not satisfied on the issue of any conflict of interest in accordance with Clause 9; or

19.1.2.5 the Electricity Provider commits any of the money laundering related offences listed in the Public Agreement Regulations 2006.

19.2 The Electricity Provider may only terminate this Agreement if:

19.1.2.1 the Authority has committed any material or persistent breach of this Agreement or any Call-Off Contract and in the case of such a breach that is capable of remedy fails to remedy that breach within 10 Business Days (or such other timeframe as specified in writing by the Electricity Provider) from the date of written notice to the Authority giving details of the breach and requiring it to be remedied; or

19.1.2.2 the Authority is subject to an Insolvency Event, or

19.1.2.5 the Authority commits any of the money laundering related offences listed in the Public Agreement Regulations 2006,

provided that the Electricity Provider must provide written notice to the Authority specifying the circumstances giving rise to the right to terminate, and any such notice validly served shall be effective immediately.

## **20. Survival**

The provisions of Clauses 1, 8, 11, 13, 15 to 18 (inclusive), 20 to 22 (inclusive), and 24 -30 (inclusive) and any other Clauses or Schedules that are necessary to give effect to those Clauses shall survive termination or expiry of this Agreement. In addition, any other provision of this Agreement which by its nature or implication is required to survive the termination or expiry of this Agreement or relevant Call-Off Contract shall do so.

## **21. Rights of Third Parties**

- 21.1 The Parties do not intend that any of the terms of this Agreement or any relevant Call-Off Contract will be enforceable by virtue of the Third Party Act by any person not a party to it.
- 21.2 The Parties are entitled to vary or rescind this Agreement or any relevant Call-Off Contract without the consent of any or all members of the TIL Group.

## **22. Contract Variation**

This Agreement and any Call-Off Contract(s) entered into may only be varied or amended with the written agreement of both Parties.

## **23. Novation**

- 23.1 The Authority may novate its rights and obligations under this Agreement to any a company which is: wholly or majority owned and controlled by the Authority; technically competent to discharge the obligations of the Authority under this Agreement; or supported by a guarantee against its payment obligations from the Authority.
- 23.2 The Electricity Provider shall do all such things reasonably necessary to give effect to such novation, including entering into a novation agreement.
- 23.3 Save as set out in clauses 23.1 and 23.2, neither Party shall assign or transfer to any person any of its rights or obligations in respect of this Agreement without the written consent of the other Party (such consent not to be unreasonably withheld or delayed).

## **24. Non-Waiver of Rights**

No waiver of any of the provisions of this Agreement is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 26. The single or partial exercise of any right, power or remedy under this Agreement shall

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not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

## **25. Illegality and Severability**

If any provision of this Agreement (in whole or in part) is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed from this Agreement and the remaining provisions shall continue in full force and effect as if this Agreement had been executed without the invalid, illegal, or unenforceable provision. In the event that in the Authority's reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Authority and the Electricity Provider shall immediately commence good faith negotiations to remedy such invalidity.

## **26. Notices**

Subject to Clause 26.2, any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by hand, post or facsimile addressed to the recipient at its registered office, the address stated in Schedule 1 or any other address (including a facsimile number) notified to the other party in writing in accordance with this clause as an address to which notices, invoices and other documents may be sent. The notice, demand or communication will be deemed to have been duly served:

- 26.1 if delivered by hand, at the time of delivery;
- 26.2 if delivered by post, 48 hours after being posted or in the case of Airmail 14 days (excluding Saturdays, Sundays and public holidays) after being posted; or
- 26.3 if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post to the other party within 24 hours after transmission.

## **27. Entire Agreement**

### **27.1 Subject to Clause 27.2:**

- 27.1.1 this Agreement and any relevant Call-Off Contract and all documents referred to in this Agreement and any relevant Call-Off Contract, contain all of the terms which the Parties have agreed relating to the subject matter of this Agreement and such documents and supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Services. Neither Party has been

induced to enter into this Agreement by a statement which it does not contain;

27.1.2 and without prejudice to the Electricity Provider's obligations under this Agreement, the Electricity Provider is responsible for and shall make no claim against the Authority in respect of any misunderstanding affecting the basis of the Electricity Provider's tender in respect of this Agreement or any incorrect or incomplete information howsoever obtained.

27.2 Nothing in this Clause 27 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

## **28. Relationship of the Parties**

Nothing in this Agreement or any Call-Off Contract constitutes, or shall be deemed to constitute, a partnership between the Parties. Except as expressly provided in this Agreement and any Call-Off Contract, neither Party shall be deemed to be the agent of the other, nor shall either Party hold itself out as the agent of the other.

## **29. Further Assurance**

Each Party will do or procure the doing of all acts and things and execute or procure the execution of all such documents as the other Party reasonably considers necessary to give full effect to the provisions of this Agreement and any relevant Call-Off Contract.

## **30. Governing Law**

The Agreement shall be governed by and construed in accordance with the law of England and Wales. Without prejudice to Clause 18, the courts of England will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement provided that the Authority has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Electricity Provider is incorporated or in which any assets of the Electricity Provider may be situated. The Parties agree irrevocably to submit to that jurisdiction.

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**THE AGREEMENT** has been signed for and on behalf of the Parties the day and year written above.

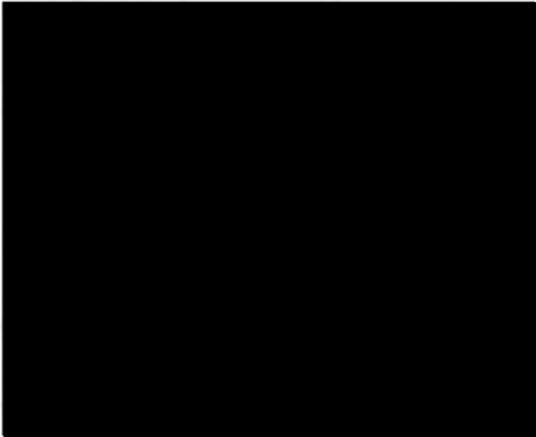
Signed by  
for and on behalf of  
**Authority** )

Signed by  
for and on behalf of  
the **Electricity Provider**

Supporting Communities, L

Version: [9 December 2016]

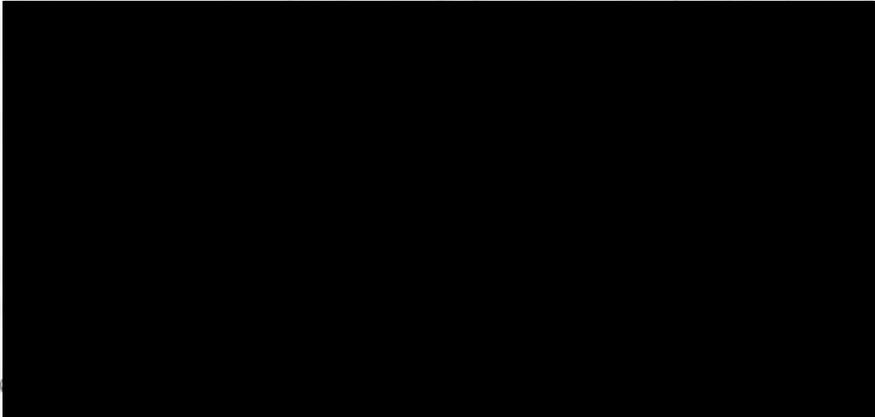
**SCHEDULE 1 - KEY AGREEMENT INFORMATION**

- 1. Agreement Reference Number: GLA 80630
- 2. Name of Electricity Provider:
- 3. Agreement Commencement Date:
- 4. Term: 2 Years
- 5. 

- 6. Electricity Provider's Key Personnel:

Name & Position	Contact Details	Area Of Responsibility

- 7. Notice period in accordance with Clause 28.4 (termination without cause): 30 days

- 8. 

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**For the Electricity Provider:**

**For the attention of:**

**Email:**

**Phone:**

**Mobile**

**Registered Address:**

**Company Number:**

**SAP Vendor number (if known):**

**Web address:**

Version: [9 December 2016]













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**SCHEDULE 2A - REQUEST FORM (IDENTIFIED ELECTRICITY PROVIDER)**

**Framework Number:**  
**Request Form Number:**

**To:**  
**Address:**

**From:**  
**Date:**

This is a Request Form for the provision of Electricity in accordance with this Agreement referenced above. This is an enquiry document only, constituting an invitation to treat, and it does not constitute an offer capable of acceptance. Your Proposal must be submitted as an offer capable of acceptance by the Authority; however such acceptance will not occur unless and until the Authority posts notice of acceptance to you.

Attachment 1 of this Request Form sets out the Electricity required by the Authority and other relevant information.

In your Proposal, you must respond to the information requested in the attached.

Attached to this Request Form is a draft Call-Off Contract. The Authority is under no obligation to award any Call-Off Contract as a result of this Request Form.

You must complete and return your Proposal by [ ] Please e-mail your Proposal, and send a paper copy to:

**Name:**  
**e- mail address:**

**Postal address:**

**Telephone:**  
**Fax:**

Any queries regarding this Request Form should be directed to the above. Any queries regarding this Agreement should be directed to the Procurement Manager named in this Agreement.

**Signed:** \_\_\_\_\_  
for and on behalf of the Authority

**Attachments:** Attachment 1: Services to be provided and other relevant information

Version: [9 December 2016]

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Attachment 2: Electricity Provider's Proposal

Draft Call-Off Contract

Version: [9 December 2016]



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## **SCHEDULE 2B - REQUEST FORM (MINI-COMPETITION)**

**Framework Number:**  
**Request Form Number:**

**To:**  
**Address:**

**From:**  
**Date:**

## **SCHEDULE 2A - REQUEST FORM (IDENTIFIED ELECTRICITY PROVIDER)**

**Framework Number:**  
**Request Form Number:**

**To:**  
**Address:**

**From:**  
**Date:**

This is a Request Form for the provision of Electricity in accordance with this Agreement referenced above. This is an enquiry document only, constituting an invitation to treat, and it does not constitute an offer capable of acceptance. Your Proposal must be submitted as an offer capable of acceptance by the Authority; however such acceptance will not occur unless and until the Authority posts notice of acceptance to you.

Attachment 1 of this Request Form sets out the Electricity required by the Authority and other relevant information.

In your Proposal, you must respond to the information requested in the attached.

Attached to this Request Form is a draft Call-Off Contract. The Authority is under no obligation to award any Call-Off Contract as a result of this Request Form.

You must complete and return your Proposal by [                      ], Please e-mail your Proposal, and send a paper copy to:

**Name:**  
**e- mail address:**

**Postal address:**

**Telephone:**

**Version:** [9 December 2016]

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Fax:

Any queries regarding this Request Form should be directed to the above. Any queries regarding this Agreement should be directed to the Procurement Manager named in this Agreement.

Signed: \_\_\_\_\_  
for and on behalf of the Authority

**Attachments:** Attachment 1: Services to be provided and other relevant information

Attachment 2: Electricity Provider's Proposal

Draft Call-Off Contract

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**SCHEDULE 3 - CALL-OFF CONTRACT TEMPLATE**

Date: [ ]

[Greater London Authority]

and

| |

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**AGREEMENT**  
**relating to the purchase of electricity**

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THIS AGREEMENT is made on  
BETWEEN

201[ ]

(1) [GREATER LONDON AUTHORITY] ( ) of [ ]  
(the "Buyer"); and

(2) The contracting person set out in Schedule 1 of this Agreement (the "Seller"),  
(together the "Parties" and each a "Party" and shall include any successor(s)  
in title to a permitted assign(s) of such person).

**IT IS AGREED THAT:**

- (A) The Seller generates electricity that it wishes to sell.
- (B) The Buyer supplies electricity to end-users and wishes to buy electricity from the Seller.

**1 Definitions and Interpretation**

**1.1 Definitions**

The following words and expressions shall bear the following meanings:

"**Act**" means the Electricity Act 1989 as amended by the Utilities Act 2000 or as otherwise amended;

"**Adjusted Price**" means the price in £/MWh for Electricity delivered by a Facility to the Buyer in circumstances where the Export Output is greater or less than the Contracted Output as determined pursuant to the provisions of Schedule 3;

"**Affiliate**" means each and any of the Buyer's subsidiary companies or holding companies and each and any subsidiary company of such holding company from time to time ("subsidiary company" and "holding company" to have the meanings set out in the Companies Act 2006 section 1159);

"**Agreement**" means this agreement together with its schedules and appendices for the purchase of electricity and associated benefits between the Parties;

"**Agreement Date**" means the date of this Agreement;

"**Annual Forecast**" means the forecast of Export Energy produced pursuant to paragraph 3.2 of Schedule 4;

"**Authorised Area**" means, the area designated in the Local Distributor's Distribution Licence as its authorised area within which the Facilit[y][ies][is] [are] situated"

**"Authorised Persons"** are the persons to whom notices under this Agreement should be sent to as set out in Schedule 1;

**"Authority"** means the Gas and Electricity Markets Authority as defined in section 1(1) of the Act and including the Office of Electricity and Gas Markets;

**"Balancing and Settlement Code (or "BSC")"** means the code of that name prepared by The National Grid Company plc pursuant to the NGC Licence and as modified from time to time;

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

**"Base Price"** shall mean the price in £/MWh of Export Output taken by the Buyer stated in Schedule 3;

**"Benefits"** means all exemptions, benefits and rights specifically set out in Schedule 5 to this Agreement or any amended, replaced or substituted exemptions, benefits and rights of similar effect (including, but not limited to, Embedded Benefits and New Benefits);

**"BSC"** means the Balancing and Settlement Code;

**"BSUoS"** means the charge per half-hour Settlement Period which National Grid Company plc recovers from BSC parties for the cost of balancing the transmission system through BSUoS charges;

**"Buyer's Group"** means the Buyer and any holding company and any subsidiary of the Buyer or of any holding company and any subsidiaries of any company of which the Buyer is a parent, with "parent" and "subsidiary" and "holding company" having the meanings given to those terms by Companies Act 2006 section 1159;

**"Buyer's Authorised Person"** is as defined in Schedule 1;

**"Central Meter Registration Service"** means as defined in the BSC;

**"Change"** means a proposed variation to the basis of delivery of Export Output including, without limitation, the addition of or change to generating or storage capacity or technology or operation or, for generator-consumers exporting power, demand side response (or any other change to this Agreement) which does not arise as a consequence of a Change in Law or a Relevant Change in Law;

**"Change in Law"** means the coming into effect after the date of this Agreement of:

- (a) Legislation, other than any Legislation which on the date of this Agreement has been published:
  - (i) in a draft Bill as part of a Governmental Departmental Consultation Paper;
  - (ii) in a Bill;
  - (iii) in a draft statutory instrument; or
  - (iv) as a proposal in the Official Journal of the European Communities;
- (b) any guidance or codes of practice issues under Legislation;
- (c) any applicable judgment of a relevant court of law which changes a binding precedent; or
- (d) an unforeseen change to any Industry Rules;

**"Charges"** means the charges referred to in clause 5;

**"Codes Dispute"** means dispute in relation to any matter related to the interpretation, implementation or compliance with, the Industry Documents or Industry Rules;

**"Commitment Period"** means the period of time specified in the table in Schedule 1 during which the Buyer commits to deliver amounts of Contracted Output to the Buyer;

**"Confidential Information"** means any commercially sensitive information provided by either Party to the other pursuant to this Agreement;

**"Contract Billing Period"** means each month or part of a month during the Term;

**"Contracted Output"** means the output expressed in MWh to be delivered to the Buyer by a Facility at the Delivery Point as contractually required pursuant to the provisions of clause 2.2 and Schedule 1;

**"Contracted Output Notification"** means the form of notification required to be provided by the Seller to the Buyer notifying the Buyer of the Contracted Output which the Seller will be required to provide to the Buyer in any Commitment Period;

**"Credit Support"** shall mean a guarantee or letter of credit or any other instrument or combination of instruments representing an amount in each case being reasonably acceptable to the other Party as credit support;

**"Credit Support Provider"** in respect of a Party, shall mean a person providing a guarantee, letter of credit or other form of credit support as security for its obligations under this Agreement;

**"CUSC"** means the Connection and Use of System Agreement;

**"Customer"** means a customer of the Buyer to whom supplies of Energy are to be made;

**"Data Aggregator"** means the party appointed to aggregate data under the BSC who is also accredited under the BSC;

**"Data Collector"** means the party appointed to collect data under the BSC who is also accredited under the BSC;

**"day"** means the period of 24 (twenty four) hours (or such other number of hours as may be relevant in the case of changes for daylight saving) starting at 12 (twelve) midnight;

**"Delivery Point"** means each exit point from the Facilit[y][ies] onto part of the Distribution Network or other premises of the DNO (such point being where electricity may flow to or from the Facilities to or from the DNO's network and which is also the point where meter readings are taken for the purposes of this Agreement);

**"Dispute"** means any dispute or disagreement arising out of this Agreement, whether concerning the meaning of its provisions, the performance by the Parties or their obligations under it, the grant by the Parties of rights granted under it, or otherwise;

**"Dispute Officer(s)"** means the persons from the Buyer and the Seller who initially deal with a dispute under this Agreement as set out in Schedule 1;

**"Distribution Licence"** means a licence to distribute electricity granted under section 6 of the Act;

**"Distribution Network Operator (DNO)"** means the operator of a Distribution Network;

**"Distribution Network"** means a system of electrical transmission lines from time to time and for the time being owned or operated by a DNO and through which the Buyer receives the Export Output directly or indirectly;

**"DUOS Charges"** means any charges made or benefits issued by a DNO for use of its Distribution Network to transport the Export Output from the Delivery Point and any other charges or benefits made or issued under the Use of System Agreement;

**"Embedded Benefits"** means the net benefits arising by virtue of the siting of the Facility, being those benefits specified in Schedule 5;

**"Embedded Benefits Payment"** means, in respect of any Contract Billing Period, an amount equal to the Embedded Benefits relating to the Facility that are transferred to the Buyer during that period multiplied by the Embedded Benefit Percentage;

**"Embedded Benefits Percentage"** means the percentage figure specified as the Embedded Benefits Percentage in Schedule 1;

**"End Date"** is as defined in Schedule 1;

**"Energy"** means the electrical energy (expressed in MWh) generated by the Facilit[y][ies] in accordance with this Agreement, other than any such electrical energy consumed by the Facilit[y][ies] in connection with [its][their] operation and maintenance;

**"Expert"** has the meaning given in clause 10;

**"Expiry Date"** means [xx] months from the date of the Agreement;

**"Export Output"** means, in any Settlement Period aggregated together for a Contract Billing Period, the aggregate amount of Energy delivered to the Delivery Point and notified to the Buyer [or the relevant member of the Buyer's Group] by the Data Collector;

**"Facilities"** means each of the electricity generating stations owned and operated by the Seller (and such other electricity generating stations as may be added following the date of this Agreement) as better described in Schedule 1 (as amended from time to time), and **"Facility"** is to be construed accordingly;

**"Financial Year"** means a period commencing on the 1 April and ending on the 31 March (inclusive);

**"Floor Price"** means the price per MWh of Electricity delivered by a Facility at the Delivery Point as may be set out and determined pursuant to the provisions of Schedule 3;

**"Force Majeure"** means any event or circumstance or any combination of event or circumstance which is beyond the reasonable control of a Party and could not have been avoided by steps which might reasonably be expected to be taken by the Party whose obligations are affected and which either causes or results in the failure of such Party to perform any of its obligations under this Agreement, including but not limited to:

(a) act of God;

(b) act of war, terrorism, riot, insurrection, public demonstration, sabotage, act of vandalism;

(c) strike, lockout or other industrial disturbance;

(d) explosion, lightning, fire, storm, flood, earthquake;

(e) fault or failure of plant and apparatus which could not have been prevented by the party acting in accordance with Good Industry Practice;

(f) cessation of supply by either the DNO or the Transmission Operator;

(g) except with regard to the performance of any obligations related to, or in connection with, compliance with the Industry Documents and Industry Rules and/or the Buyer's electricity supply licence, where such events of Force Majeure shall be limited or extended (as appropriate) to those expressly determined and evidenced under the Industry Documents, Industry Rules and/or the conditions of that electricity supply licence (as appropriate);

**"Forecast Output"** means the indicative output measured in MWh to be delivered at the Delivery Point from [the][each] Facility as notified by the Seller to the Buyer pursuant to the provisions of [Schedule 4] hereto;

**"Good Industry Practice"** means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking in the same or similar circumstances seeking in good faith to comply with its contractual obligations and complying with all relevant laws;

**"Grid Code"** means the code drawn up by the National Grid Company plc pursuant to its transmission licence;

**"Half Hourly Meter"** means a meter which provides measurements on a basis compatible with Settlement Periods;

**"Inclusive Price"** means the Base Price together with such additional payments as represent the value of Embedded Benefits as defined in more detail in Schedule 5;

**"Industry Documents"** means any and all agreements regulating the generation, transmission, distribution, supply and/or trading of electricity in England and Wales, including, without limitation, the CUSC, BSC and any bilateral industry document (such as Bilateral Embedded generating agreements as defined in the CUSC) as the same may be amended, novated, modified or replaced from time to time;

**"Industry Rules"** means the Act, the Regulations, the Balancing and Settlement Code, the Grid Code, the Distribution Use of System Agreement, the Master Registration Agreement, the Connection Use of System Code and any connection agreement the Seller has with the Local DNO, the Distribution Code(s), Licence(s) and any other legislation, agreement, licence or code to which the Seller is or should be a Party which affects their ability to perform their obligations under this Agreement;

**"Intermittent Plant"** means a generating plant which is powered by solar or wind energy;

**"Licence"** means a licence granted under section 6 of the Act;

**"Local DNO"** means the holder of the Distribution Licence in the Authorised Area in which each of the Facilities are situated;

**"Losses"** means all damages, losses, liabilities, costs and expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands;

**"Master Registration Agreement"** means the agreement of that name dated 1 June 1998, to which the Buyer is required to be a party pursuant to its electricity supply licence and that regulates matters including:

- (a) terms for the provision of metering point administration services;
- (b) provisions and procedures in relation to changes of electricity suppliers in respect of any premises,

as amended from time to time;

**"MPAN"** means the Metering Point Administration Number which provides a unique number for a Metering Point;

**"Meter Operator"** means a party who procures, installs, calibrates and maintains the metering system at each of the Facilities pursuant to the BSC and who is accredited under the BSC;

**"Metering Communication Link"** means the communication link that provides any relevant party with access to half hourly metered data from the meter at the Delivery Point;

**"Metering Point"** means the point, determined according to the principles and guidance as set out in Schedule 9 of the Master Registration Agreement, at which a supply to or from a Distribution System is intended to be measured;

**"Metering Services"** means those services expected to be provided by a Meter Operator under the BSC;

**"Month"** means a calendar month;

**"Monthly Forecast"** has the meaning given to it in paragraph 3.3 of Schedule 4;

**"MW"** means Megawatt;

**"MWh"** means Megawatt hour;

**"New Benefit"** means any new benefit, exemption or right (including those that replace (in whole or in part) exemptions, benefits or rights that are specifically set out in this Agreement and amendments to such exemptions, benefits or rights) associated with the Facilities or the Export Output;

**"NGC Licence"** means the transmission licence as amended from time to time, granted to The National Grid Company plc pursuant to section 6(i)(b) of the Act;

**"Non-Intermittent Plant"** means generating plant which is not Intermittent Plant;

**"Operating Protocol"** means a document as agreed between the Parties pursuant to clause 17;

**"Prudent Operating Practice"** means the exercise of that degree of skill and diligence which would reasonably and ordinarily be expected from a skilled and experienced owner/operator engaged in a similar undertaking under similar circumstances;

**"Qualifying Change in Law"** means a Change in Law which renders the performance of this Agreement (in whole or in part) illegal or unenforceable by either Party or otherwise materially affects this Agreement, including the commercial balance of this Agreement or the costs incurred by the Parties in connection with the performance of their obligations hereunder;

**"Qualifying Electricity"** means electricity which is produced from qualifying renewable sources, as defined in the Order;

**"RCRC"** is as defined in the BSC;

**"Reasonable Endeavours"** includes, notwithstanding Force Majeure, the taking by the Party subject to the obligation of all of the reasonable steps in accordance with Prudent Operating Practice which a prudent and

conscientious person having willingly undertaken the obligation would take to achieve the object of the obligation;

**"Registration Date"** means in relation to a Facility, the date and time the relevant metering system which records the Export Output from the Facility is registered in the name of the Buyer [(or in the sole discretion of the Buyer, a member of the Buyer's Group [or such other party as notified by the Buyer])] so that the Export Output from the Facility is credited to the Buyer [or the Buyer's Group (as the case may be) [or such other party as notified by the Buyer to the Seller]];

**"Regulations"** means the Electricity, Safety, Quality and Continuity Regulations 2002;

**"Schedule"** means a Schedule to this Agreement;

**"Seller's Authorised Person"** is as defined in Schedule 1;

**"Settlement Period(s)"** means a period of 30 (thirty) minutes beginning on the hour or the half hour as defined in the BSC;

**"SSNOA"** means the Supplier Services and Netting-Off Agreement entered into between the Buyer and a third party licensed supplier under which the third party licensed supplier agrees inter alia to provide certain licensed supplier services to the Buyer including a top-up supply of electricity to the Buyer;

**"Supplier Meter Registration Service"** means as defined in the BSC;

**"Term"** means the period from the Agreement Date until the Expiry Date unless terminated earlier in accordance with this Agreement;

**"Termination Date"** means the date of early termination of this Agreement in accordance with its terms;

**"TPLS"** means the third party licensed (electricity) supplier with whom the Buyer has contracted to provide supplier services under the requirements of the Buyer's electricity supply licence application to the Authority;

**"Top Up Power"** means the power required by the Buyer to meet the requirements of its Customers;

**"Transmission Operator"** means National Grid, which manages the operations of the electricity transmission systems in Great Britain;

**"Triad Avoidance Benefit"** has the meaning given to it in Schedule 5;

**"Use of System Agreement"** means an agreement of the same title made between the Buyer and a DNO in respect of use of the Distribution Network as may be amended from time to time;

**"VAT"** or **"Value Added Tax"** has the meaning given to that term in the Value Added Tax Act 1994 as such term may have been amended or varied from time to time including by HMRC Statutory Instruments, HMRC Extra Statutory Concessions or Notices issued by HMRC which have the effect of law and are in respect of VAT.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- 1.2.1 references to any statute or any section of, or schedule to, or other provisions of a statute shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment 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 case may have been so modified, extended or re-enacted from time to time);
- 1.2.2 where the Seller comprises two or more persons, any obligations of the Seller in, under or arising from this Agreement is undertaken by or binding upon such two or more persons jointly and severally;
- 1.2.3 except to the extent that the context requires otherwise, any reference to "this Agreement" or any other agreement or document is a reference to it as amended, supplemented or novated from time to time and includes a reference to any document which amends, is supplemental to, novates, or is entered into, made or given pursuant to or in accordance with any terms of it;
- 1.2.4 words not defined in this Agreement but starting with a capital letter shall, where defined in the BSC have the same meaning as set out in the BSC;
- 1.2.5 the headings are inserted for convenience only and are to be ignored for the purposes of construction;

## 2 Operation of the Facilities

### 2.1 Registration

- 2.1.1 The Seller shall either on the date of this Agreement (where the Facility or Facilities which are the subject of this Agreement have been commissioned and are operational at such date) or at the

date on which any such Facility or Facilities which are the subject of this Agreement are confirmed as being fully commissioned and operational to the satisfaction of the Buyer, provide all the information required or desired by the Buyer to allow the Buyer [(or a member of the Buyer's Group)] to become the body credited as having ownership of the Export Output.

- 2.1.2 The Seller shall take such steps as the Buyer may reasonably require to ensure that the Buyer is registered in the manner described in this clause 2.1.
- 2.1.3 Notwithstanding any other clause in this Agreement, the Buyer shall not pay for or take ownership of the Export Output or associated benefits until such registration is successfully completed.
- 2.1.4 The rest of this clause 2 is only effective from the moment immediately after the Registration Date.

## 2.2 Sale of Energy

- 2.2.1 The Buyer shall take ownership of and the Seller undertakes to sell all Export Output produced by the Facilities that is delivered to the Delivery Point for the duration of the Term. The provisions of Schedule 3 and Schedule 5 shall apply to the purchase of Export Output by the Buyer and the prices to be paid by the Buyer to the Seller for such output;
- 2.2.2 From the Registration Date and in consideration of the Buyer's obligation at sub-clause 2.2.1, the Seller grants to the Buyer the sole and exclusive right to all Export Output produced by the Facilities and delivered to the Delivery Point from the Registration Date for the remainder of the Term. The Buyer agrees to purchase such Export Output on the terms of the Agreement and in particular the provisions of Schedule 5.
- 2.2.3 The Seller authorises the Buyer [and/or any member of the Buyer's Group][and any other party notified by the Buyer to the Seller] to accept responsibility for the export from the Facilities for the purposes of the BSC during the Term and agrees that the Buyer [and/or any member of the Buyer's Group][or any other party notified by the Buyer to the Seller] shall have the sole rights to register the Facilities in either the Central Meter Registration Service or the Supplier Meter Registration Service as a BM Unit or within a BM Unit under the BSC at the sole discretion of the Buyer and shall have the sole right to direct all of the Energy or part of it to the credit of any person.

- 2.2.4 The Buyer shall not be obliged to purchase or pay for any Energy under this Agreement in the event of any de-energisation or disconnection of the Delivery Point for whatever reason or for any Energy not delivered to the Delivery Point or for any Energy delivered prior to the Registration Date or for any Energy after the Term has ended (even if the Seller has not de-registered the Buyer [or the Buyer's Group company])[or such other party notified by the Buyer to the Seller] (as the case may be) as the body credited as taking the Export Output).
- 2.2.5 The Buyer confirms that it will not directly sell the Energy delivered to the Delivery Point to a customer or customers outside of Great Britain.

### 2.3 Force Majeure

- 2.3.1 [Neither Party will be liable to the other for any failure to comply with its obligations in this Agreement to the extent it is prevented from so complying by reason of the occurrence of a Force Majeure event provided that (in the Seller's case) the Seller shall continue to use Reasonable Endeavours to deliver Energy to the Delivery Point (whilst always complying with all applicable Industry Rules) and further provided that the relevant Party has used all reasonable efforts to mitigate the impact of the Force Majeure event .
- 2.3.2 A Party affected (the "**Affected Party**") shall notify the other Party in writing as soon as reasonably practicable of the nature and likely duration of the Force Majeure event and the likely effect on the Affected Party's ability to perform its obligations. The Affected Party shall update the other Party with any relevant development regarding the Force Majeure event. The Parties shall, as soon as practicable following notification of the Force Majeure event, consult with each other in good faith and use reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure event and facilitate the continued performance of the Parties' respective obligations under the Agreement. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure event ceases of no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure event.
- 2.3.3 If no such terms are agreed pursuant to the process set out in clause 2.3.2 above on or before a date falling 30 (thirty) days after the date of the commencement of the Force Majeure event and such Force Majeure event is continuing or its consequence

remains such that the Affected Party is unable to comply with its obligations under this Agreement for a period of more than 30 (thirty) days, then this Agreement may be terminated by the giving by either Party to the other Party of 30 (thirty) days written notice.]

#### 2.4 Forecasts

The Seller shall be under an obligation to provide an Export Forecast, Monthly Forecast and Annual Forecast to the Buyer pursuant to and in accordance with the provisions of Schedule 4.

#### 2.5 Contracted Output

The Seller undertakes to provide to the Buyer a Contracted Output Notification in relation to all Non-Intermittent Plant which are listed as Facilities in Schedule 1 to this Agreement. This Contract Output Notification must be supplied by the Seller to the Buyer not later than 5 days prior to the Registration Date of the Buyer.

### 3 Benefits, obligations and warranties

#### 3.1 Benefits to the Buyer

The Seller agrees that all Benefits which arise as a result of the nature of the Export Output and which are capable of transfer to a purchaser of the Export Output, shall belong to the Buyer or, as the Buyer may direct, any purchaser from the Buyer [or any member of the Buyer's Group][or such other party as may be notified by the Buyer to the Seller]. The Seller also agrees that he shall procure that all such Benefits shall be obtained by the Seller (and that the Seller shall comply with and adhere to any relevant timescales imposed by the Authority in procuring such Benefits including, but not limited to, the provision of Export Output data to the Authority as appropriate) and sold with the Export Output and the Seller acknowledges that the Buyer is entering into this Agreement on the basis of the representation by the Seller that such Benefits are both available and are being sold to him with the Export Output. The Seller shall not obtain any New Benefits relating to the Export Output if doing so would prevent the Seller obtaining or invalidate any of the Benefits enjoyed by the Buyer at that time unless the Buyer otherwise agrees.

#### 3.2 Access

3.2.1 The Seller hereby grants to the Buyer, its agents and representatives the right, between the hours of 9am and 5pm on any Business Day and upon provision of 2 (two) Business Days' notice or other such reasonable notice as may be agreed, of access by the Buyer, its agents and representatives to each

Facility [or site of a Facility which is to be the subject of this Agreement and which is under construction] and or to any other premises where the Seller's records are kept. This Buyer shall have the right to inspect and audit each Facility and the records to check the accuracy of information provided under this Agreement and to confirm that the Buyer is [either] operating each Facility in accordance with clause 3.1 above [or that the construction timetable for the commissioning and commercial operation of the proposed Facility is in line with the agreed start date for operation of the Facility which has been agreed with the Buyer].

- 3.2.2 Where the Export Output volume is greater than [X] MW, the Seller shall provide full and unobstructed access to online data from the supervisory control and data acquisition SCADA or equivalent system to provide data as may be reasonably requested by the Buyer to support short term forecasting.

### 3.3 Material Breach

The Seller acknowledges that any breach of any of the obligations set out in clause 3.1 and the Schedules to this Agreement or any misrepresentation in relation thereto, shall be a material breach of this Agreement which shall be incapable of remedy and the Buyer reserves the right to terminate the Agreement forthwith in the event that such breach has (in the Buyer's reasonable opinion) occurred.

## 4 Metering

### 4.1 Nature of Meter

The Seller warrants that it has a Half Hourly Meter at each of the Facilities which are operational at the date of the Agreement and that it will ensure that any new electricity generating station which becomes a Facility under the Agreement after the date of the Agreement will have a Half Hourly Meter installed prior to its export of any Energy.

### 4.2 Determination of Export Output

The amount of Export Output shall be calculated by the Buyer [or by the Buyer's Data Collector] by reference to such meters as the Buyer shall reasonably decide. The determination of the Buyer [or the Buyer's Data Collector] as to the amount of Export Output in respect of any Contract Billing Period shall be conclusive in the absence of manifest error. Where, however, a meter is found to be recording inaccurately or where the Buyer has not received data from the meter for any reason, or where a Party disputes the accuracy of the meter, then the meter shall be examined in accordance with the Act. If, on examination, the inaccuracy

of the registration of the meter [at normal operating levels] exceeds [ ]% plus or [ ]% minus or the inaccuracy of the registration of any [export amount at normal operating levels] exceeds [ ]%, the meter shall be recalibrated or replaced and the cost of such test and recalibration shall be paid by the relevant Party appointing the Meter Operator to be recovered from the Meter Operator and suitable adjustment shall be made to any account raised by the Seller to the Buyer pursuant to clause 6. Where, however, the meter is accurate within the limits set out above, then the meter shall be deemed to be accurate and the cost of moving, testing and replacing the meter or any part thereof shall be paid by the Party which disputed the accuracy of the meter. The Buyer and the Seller both agree that they will co-operate in developing an Operating Protocol (pursuant to clause 17) relating to the issues surrounding procedures which will be required to enable the Buyer to gain access to the Seller's Sites and meters to determine, inter alia, the amount of the Export Output (as detailed in clauses 4.3, 4.4 and 4.5 below).

#### 4.3 Access to Information

The Seller and the Buyer shall procure that all relevant information and data held by it relating to Export Output shall be provided to the other Party. The Buyer shall so far as practicable provide a statement setting out details of the Export Output and all the other components of the Inclusive Price (where reasonably available or a reasonable estimate thereof, where not available) and Embedded Benefits Payment due in respect of each Contract Billing Period within [ ] Business Days of the end of the relevant Contract Billing Period. This statement shall include any adjustments which may be required to be made as a result of the outcome of the comparison of the amount of Export Output provided during the relevant Contract Billing Period compared to the requirements to provide the Contract Output for such Contract Billing Period as set out in Schedule 3. In the event that the Buyer shall fail to provide the Seller with details of the Export Output within the period provided for in this clause 4.4, the Parties shall within [ ] Business Days thereafter seek to agree upon an estimated amount as representing the Export Output for the relevant period. Upon failure to achieve agreement within the specified period clause 10 (Dispute Resolution Procedure) shall apply.

#### 4.4 Access to Meters

The Seller hereby grants to the Buyer and the Buyer's agents (including the Buyer's Data Collector) the right, at reasonable times and on reasonable notice, of access by the Buyer and any suitable persons nominated by the Buyer to such plant, property or assets owned, occupied or controlled by the Seller as may be reasonably necessary in order for the Buyer (or such suitable person) to check the Export Output from time to time and for the Buyer (or such suitable person) to gain all

such further metering information reasonably required by the Buyer to fulfil any obligation under Industry Rules and/or to allow the Buyer to install, maintain and inspect any telemetering equipment and/or Metering Communication Link at each of the Facilities so as to allow the Buyer [or member of the Buyer's Group] to read the relevant meter(s) remotely.

#### 4.5 Further Metering Requirements

4.5.1 The Seller will comply with such further metering information requirements as the Buyer may reasonably specify so that purchasers from the Buyer of the Energy have all such further metering information reasonably required by a purchaser of the Energy from the Buyer including, where relevant, information required by the relevant metering registration agent.

4.5.2 The Buyer (or the counterparty to the SSNOA) shall nominate the Meter Operator and the Seller shall enter into an agreement with it, except where the Buyer agrees to a Meter Operator nominated by the Seller. In this latter case, the Seller must nominate such Meter Operator when it enters into this Agreement with the Buyer by giving to the Buyer details of the Seller-nominated Meter Operator in writing. The Seller may not (except with the written consent of the Buyer) nominate more than one third party as the Seller's Meter Operator at any time. If the Seller does not enter into any agreement with a Meter Operator, it shall be deemed to have entered into an agreement with a Meter Operator nominated by the Buyer (or the counterparty to the SSNOA) until the End Date and such agreement will take effect upon receipt by the Seller of the Meter Operator terms and conditions, and the Seller shall be liable for all charges incurred as a result. The Buyer shall be responsible for appointing a Data Collector and Data Aggregator.

## 5 Charges

### 5.1 Price for Export Output

5.1.1 There shall be due from the Buyer to the Seller for each Settlement Period (aggregated together for a Contract Billing Period):

5.1.1.1 the Inclusive Price for each MWh of Export Output which shall be calculated pursuant to Schedule 3 and which is payable in accordance with the provisions of clause 6. Where, however, the calculations carried out pursuant to Schedule 3 result in an adjustment to the Inclusive Price for any part of the Export Output delivered for such period then an additional calculation

will be made pursuant to the terms of Schedule 3 to produce an Adjusted Price for such relevant output for the relevant Contract Billing Period; and

5.1.1.2 the Embedded Benefit Payment in respect of Embedded Benefits accrued during the relevant Contract Billing Period, in accordance with the statement prepared pursuant to clause 4.3

5.1.2 Where a number has been estimated under this Agreement, when the relevant number becomes available, the Buyer shall conduct a reconciliation in the following Contract Billing Period and shall set-off/accumulate any differences against monies due or owing in that next Contract Billing Period to/from the Buyer.

5.1.3 The Seller agrees that it shall be solely responsible for and shall not pass on to the Buyer any connection charges or positive use of system charges incurred by the Seller in relation to the Facilities and shall reimburse the Buyer for any such cost incurred by the Buyer.

## 5.2 Rounding

The Inclusive Price for each relevant period shall be expressed by reference to pounds per MWh and shall be expressed to two decimal places.

## 5.3 Triad

Triad Avoidance Benefit shall be shared in accordance with and/or are subject to Schedule 5 of this Agreement.

## 5.4 Third Party Arrangements

The Seller warrants that:

5.4.1 as at the date of this Agreement it has notified the Buyer of arrangements that the Seller has with any third party (including, but not limited to, any DNO) that may affect the Contracted Output expected by the Buyer; and

5.4.2 it shall not, without the Buyer's prior written consent, enter into any such arrangements with a third party.

The Buyer agrees that where the Seller enters into such arrangements with a third party then the Buyer must notify and consult the Seller in deciding whether to reasonably amend any of the prices, fees or charges set out in this Agreement (including, but not limited to, the Inclusive Price) that may in the reasonable opinion of the Buyer be affected by

such an arrangement. In the event that the Seller deems the amendment to the prices, fees or charges to be unreasonable, then clause 10 (Dispute Resolution) shall apply.

## **6 Terms of Payment**

### **6.1 Accounts and billing**

The Seller shall within 3 (three) Business Days of receipt of a statement agreed under clause 4.3, prepare and submit to the Buyer an account based on the determination of Export Output, Embedded Benefits and other variables calculated by the Buyer adjusted if necessary to reconcile any actual variance of Export Output against Contracted Output (as determined pursuant to the provisions of clause 5 and Schedules 3 and 4 or relevant variable established against the Forecast Output under the provisions of clause 5 and Schedules 3 and 4.

### **6.2 Price Payable**

The amount payable by the Buyer to the Seller shall be:

6.2.1 The Inclusive Price (being the price payable in respect of the Export Output and Embedded Benefits as specified in Schedule 5 and invoiced under clause 6.1) or, in the case of a determination pursuant to the provisions of Schedule 3, the Adjusted Price for relevant elements of the Export Output; and

6.2.2 [the price payable in respect of ROCs in accordance with the provisions of Schedule 2 this Agreement and invoiced under that Schedule.] **[delete if no ROCs purchased]**

### **6.3 Payment**

Accounts submitted by the Seller pursuant to this Agreement disclosing amounts payable by the Buyer to the Seller and undisputed shall be paid by the Buyer within 30 (thirty) days of receipt of the account by direct transfer to the bank account of the Seller in Great Britain with such bank as the Seller may from time to time notify to the Buyer or by such other arrangements as the Parties may agree.

### **6.4 Value Added Tax**

All sums expressed to be payable under this Agreement are exclusive of applicable Value Added Tax ("VAT") and the Parties agree that an amount equal to any applicable VAT chargeable on any payments made under this Agreement will be payable in addition to those sums provided that this is accompanied by a VAT invoice in relation to that amount.

### **6.5 Set-Off**

The Buyer shall be allowed to set-off monies owed under this Agreement by the Seller to the Buyer as against any monies the Buyer owes the Seller under this Agreement in accordance with the provisions of Schedule 3 (Base Price) and Schedule 7 (Relevant Change in Law) provided always that the Buyer and Seller shall account for the VAT payable and issue such VAT invoices as are necessary to comply with relevant legislation or guidance.

**6.6 Interest**

Any amount properly due and payable from the Buyer to the Seller or from the Seller to the Buyer pursuant to this Agreement and remaining unpaid at the expiry of the relevant period for payment shall bear daily interest at a rate equal to 3 (three) per cent in excess of the base lending rate of National Westminster Bank plc for the time being, from and including the date when payment was due up to but excluding the date the amount due is actually received.

**6.7 Disputed Items**

If any item or part of any item of an account rendered by the Seller in accordance with this Agreement or any calculations of Export Output made by the Buyer is disputed or subject to question by either the Seller or the Buyer, the relevant party shall pay the undisputed and unquestioned items and/or parts of items and the provisions of clause 6.6 shall apply to such undisputed and unquestioned items and/or parts of items. Clause 6.6 shall also apply to the disputed or questioned items and/or parts of items and/or excluded amounts to the extent that such sums are subsequently agreed or determined to have been properly payable to the Seller.

**7 Term and termination**

7.1 The Agreement will continue in full force and effect for the Term unless terminated earlier in accordance with Schedule 6.

7.2 No earlier than 3 (three) months prior to the Expiry Date, the Buyer shall have the option to give written notice to the Seller of its desire to renew the Term.

7.3 Within 28 (twenty eight) days of written notice in accordance with clause 7.2, the Seller shall provide to the Buyer terms upon which the Seller would be willing to renew the Term.

**8 Limitation of liability**

8.1 Limitation of liability

Subject to any indemnity expressly given in this Agreement, and save as provided in Schedule 6, neither Party ("**the Party Liable**") nor any of its officers, employees or agents shall be liable to the other party for loss arising from any breach of this Agreement other than for loss directly resulting from such breach and which at the date hereof was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach. The Seller acknowledges the value of goodwill accruing to the Buyer and the Buyer's expenditure in promoting any renewable and/or low carbon electricity. Other than as set out above, neither Party nor its officers, employees or agents shall in any circumstance whatsoever be liable to the other for any loss of use, loss of contract (other than this Agreement) or any incidental or consequential loss.

## 8.2 Financial Limits on Liability

8.2.1 The Buyer's liability shall be limited, in any 12 (twelve) month period, to the lesser of £100,000 (one hundred thousand pounds) and an amount equal to 10% (ten percent) of the 3 (three) month pro-rated value of the annual Export Output (calculated as a quarter of the Export Output over the previous 12 (twelve) months prior to the event giving rise to the relevant claim and pro-rated, where necessary, for any shorter period) for each and every claim (or series of connected events) and in the aggregate, except for the following liabilities:

- 8.2.1.1 death or personal injury resulting from the Buyer's negligence;
- 8.2.1.2 fraud or wilful misconduct on the part of the Buyer and/or any of its sub-contactors;
- 8.2.1.3 any amount correctly due under clause 6 (Terms of Payment)

8.2.2 The Seller's liability shall be limited, in any 12 (twelve) month period, to the lesser of £100,000 (one hundred thousand pounds) and an amount equal to 10% (ten percent) of the 3 (three) month pro-rated value of the annual Export Output (calculated as a quarter of the Export Output over the previous 12 (twelve) months prior to the event giving rise to the relevant claim and pro-rated, where necessary, for any shorter period) for each and every claim (or series of connected events) and in the aggregate, except for the following liabilities:

- 8.2.2.1 death or personal injury resulting from the Seller's negligence;

8.2.2.2 fraud or willful misconduct on the part of the Seller and/or any of its sub-contractors;

8.2.2.3 any amount correctly due under clause 6 (Terms of Payment)

### 8.3 Overriding provisions

Save as otherwise expressly provided in this Agreement, this clause insofar as it excludes or limits liability shall override any other provision in this Agreement provided that nothing in this clause shall exclude or restrict or otherwise prejudice or affect any of:

8.3.1 the rights, powers, duties and obligations of any Party which are conferred or created by the Act, any Licence, the Regulations or any other regulations; or

8.3.2 the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, any Licence or otherwise howsoever;

### 8.4 Survival of Terms

Each of the sub-clauses of this clause 8 shall survive termination of this Agreement.

### 8.5 Benefit of Provisions

Each Party acknowledges and agrees that the other Party holds the benefit of this Agreement for itself and as trustee and agent for its officers, employees and agents.

### 8.6 Terms Fair and Reasonable

Each Party hereby acknowledges and agrees that the provisions of this clause 8 are fair and reasonable having regard to the circumstances as at the date hereof.

## 9 Confidentiality and Announcements

### 9.1 Subject to clause 14, each Party will keep confidential:

9.1.1 the terms of this Agreement; and

9.1.2 any and all Confidential Information that it may acquire in relation to the other.

### 9.2 Neither Party shall use the other's Confidential Information for any purpose other than to perform its obligations under the Agreement. Each

Party shall ensure that its officers and employees comply with the provisions of clause 9.1.

9.3 The obligations set out in clauses 9.1 and 9.2 will not apply to any Confidential Information:

9.3.1 which either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this clause 9);

9.3.2 which a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure; or

9.3.3 to the extent that such disclosure is to the Secretary for Transport (or the government department responsible for public transport in London for the time being), the Office of Rail Regulation, or any person or body who has statutory responsibilities in relation to transport in London and their employees, agents and sub-contractors.

9.4 Each Party shall keep secure all materials containing any information in relation to the Agreement and its performance.

9.5 Neither Party shall communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of the Agreement or in relation to any matter under or arising from the Agreement where the other Party's identity is disclosed (or could reasonably be inferred) unless specifically granted permission to do so in writing by the other Party. The other Party shall have the right to approve any such announcement before it is made.

9.6 The provisions of this clause 9 will survive any termination of this Agreement for a period of 6 (six) years from termination.

## **10 Dispute Resolution Procedure**

10.1 First Stage Resolution

The Parties will use all their reasonable endeavours to resolve any Dispute.

10.2 Escalation to Senior Officers

10.2.1 If the Parties fail to resolve a Dispute within 10 (ten) Business Days of one Party giving notice to the other of the Dispute, either Party, by giving notice to the other, may refer the Dispute to the Parties' Senior Officers who will co-ordinate in good faith to resolve the Dispute as amicably as possible within 10 (ten) Business Days of the Dispute being referred to them.

10.2.2 The Senior Officers of the Parties shall be:

10.2.2.1 for Buyer: [insert name and contact details]

10.2.2.2 for Seller: [insert name and contact details]

10.2.3 Either Party may nominate an alternative Senior Officer, at any time, by notifying the other Party in writing.

### 10.3 Escalation to Expert

If the Senior Officers fail to resolve the Dispute within 10 (ten) Business Days of the Dispute being referred to them, the Parties will, at the written request of either Party and within 10 (ten) Business Days of receipt of the request, submit to determination of the Dispute by an expert. The expert ("**Expert**") will be mutually agreed by the Parties within 10 (ten) Business Days of receipt of the request or, failing such agreement, will be an expert nominated, at the request of either Party, by the Centre for Dispute Resolution or (if that organisation ceases to exist or fails to nominate within a reasonable period) any other organisation nominated by the Party requesting the nomination.

### 10.4 Determination Binding

The Expert's determination of the Dispute will be final and binding on the Parties, except in the case of manifest error. The Expert will be free to decide the determination procedure to be adopted and the Parties will execute any documents which the Expert reasonably requests that they execute in order to implement that procedure (such as the Model Expert Determination Agreement published by the Centre for Dispute Resolution with whichever options the Expert considers appropriate).

### 10.5 Confidentiality of Negotiations

All negotiations connected with the Dispute will be conducted in strict confidence and be subject to clause 9 (Confidentiality).

### 10.6 Limit on Issuing Proceedings

Except for either Party's right to seek interlocutory relief in the courts, neither Party may commence other legal proceedings under the jurisdiction of the courts in relation to any Dispute until at least 15 (fifteen) Business Days after the Expert has completed its determination of the Dispute, and then only on grounds that the Expert's determination is manifestly wrong (either in fact or in law).

### 10.7 Costs

10.7.1 Subject to any contrary determination by the Expert:

10.7.1.1 the Parties will bear their own legal costs under this clause 10; and

10.7.1.2 the costs and expenses of the Expert will be borne by the Parties equally.

**10.8 Expert not liable**

Except in the case of fraud or death or personal injury caused by negligence, the Expert will have no liability to the Parties, whether in contract, tort or otherwise, in relation to the Expert's determination contemplated by this clause 10. This clause 10.8 is enforceable against the Parties by the Expert in accordance with the Contracts (Rights of Third Parties) Act 1999.

**10.9 Expert clause not applicable**

10.9.1 Clauses 10.3 to 10.8 shall not apply to:

10.9.1.1 any Dispute which arises from any breach of this Agreement the substance of which is the subject of proceedings issued in any other forum by a third Party against one of the Parties and leads to a right of contribution under this Agreement; or

10.9.1.2 any Code Dispute.

10.9.2 If a Code Dispute arises, it may be referred by either Party to be resolved by arbitration under the arbitration rules of the Electricity Arbitration Association in force from time to time. Unless and until revised, cancelled or varied by the courts of England and Wales or the courts of Scotland, the Electricity Arbitration Association decision shall be binding on both Parties who shall forthwith give effect to the decision. The provisions of the Arbitration Act 1996 shall apply to any such arbitration subject to any permitted exceptions thereto agreed by the Parties. The seat for arbitration shall be England and Wales and the laws of England and Wales shall be the proper law of reference to arbitration hereunder.

**11 Miscellaneous provisions**

**11.1 Waiver**

No failure to exercise nor any delay in exercising any right or remedy under this Agreement shall operate as a waiver thereof, or of any other right or remedy hereunder, nor shall any single or partial exercise of any

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

## 11.2 Entire Agreement:

11.2.1 Except where expressly provided in this Agreement, this Agreement and the Schedules hereto constitute the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

11.2.2 Each of the Parties acknowledges that:

11.2.2.1 It does not enter into this Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provisions (in any case whether oral, written, express or implied) made or agreed to by any person (whether a Party to this Agreement or not) except those expressly repeated or referred to in this Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Agreement; and

11.2.2.2 clause 11.2.2.1 shall not apply to any statement, representation or warranty made fraudulently, or to any provisions of this Agreement which were induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.

## 11.3 Notices

11.3.1 Notices shall be regarded as duly given if delivered by hand or sent by pre-paid post or by facsimile transmission or by electronic mail (if receipt is confirmed) to the recipient at the registered office of the relevant Party for the time being or at the addresses stated above or such other addresses as the Parties may agree. Any notice shall be deemed to be served immediately after by hand delivery, immediately upon confirmed receipt of electronic mail, on the fifth Business Day after delivery by pre-paid post or on the next Business Day after facsimile transmission provided that the sender has received automated confirmation of a successful transmission.

11.3.2 Other than in the case of the information transmitted as expressly set out elsewhere in this Agreement, all notices given under this Agreement will be in writing, signed by a person duly authorised by the sending Party, and will be addressed to the person ("**Recipient**") in respect of the Party to which the notice is to be sent, as set out in the Authorised Persons section of Schedule 1.

#### 11.4 Counterparts

This Agreement may be executed in any number of 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 be one and the same instrument.

#### 11.5 Severance of Terms

If any term, condition or provision of this Agreement is held invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other terms, conditions or provisions of or any other documents referred to in this Agreement.

#### 11.6 Variation

11.6.1 Subject to clause 15 (Change in Law) and Schedule 7 (Relevant Change in Law) the Buyer shall:

11.6.1.1 notify the Seller as soon as reasonably practicable in the event of a proposed Change:

11.6.1.2 provide such details of the Change as is necessary to enable the Seller to comply with clause 11.6.2, including whether any changes are required to the terms of this Agreement to deal with the Change.

11.6.2 On receipt of notification, the Seller shall within 10 (ten) Business Days, provide to the Buyer proposals and estimates of changes required to the Agreement (if any) to deal with the Change (the "**Seller Change Response**"), including but not limited to:

11.6.2.1 an appropriate charging methodology: and/or

11.6.2.2 proposed change to the existing methodology for the calculation of Charges.

11.6.3 On receipt of the Seller Change Response, the Buyer shall within 20 (twenty) Business Days, either:

- 11.6.3.1 accept the proposed changes required to the Agreement (if any) detailed in the Seller Change Response; or
  - 11.6.3.2 reject the Seller Change Response and request such additional information as the Buyer reasonably requires to determine whether the Seller Change Response is fair and reasonable in all the circumstances.
- 11.6.4 The Seller shall provide the information requested under clause 11.6.3.2 within 20 (twenty) Business Days of the request, whereupon the Buyer may:
- 11.6.4.1 accept the amended Seller Change Response;
  - 11.6.4.2 reject the amended Seller Change Response and withdraw the Change; or
  - 11.6.4.3 reject the amended Seller Change Response and refer the dispute to be resolved in accordance with clause 10.

Other than as set out below, no variation of this Agreement shall be effective unless it is in writing and signed by or on behalf of both Parties.

#### 11.7 Novation and Sub-contracting

- 11.7.1 Subject to clauses 11.7.2 and 11.7.3 below and subject to the right to assign rights by way of security, neither Party shall assign or transfer to any person any of its rights or obligations in respect of this Agreement without the written consent of the other Party (such consent not to be unreasonably withheld or delayed).
- 11.7.2 The Seller may from time to time sub-contract or assign any of its obligations under this Agreement provided always that this shall not affect the Buyer's rights under this Agreement as against the Seller. Where requested by the Buyer, the Seller shall provide the Buyer with information regarding its assignees and sub-contractors and the obligations being performed by them including the technical and other relevant competence and financial standing of such proposed assignees and sub-contractors.
- 11.7.3 Upon giving prior written notice to the Seller, the Buyer may novate its rights and obligations under this Agreement to any member of the Buyer's Group or to a company which is: wholly or majority owned and controlled by the Buyer; technically

competent to discharge the obligations of the Buyer under this Agreement; or supported by a guarantee against its payment obligations from the Buyer.

11.7.4 The Seller shall do all such things reasonably necessary to give effect to such novation, including entering into a novation agreement.

#### 11.8 Law and Jurisdiction

This Agreement shall be governed by, and construed in accordance with the laws of England and Wales and the Parties (subject to clause 10 (Dispute Resolution Procedure)) hereby submit to the exclusive jurisdiction of the courts of England and Wales to settle any Dispute which arises out of or in connection with this Agreement.

#### 11.9 Third Party Rights

Except as set out in Clause 10.8, 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.

#### 11.10 Waiver of Rights

Except as expressly set out in this Agreement, all rights, remedies, warranties, terms, conditions and undertakings whether express or implied, statutory or otherwise are hereby excluded.

### 12 Compliance with Policies and Law

12.1 The Seller, at no additional cost to the Buyer:

12.1.1 undertakes to procure that all the Seller's Personnel comply with all of the Buyer's policies and standards that are relevant to the performance of the Services, (including the Buyer's Dignity at Work policy as updated from time to time and with the Buyer's Code of Ethics as updated from time to time and those relating to safety, security, business ethics, drugs and alcohol and any other on site regulations as may be specified by the Buyer. The Buyer shall provide the Seller with copies of such policies and standards on request.

12.1.2 shall comply with and ensure that the Seller's Personnel comply with all requirements of all Acts of Parliament, statutory instruments, court orders, regulations, directives, European Community decisions (insofar as legally binding), bye-laws, treaties and other regulatory requirements relevant to either of both of the Seller's or the Buyer's business, from time to time in

force which are or may become applicable to the subject matter of this Agreement. The Seller shall promptly notify the Buyer if the Seller is required to make any change to the Agreement for the purposes of complying with its obligations under this Clause 12.1.2;

12.1.3 without limiting the generality of Clause 12.1.2, shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;

12.1.4 acknowledges that the Buyer is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex, marital or civil partnership status, race, sexual orientation, religion or belief, age, pregnancy or maternity, gender reassignment or disability (a "**Relevant Protected Characteristic**") (as the case may be) and to promote equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it. In relation to its obligations under this Agreement, the Seller shall, where relevant, assist and cooperate with the Buyer where possible in satisfying this duty;

12.1.5 acknowledges that the Buyer is under a duty under section 404(2) of the Greater London Authority Act 1999 to have due regard to the need to:

12.1.5.1 promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;

12.1.5.2 eliminate unlawful discrimination; and

12.1.5.3 promote good relations between persons of different racial groups, religious beliefs and sexual orientation,

and in complying with its obligations under this Agreement shall, where relevant, assist and co-operate with the Buyer where possible to enable the Buyer to satisfy its duty.

12.2 The Seller shall:

12.2.1 comply with policies developed by the Buyer with regard to compliance with the Buyer's duties referred to in clauses 12.1.4 - 12.1.5 as are relevant to the Agreement and the Seller's activities;

- 12.2.2 obey reasonable directions from the Buyer with regard to the conduct of the Agreement in accordance with the duties referred to in clauses 12.1.4 - 12.1.5;
  - 12.2.3 assist, and consult and liaise with, the Buyer with regard to any assessment of the impact on and relevance to the Agreement of the duties referred to in Clauses 12.1.4 - 12.1.5;
  - 12.2.4 on entering into any contract with a sub-contractor in relation to this Agreement, impose obligations upon the sub-contractor to comply with this clause 12.2 as if the sub-contractor were in the position of the Seller;
  - 12.2.5 provide to the Buyer, upon request, such evidence as the Buyer may require for the purposes of determining whether the Seller has complied with this Clause 12.2. In particular, the Seller shall provide any evidence requested within such timescale as the Buyer may require, and co-operate fully with the Buyer during the course of the Buyer's investigation of the Seller's compliance with its duties under this Clause 12.2. Nothing in this Clause 12.2.5 is intended to require the Seller to provide the Buyer with sensitive personal information unless in accordance with the Data Protection Act 1998; and
  - 12.2.6 inform the Buyer forthwith in writing should it become aware of any proceedings brought against it in connection with this Agreement by any person for breach of the Equality Act 2010.
  - 12.2.7 promptly notify the Seller's Personnel and the Buyer of any health and safety hazards that exist or may arise in connection with the performance of the Seller of its obligations under the Agreement; and
  - 12.2.8 without limiting the generality of Clause 12.1.2, comply with the Bribery Act 2010 and any guidance issued by the Secretary of State under it.
- 12.3 In all cases, the costs of compliance with this Clause 12 shall be borne by the Seller.
- 12.4 In carrying out its obligations under this Agreement, the Seller shall, where relevant, (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the Seller's activities may impact on the environment) to the need to:

- 12.4.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;
- 12.4.2 enhance the environment and have regard to the desirability of achieving sustainable development;
- 12.4.3 conserve and safeguard flora, fauna and geological or physiological features of special interest; and
- 12.4.4 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

### 13 **Corrupt Gifts and Payment of Commission**

The Seller shall not, and shall ensure that its employees, agents and sub-contractors do not, pay any commission, fees or grant any rebates to any employee, officer or agent of any member of the Buyer or the Buyer's Group nor favour any employee, officer or agent of any member of the Buyer's Group with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of any member of the Buyer's Group other than as a representative of the Buyer and except in accordance with a permitted and lawful contract or sub-contract, without the Buyer's prior written approval.

### 14 **Freedom of Information and Transparency**

14.1 For the purposes of this Clause 14:

14.1.1 **"FOI Legislation"** means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance or statutory codes of practice issued by the Information Commissioner, the Ministry of Justice or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

14.1.2 **"Information"** means information recorded in any form held by the Buyer or by the Seller on behalf of the Buyer or, where the Seller is also subject to FOI Legislation, the Seller; and

14.1.3 **"Information Access Request"** means a request for any Information under the FOI Legislation,

14.2 [The Seller][Each Party] acknowledges that the [Buyer][other];

**Comment [TB1]:** Use alternate wording where Seller is not a local authority.

- 14.2.1 is subject to the FOI Legislation and [each] agrees to assist and co-operate with the [Buyer][other] to enable the [Buyer][other] to comply with its obligations under the FOI Legislation; and
- 14.2.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the [Seller][other].
- 14.3 Without prejudice to the generality of Clause 14.2, [the Seller][each Party] shall and shall procure that its sub-contractors (if any) shall:
- 14.3.1 [transfer to][notify] the [Contract Manager (or such other person as may be notified by the Buyer to the Seller)][other of] each Information Access Request relevant to the Agreement or any member of the [Buyer's][other Party's] Group that it or they (as the case may be) receive as soon as practicable and in any event within 2 (two) Business Days of receiving such Information Access Request; and
- 14.3.2 in relation to Information held by [the Seller][one Party] on behalf of the [Buyer][other], provide the [Buyer][other] with details about and copies of all such Information that the [Buyer][other] requests and such details and copies shall be provided within 5 (five) Business Days of a request from the [Buyer][other] (or such other period as the [Buyer][other] may reasonably specify), and in such forms as the [Buyer][other] may reasonably specify.
- 14.4 [The Buyer][Each Party] shall be responsible for determining whether Information is exempt from disclosure under the FOI Legislation and for determining what Information will be disclosed in response to an Information Access Request [it receives] in accordance with the FOI Legislation.
- 14.5 [The Seller shall not itself][Either Party may] respond to any person making an Information Access Request, [save to acknowledge receipt, unless expressly authorised to do so by the Buyer][provided that it shall notify and co-operate with the other in accordance with this clause 14].
- 14.6 [The Seller][Each Party] acknowledges that the [Buyer][other] is subject to the Transparency Commitment. Accordingly, notwithstanding clause 9.1 and clause 9.2, [the Seller][each Party] hereby gives its consent for the [Buyer][other] to publish the Contract Information to the general public.
- 14.7 [The Buyer][Either Party] may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion, [the Buyer][that Party] may take account of the

exemptions/exceptions that would be available in relation to information requested under the FOI Legislation.

- 14.8 [The Buyer may in its absolute discretion][Each Party shall] consult with the [Seller][other] regarding any redactions to the Contract Information to be published pursuant to Clause 14.6. The Buyer shall make the final decision regarding both publication and redaction of the Contract Information [provided that it does not in so doing cause the Seller to be in breach] of its obligations under the FOI Legislation].

## **15 Change in Law**

- 15.1 The Seller shall take all steps necessary to ensure that it performs its obligations in accordance with the terms of this Agreement following any Change in Law.

- 15.2 If a Qualifying Change in Law occurs or is shortly to occur, either Party may notify the other to express an opinion on its likely effects, giving details of its opinion as to:

15.2.1 whether any changes are required to the terms of this Agreement to deal with the Qualifying Change in Law;

15.2.2 whether relief from compliance with any obligation is required, including the obligation of the Seller to meet the Contracted Output required under the Agreement;

15.2.3 any change in cost of complying with the obligations of either Party which will result from the relevant Qualifying Change in Law, including evidence of how such change in costs is calculated,

in each case giving, in full detail, the procedure for implementing the change and necessary amendments to the Agreement. Responsibility for the costs of implementation shall be dealt with in accordance with clause 15.3 and 15.4 below.

- 15.3 As soon as practicable after receipt of any notice from either Party under clause 15.2, the Parties shall discuss and use reasonable endeavours to agree to the issues referred to in clause 15.2, any necessary amendments to this Agreement and any ways in which the Parties can mitigate the effect of the Qualifying Change in Law, including (but not limited to):

15.3.1 providing evidence that the Seller has used reasonable endeavours to minimise any increase in costs and maximise and reduction in costs;

- 15.3.2 demonstrating how any additional cost of complying with its obligations under the Agreement is being measured in a cost effective manner; and
  - 15.3.3 giving evidence as to how the Qualifying Change in Law has affected the costs and prices charged by similar businesses pursuant to agreements similar to the Agreement in the same or similar circumstances.
- 15.4 Any increase in costs of either Party performing its obligations pursuant to this Agreement and resulting from a Qualifying Change in Law shall:
- 15.4.1 in the case of a Qualifying Change in Law impacting the value of Embedded Benefits or, where relevant, ROCs, be borne by the Seller; and
  - 15.4.2 otherwise be borne by the Parties in accordance with the allocation agreed or determined pursuant to Clause 15.5; and
  - 15.4.3 in any event shall not be a basis for suspending or terminating any obligations under this Agreement (unless required by law).
- 15.5 Where the Parties are not able to agree the issues referred to in clause 15.2, any necessary amendments to the Agreement and/or any ways in which the Parties can mitigate the effect of the Qualifying Change in Law within 30 (thirty) days of the date of the notice referred to in clause 15.3 then either Party may refer the Dispute to be resolved in accordance with clause 10.

## **16 Indemnities**

- 16.1 Subject to clauses 16.2 and clause 8, the Seller shall be liable to the Buyer:
- 16.1.1 for any costs or penalties levied against the Buyer, arising from the Seller's breach of its obligations under this Agreement; and
  - 16.1.2 for any liability arising from the failure to provide data or the failure to provide accurate data to the Buyer,
- in each case, to the extent that such liabilities and Losses arise as a result of the Seller's breach of the terms of this Agreement.
- 16.2 Each Party shall be under a duty to take reasonable steps to mitigate any losses or liabilities in respect of which it wishes to bring a claim under the indemnities in clause 16.1 and its claim under the indemnity shall be reduced to the extent that its losses or liabilities are exacerbated by its own breach of this Agreement.

## **17 Operating Protocols**

- 17.1 Acknowledging that it will assist co-ordination and the efficient operation of this Agreement to develop detailed operating protocols, including as to data requirements, the Parties shall comply with any Operating Protocol agreed or deemed to be agreed, including any modification thereof agreed or deemed to be agreed, pursuant to clause 17.2.
- 17.2 The Parties shall agree operating protocols in accordance with this clause 17.2 ("**Operating Protocols**"):
- 17.2.1 either Party may propose an Operating Protocol:
- 17.2.2 within [10 (ten) Business Days] of receipt of a proposed Operating Protocol, the receiving Party shall, acting reasonably, either:
- 17.2.2.1 accept the Operating Protocol; or
- 17.2.2.2 reject the Operating Protocol, giving reasons;
- 17.2.3 if the receiving Party accepts the proposed Operating Protocol, then it shall be binding on the Parties;
- 17.2.4 if the receiving Party rejects the proposed Operating Protocol, the proposing Party may modify and resubmit the Operating Protocol and sub-clause 17.2.2 shall apply;
- 17.2.5 if a proposed Operating Protocol is rejected twice, the proposing Party can refer the matter as a Dispute to be resolved in accordance with clause 10 and the Parties shall be deemed to have agreed with and shall comply with the Operating Protocol with such modifications as the Expert determines are required (or, if it cannot be determined, then it shall not be deemed agreed);
- 17.2.6 the terms of reference for developing any Operating Protocol or for the resolution of any Dispute relating to any Operating Protocol shall be that the Operating Protocol is intended to provide additional detail of the operating procedures between the Parties but not otherwise to modify the balance or risk and reward as between them and not to modify or vary the obligations under this Agreement;
- 17.2.7 either Party may propose a modification or an agreed or deemed agreed Operating Protocol but not sooner than [6 (six)] months from the date on which such Operating Protocol was agreed or deemed agreed or last modified in accordance with this clause 17.

- 17.3 For the avoidance of doubt the Parties anticipate a period of discussion and collaborative development of Operating Protocols prior to the formal submission and consideration of a proposed Operating Protocol pursuant to sub-clauses 17.2.1 and 17.2.2 above and if the receiving Party reasonably believes that the proposed Operating Protocol constitutes a material change to this Agreement, the provisions of clause 11.6 shall apply instead.

**AS WITNESS** the hands of the duly authorised representatives of the Parties on the date stated at the beginning of this Agreement.



5 **Dispute Officer:** *Buyer*

*Seller*

**Senior Officer:** *Buyer*

*Seller*

6 **Authorised Persons:**

**Buyer**

The contact details for the Buyer for the purpose of Price Requests are as follows:

Buyer's Authorised Person:

Telephone (recorded line):

Fax:

E-mail:

The contact details for the Buyer [for all other purposes] are as follows:

Buyer's Authorised Person:

Telephone:

Fax:

E-mail:

**Seller**

The contact details for the Seller for the purpose of Price Requests are as follows:

**Seller's Authorised Person:**

[Consultant: Those persons working at **CONSULTANT NAME** as notified by **CONSULTANT NAME** from time to time].

E-mail:

Telephone:

Emergency Telephone:

Fax:

(as such contact detail may be updated by **CONSULTANT NAME** from time to time).

**Seller's Authorised Person:**

Those persons working at **COMPANY NAME** as notified by **COMPANY NAME** to the Supplier from time to time.

Current Seller's Authorised Person:

Name:

E-mail:

Telephone:

Emergency Telephone:

Fax:

The contact details for the Seller [for all other purposes] are as follows:

**Seller's Authorised Person:**

[Consultant: Those persons working at **CONSULTANT NAME** as notified by **CONSULTANT NAME** from time to time].

Name:   
E-mail:   
Telephone:   
Emergency Telephone:   
Fax:

(as such contact detail may be updated by **CONSULTANT NAME** from time to time).

**Seller's Authorised Person:**

Those persons working at **COMPANY NAME** as notified by **COMPANY NAME** to the Supplier from time to time.

Current Seller's Authorised Person:

Name:   
E-mail:   
Telephone:   
Emergency Telephone:   
Fax:

7 **Embedded Benefit Percentage:** [100% (one hundred percent)]

**SCHEDULE  
BUSINESS**

**2**



## SCHEDULE

2(A)

### ROCS (FIXED PRICE)

#### 1 [Purpose

- 1.1 The Seller generates the Export Output and has associated benefits such as ROCs that it desires to sell.
- 1.2 Definitions used in this Schedule have the meaning given to them in clause 1 of this Agreement and paragraph 2 of this Schedule 2(a)
- 1.3 References to a clause or Schedule in this Schedule are references to clauses or Schedules of this Agreement.
- 1.4 In this Schedule, the contractually binding language is in regular font, with narrative identified in italics.

#### 2 Additional Definitions

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

**["Bioliquid Generating Station"** means a generating station which, during the month to which the ROCs relate has used liquid fuel for energy purposes other than for transport, including electricity and heating and cooling, produced from biomass, in such case as defined in the Order;]

**["Co-Firing Generating Station"** means a generating station which, during the month to which the ROCs relate has been fuelled partly by fossil fuel and partly by biomass, in such case as defined in the Order;]

**"Long Stop Date"** means for each ROC Registration Obligation in respect of any ROC issued in any Obligation Period, the 7 July next following the expiry of that Obligation Period;

**"the Order"** or **"Order"** means the Renewables Obligations Order 2015 and any amendment thereof or any replacement or subsequent statutory instrument;

**"Obligation Period"** means as defined in the Order;

**"Register"** means the electronic register of ROCs established by the Authority in accordance with the Order;

**"Renewables Obligation"** means the obligation contained in the Order which requires electricity suppliers (as defined in the Act) to purchase a proportion of their respective total electricity supplied to end-users from renewable sources;

**"Renewables Obligation Certificate"** or **"ROC"** means a certificate issued by the Authority (normally first to a generator) as evidence that electricity has

been generated by a qualifying accredited renewable generator for the purposes of the Renewables Obligation;

"ROC Price" means [ ] per ROC.

- 3 The Buyer shall take ownership of, and the Seller undertakes to sell, all ROCs attributable to the Export Output from the Registration Date for the remainder of the Contract Term.
- 4 The Buyer shall pay the ROC Price for all ROCs attributable to the Export Output transferred to the Buyer in accordance with this Agreement.
- 5 From the Registration Date and in consideration of the Buyer's obligation in paragraph 3 above, the Seller grants to the Buyer the sole and exclusive right to all ROCs attributable to the Export Output from the Registration Date for the remainder of the Contract Term.
- 6 All of the Seller's rights in and entitlement to ROCs (to the extent legally possible given the procedure set out in the Order) shall pass to the Buyer on delivery of the Export Output to which each such ROC is attributable and the Seller shall do all such things as are required to facilitate this.
- 7 The Buyer shall not be obliged to purchase or pay for any ROCs under this Agreement in the event of:
  - 7.1 any de-energisation or disconnection of the Delivery Point for whatever reason; or
  - 7.2 for any ROCs not delivered to the Delivery Point; or
  - 7.3 for any ROCs delivered prior to the Registration Date; or
  - 7.4 for any ROCs after the Contract Term has ended; or
  - 7.5 for any ROCs (if applicable) until the Buyer is the registered holder of these ROCs on the Register,  
unless caused by the Buyer.
- 8 The Buyer shall not be obliged to pay for any ROCs attributable to any Excess Export Output.
- 9 **[Co-Firing and Bioliquid Generating Stations]**
  - 9.1 The maximum number of ROCs attributable to Co-Firing Generating Stations will be **X%** of the Export Output.
  - 9.2 The maximum number of ROCs attributable to Bioliquid Generating Stations will be **Y%** of the Export Output.]

## 10 Delivery of ROCs

- 10.1 The Seller shall procure that the Buyer shall be the registered holder of the ROCs on the Register for all Export Output of the Facilities. The Seller shall do all such things as are required or requested by the Authority or the Buyer (acting reasonably) to ensure that the Buyer becomes the registered holder of the ROCs on the Register within 5 Business Days from the date the ROCs are issued to the Seller, provided that in any event the Seller will ensure that the Buyer is the registered holder of the relevant ROCs on the Register by the Long Stop Date immediately following the end of the Financial Year in which the Export Output to which the ROCs relate was delivered, ("**ROC Registration Obligation**") and if for whatever reason the Seller fails to comply with the ROC Registration Obligation for the purposes of paragraph 12 the Seller shall be deemed to have failed to transfer ownership of the relevant ROCs to the Buyer.
- 10.2 The Seller shall also (where relevant), within 2 (two) Business Days of receiving any ROC (or information on that ROC) attributable to the Export Output:
- 10.2.1 if received by e-mail, send the relevant ROC or information on that ROC (in the form received) to the Buyer by e-mail; or
- 10.2.2 if received by other means, send the relevant ROC or information on that ROC (in the form received) to the Buyer by facsimile

the Seller shall include with any relevant ROC or information on that ROC sent to the Buyer the correspondence received from the Authority which accompanied such certificates and the unique ROC identifier numbers of each such certificate (if provided separately) and all other information or material as the Authority has, is or may request from the Buyer in relation to those certificate(s). In any event, the Seller shall ensure that the Buyer has received the relevant ROCs or information on those ROCs within 5 (five) Business Days of receipt from the Authority by the Seller of the relevant ROCs or information on those ROCs.

## 11 Transfer of ROCs

- 11.1 The Seller undertakes that it will, forthwith on the earlier of receipt of ROCs attributable to the Export Output or notification from the Authority that the Seller is the registered owner of such ROCs, take all such steps as are required or necessary to transfer the ownership of such ROCs to the Buyer in the time scale specified in paragraph 10.1 and in accordance with the prevailing rules as provided from time to time by the Authority or other authorised body during the term of this Agreement.
- 11.2 The Seller warrants and represents to the Buyer that it has full title guarantee to all ROCs transferred to the Buyer under this Agreement (the "**ROC Warranty**").

- 11.3 On transfer of the ROC to the Buyer the Buyer is entitled to use the ROC against the Renewables Obligation either in England and Wales or Scotland or otherwise use the ROCs in a manner that the Buyer sees fit

12 **ROCs revoked or not issued**

If any ROCs to which the Buyer is entitled pursuant to paragraph 3 are not issued by the Authority within such timescale as the Authority indicate such ROCs should be issued (e.g. at the date of this Agreement the Authority have indicated that ROCs should be issued 3 (three) months after the end of the month when the relevant Energy is generated) or in any event are not issued by Long Stop Date immediately following the Financial Year in which the Export Output to which the ROCs relate was delivered, or having been issued, are subsequently revoked by the Authority at any time or the Buyer becomes unable to use any ROCs associated with the Export Output in accordance with paragraph 11.3 ("**Default ROCs**"), the Seller repay to the Buyer the amounts previously paid to the Seller for each Default ROC within 5 (five) Business Days after the Seller is notified (whether by the Buyer or otherwise) of a Default ROC. In the event of non-payment the Buyer shall be entitled to set off any such sums against monies due to the Seller. In addition where the Default ROCs arise due to any act or omission of the Seller, the Seller hereby undertakes to indemnify and keep indemnified the Buyer and or any Affiliate for all loss, costs, damages, expenses and liabilities incurred by the Buyer and or any Affiliate arising from such revocation or withdrawal (including for the avoidance of doubt the purchase by the Buyer and or any Affiliate of the Buyer to replace those hereby revoked or withdrawn).

13 **Subsequent issue or validation**

In the event that Default ROCs are either subsequently issued by the Authority or the Authority reverses any previous revocation and the Buyer is reasonably able to use such ROCs to count towards its Renewables Obligation by the Long Stop Date immediately following the Financial Year in which the Export Output to which the Default ROCs relate was delivered, the Buyer shall repay the amount paid by the Seller in accordance with paragraph 12. Any such repayment shall be made by the Buyer in the Contract Billing Period next following the issue or validation of any such ROCs.

14 **Failure to Deliver ROCs**

14.1 If the Seller:

- 14.1.1 sells any ROCs which are attributable to the Export Output to any party other than the Buyer (or its permitted successors and assigns) in breach of its undertaking in paragraph 5; or

14.1.2 fails to act in accordance with its obligations and undertakings in paragraphs 11 or 12 such that the ownership of any ROCs it has received is not passed to the Buyer; or

14.1.3 be in breach of the ROC Warranty

thereby depriving the Buyer of ROCs then the Seller (in addition to repaying any payment already made by the Buyer for a ROC which is not transferred), hereby undertakes to indemnify and keep indemnified the Buyer and or any Affiliate for all loss, costs, damages, expenses and liabilities incurred by the Buyer and or any Affiliate arising from the default of the Seller under sub-clauses 14.1.1, 14.1.2 and 14.1.3 above of this paragraph 14 (including for the avoidance of doubt the purchase by the Buyer and or any Affiliate of ROCs to replace those hereby revoked or withdrawn).

**15 "Frozen" ROCs**

In the event that the Authority requests the Buyer not to redeem any or all of the ROCs transferred by the Buyer under this Agreement and as a result the Buyer has not redeemed such ROCs by the relevant Long Stop Date then such ROCs shall be treated as if the ROC has been revoked in accordance with paragraph 12 above.

**16 Nature of the Facilities**

The Seller undertakes, warrants and represents that during the Contract Term it will continue to own and operate the Facilities and that the Export Output is and will continue to be fully eligible for the purposes of the Renewables Obligation such that the Buyer can use the ROCs generated by the Facilities as the evidence set out in article 3 of the Order.

**17 Price for ROCs**

17.1 The Buyer shall pay the ROC Price to the Seller for each ROC attributable to the Export Output (aggregated together for each Contract Billing Period) for which title (both legal and beneficial) has been transferred by the Seller to the Buyer in accordance with this Agreement.

17.2 Payment pursuant to paragraph 17.1 shall be made in accordance with clause 6 of the Agreement.

**18 ROC accounts**

18.1 The account referred to in clause 6.1 of the Agreement shall not include any amounts payable in respect of ROCs which shall be payable in accordance with this Schedule.

18.2 The Seller shall, no earlier than the first Business Day of the calendar month immediately following the month in which ownership in the Register of ROCs

attributable to the Export Output delivered in a Contract Billing Period has transferred to the Buyer, submit to the Buyer an account for that Contract Billing Period stating, the ROC Price.

## BASE PRICE

**Price for Export Output and related matters****1A Base Price [for Contracted Output]**

The Base Price for the Export Output of Non-Intermittent Plant shall be the following prices [the Seller may choose to submit in the pricing Schedule a floor price (in £/MWh) for the Contracted Output and this will be reflected in the relevant tables to be included in this Schedule 3]

<b>Period (£/MWh)</b>	<b>Base Price (£/MWh)</b>	<b>Floor Price</b>
Summer Weekday Day		
Summer Weekday Night		
Summer Weekend Day		
Summer Weekend Night		
Winter Weekday Day		
Winter Weekday Night		
Winter Weekend Day		
Winter Weekend Night		

For the purposes of this Schedule 3 the following terms shall have the following meanings:

**"Day"** means the thirty-two half-hour periods between 07:00 and 23:00 hours;

**"Night"** means the sixteen half-hour periods between 23:00 and 07:00 hours (being the time then applicable in the United Kingdom);

**"Summer"** means any time during the months of April, May, June July, August or September;

**"Weekday"** means Monday, Tuesday, Wednesday, Thursday or Friday;

**"Weekend"** means Saturday or Sunday;

**"Winter"** means any time during the months of October, November, December, January, February or March.

**1B Base Price for Export Output of Intermittent Plant**

The Base Price for the Export Output of Intermittent Plant shall be the following prices

<b>Period</b>	<b>Base Price (£/MWh)</b>
Summer Weekday Day	
Summer Weekday Night	
Summer Weekend Day	
Summer Weekend Night	
Winter Weekday Day	
Winter Weekday Night	

Winter Weekend Day

Winter Weekend Night

For the purposes of this Schedule 3 the following terms shall have the following meanings:

"**Day**" means the thirty-two half-hour periods between 07:00 and 23:00 hours;

"**Night**" means the sixteen half-hour periods between 23:00 and 07:00 hours (being the time then applicable in the United Kingdom);

"**Summer**" means any time during the months of April, May, June July, August or September;

"**Weekday**" means Monday, Tuesday, Wednesday, Thursday or Friday;

"**Weekend**" means Saturday or Sunday;

"**Winter**" means any time during the months of October, November, December, January, February or March.

## 2 **Adjustments to the Base Price/Inclusive Price Calculations**

2.1 The Facilities which are or may be included in this Agreement are either (a) Non-Intermittent Plant or (b) Intermittent Plant. Each separate class of Facility needs to be dealt with separately for the purposes of determining whether the requirements of the Seller in relation to the output required to be provided by the Buyer under this Agreement have been met pursuant to the provisions of clause [xx].

2.2 The Seller is obliged under the Agreement to provide the Contracted Output for Non-Intermittent Plant and this output will be required to be provided to the Buyer for an agreed Commitment Period as stated in the table set out in Schedule 1 and relating to individual Facilities) which will be of no shorter duration than [1 (one) year]. The provisions of paragraph 4 of Schedule 4 shall apply.

2.3 The following provisions apply where the values for Export Output and Contracted Output are not equal with the result that a calculation needs to be carried out to determine whether there has been a shortfall in the provision of Contracted Output or a surplus of Contracted Output produced.

2.3.1 In any Contract Billing Period where the Contracted Output is calculated pursuant to clause 6.1 and the figure for the Contracted Output is determined to be lower than the figure for Export Output for the relevant Contract Billing Period then the Buyer shall re-calculate the Base Price taking into account any excess output delivered by the Seller and where relevant the Seller shall receive an enhanced Base Price for each unit of Energy delivered over the Contracted Output figure and such Adjusted Price will be used to calculate the new value of the Inclusive Price for the Energy delivered.

- 2.3.2 In any Contract Billing Period where the Contracted Output is calculated pursuant to clause 6.1 and the figure for the Contracted Output is determined to be lower than the figure for Export Output for the relevant Contract Billing Period then the provisions of sub-paragraph 2.4 will apply.
- 2.4 The Base Price will be re-calculated by the Buyer to take into account any increased costs incurred by the Buyer as a result of the shortfall in generating output suffered as a result of the Seller not providing the required level of Contracted Output for the relevant Contract Billing Period.
- 2.4.1 If there is a reduction in the Base Price as determined by the Buyer due to increased costs being incurred then an Adjusted Price will be notified to the Seller and this Adjusted Price will be used to calculate the payment to be made by the Buyer to the Seller for the Energy delivered for the relevant Contract Billing Period.
- 2.4.2 Where the Seller has provided a Floor Price to the Buyer (as stated in the table in Schedule 1) then if the Adjusted Price for the Energy delivered for the relevant Contract Billing Period would have been less than the Floor Price then the Floor Price will be used in determining the Inclusive Price.
- 2.4.3 If the Seller fails to provide the relevant level of Contracted Output for [xx] consecutive Contract Billing Periods such that an Adjusted Price is required to be calculated, then the Buyer will have the right to treat this as a material breach of the terms of the Agreement and the provisions of Schedule 6 shall apply.

**OUTPUT FORECASTS, COMMITMENT PERIOD AND MAINTENANCE PROGRAMME****3 Forecasts**

- 3.1 The Seller shall provide to the Buyer [at least xx days prior to the Registration Date] all historic metered output data and any other Facility specific information reasonably requested by the Buyer together with the Forecast Output as required pursuant to the provisions of clause 2.4 and the further provisions of this Schedule 4 so that the Buyer can better predict anticipated Export Output ("**Annual Forecast**") from the Facilities. The Seller also acknowledges that the Metering Communications Link that the Buyer has the right to install under clause 4.4 of this Agreement is also designed to help the Buyer better forecast from the Facilities.
- 3.2 The Seller shall not later than 5 (five) Business Days prior to the commencement of each of the anniversaries of the Registration Date notify the Buyer in writing of the Forecast Output for such year (in the form stipulated by the Buyer). Such notification shall show the total of the Forecast Output for the year broken down on a Facility by Facility basis and the totals of the Forecast Output for each Contract Billing Period during the year again broken down on a Facility by Facility basis. [It is acknowledged that for Facilities which are Intermittent Plant this will not be practical in all cases but the aggregated figure for all Facilities must include forecast outputs for such Facility types. For Non-Intermittent Plant this requirement is still valid.
- 3.3 The Seller shall also not earlier than 8 Business Days and not later than 5 Business Days prior to the start of each Contract Billing Period notify the Buyer by e-mail or facsimile of amendments to the Forecast Output provided pursuant to paragraph 3.1 above and the anticipated Forecast Output for each Settlement Period in that Contract Billing Period (even if it is the same or similar to that anticipated by the annual forecast) (the "**Monthly Forecast**").
- 3.4 Notwithstanding the above, if the Seller becomes aware that the Contracted Output for any Settlement Period in any Contract Billing Period could differ from the Monthly Forecast by more than [ ] percent, then the Seller shall notify the Buyer of such change and of the revised Monthly Forecast forthwith by facsimile or e-mail.
- 3.5 The Seller shall notify the Buyer not less than 5 (five) Business Days prior to the commencement of each of the anniversaries of the Registration Date of the proposed maintenance, repair, replacement and inspection programme for the Facilities for the same period. The Seller shall, as soon as practicable, give notice to the Buyer of any significant change in the anticipated Export Output or the programme previously notified (including any limitations or restrictions on output capacity, outages or shutdowns).

**4 Commitment Period**

- 4.1 The Seller undertakes to provide to the Buyer a Contracted Output Notification in relation to each Facility which is a Non-Intermittent Plant at least 5 (five) days prior to the Registration Date. This must include a Commitment Period during which the Seller is committing to provide the Contracted Output to the Buyer.
- 4.2 The Commitment Period to be provided by the Seller to the Buyer must be for a minimum period of [1 (one) year] from the Registration Date [and any proposed amendments to the Contracted Output during the term of the Commitment Period will be dealt with pursuant to the provisions of paragraph 3 above but with each reference to "Forecast Output" being changed to "Contracted Output" for these purposes.

**5 Maintenance**

- 5.1 The Seller undertakes to the Buyer to:
- 5.1.1 give 30 (thirty) days' notice of any planned maintenance or planned outage, such notice to contain full details of such maintenance or outage;
- 5.1.2 give notice as soon as practicable of any unplanned maintenance or outage, such notice to contain as many details as are practicable concerning the duration and effect on output of such maintenance or outage; and
- 5.1.3 give to the Buyer as soon as reasonable practicable any further data requested by the Buyer to allow the Buyer to make such generation forecast data as any prudent electricity supplier is likely to reasonably want to assimilate.

## EMBEDDED BENEFITS AND TRIADS

## 1. Interpretation

- 1.1. In this Schedule 5, unless the context otherwise requires the following terms shall have the meanings assigned to them below:

**"Avoided BSUoS"** shall mean the costs avoided (expressed as £ per MWh) by the Buyer in consequence of the Facilities being embedded into a distribution network which the Buyer would otherwise have incurred under the Balancing Services Use of System Charges (as better described in the NGC Licence);

**"Avoided RCRC"** means the proportion of RCRC to which the Buyer would have been entitled or been charged (depending on whether RCRC is a positive or negative amount) under the terms of the BSC as a result of the Facilities being embedded into a distribution network, expressed for the purposes of this Agreement as £ per MWh;

**"Financial Year"** means any period of one year commencing on 1 April and terminating on 31 March during the continuance of this Agreement provided that the first financial year of the Agreement shall be deemed to run from the Registration Date until the following 31 March and the final financial year shall be deemed to run from the 1 April immediately preceding the termination of this Agreement until such termination;

**"GDUoS Charges"** means the generation use of system charges levied by the Local DNO in respect of the Facility, which either take the form of a charge by the Local DNO (where such charges are stated as a positive amount), or take the form of a payment by the Local DNO (where such charges are stated as a negative amount), and references in the Agreement to "positive GDUoS Charges" and "negative GDUoS Charges" shall be construed accordingly.

**"Local DNO"** means the DNO who holds a Distribution Licence in which section B of the standard distribution licence conditions has effect, and which has a distribution services area which encompasses the geographic location of the Facility's connection (or proposed connection).

**"System Operator"** means National Grid Company plc or any successor to the system operator role under the BSC;

**"Triads"** means the three half hours of System Demand Peak (as defined in the System Operator's Statements of Charges for Use of the Transmission System) for the relevant Financial Year;

**"Triad Avoidance Benefit"** means any relief from Triad Charges relating to demand that is attributable to electricity exported from the Facility;

**"Triad Charges"** means the charges levied on the Buyer by the System Operator calculated by reference to the Triad Tariff;

**"Triad Tariff"** means the transmission network use of system tariff as specified in the LC10 statement published by the System Operator (or such other document as replaces it from time to time) in the relevant Financial Year in kW.

- 1.2. The Embedded Benefits shall be the net benefit of:
  - (a) Avoided BSUoS;
  - (b) Avoided Transmission and Distribution Line Losses; and
  - (c) Avoided RCRC and/or negative GDUoS Charges.

## **2. Monthly Payment of Embedded Benefits**

- 2.1. In respect of each Contract Billing Period, within 10 (ten) days from the end of the Contract Billing Period, the Buyer shall prepare a statement of the amount of Embedded Benefits transferred to the Buyer relating to the Facility/Facilities during that period multiplied by the Embedded Benefits.
- 2.2. It is agreed that where required an estimated number shall be used to calculate the relevant account under clause 6 of this Agreement.

## **3. Triads**

- 3.1. The Seller undertakes not to take any action which would result in any person other than the Buyer being credited with the Export Output from the Facilities during the term of this Agreement.
- 3.2. Within one month of notification of the Triads, the Buyer shall inform the Seller of the value of the reduction in the Buyer's Triad Charges arising from the Seller's Export Output during Triads as calculated in accordance with paragraph 3.5 of this Schedule (the "Reduction") for the relevant Financial Year.
- 3.3. The Buyer shall pay to the Seller the sum which is equal to the Embedded Benefit Percentage of the Reduction in respect of any Financial Year (the "**Shared Reduction**") provided always that such sum does not exceed the value of the actual reduction in the Buyer's Triad Charges which is attributable to the Facility.
- 3.4. The Buyer shall pay the Shared Reduction to the Seller within 30 days of receipt of a valid VAT invoice from the Seller.
- 3.5. The Reduction shall be calculated as follows:  
$$Y \text{ multiplied by } Z$$

Where:

Y = X/3

Z = the Triad Tariff

X = the sum of the Export Output in kW measured at the Delivery Point on each of the Triads within the relevant Financial Year where such Triads occur after the Start Date but prior to any termination of this Agreement.

- 3.6. If, as a result of industry-wide changes, the method of applying or calculating Triad Charges is altered or the benefit represented by the Reduction is replaced or the value of the Reduction is no longer solely allocated to the Buyer (the "**Changed Triad Charge**") and:
- (a) the parties (acting reasonably) agree that the Changed Triad Charge attributable to the Facilities is still of benefit to the Buyer, then the parties will use reasonable endeavours to agree how the Changed Triad Charge will be shared so that each of them (so far as it is possible) is in the same financial position as though the terms set out in this Schedule 5 had continued to apply; or
  - (b) the parties (acting reasonably) agree that the Changed Triad Charge attributable to the Facilities is no longer of benefit to the Buyer or represents a cost the Buyer (a "**Triad Detriment**") then the Parties agree that the portion of the Triad Detriment attributable to the Facilities shall be deducted from Base Price payable by the Buyer to the Seller.

**TERMINATION AND EVENTS OF DEFAULT**

- 6 Event of Default.
- 6.1 In this Schedule 6, an "Event of Default" shall mean one or more of the following events:
- 6.1.1 if the Seller shall cease for any reason to be either authorised by a licence granted under the Act to generate electricity for the purposes of giving a supply to any premises or enabling a supply to be given or exempt under the Act from holding such a licence;
  - 6.1.2 If a binding order is made or an effective resolution is passed for the winding up of a Party (otherwise than for the purposes of reconstruction or amalgamation on terms previously approved in writing by the other Party whose approval shall not be unreasonably withheld) or within 28 (twenty eight) days of his appointment the liquidator of the Party has not provided to the other Party a guarantee of performance of this Agreement in such form and amount as the other Party (acting reasonably) may require;
  - 6.1.3 if an order is made for the appointment of an administrator to manage the affairs, business and property of a Party or a receiver and/or manager or administrative receiver is appointed in respect of all or any of that Party's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or which entitle the court to make a bankruptcy order or that Party takes or suffers any similar or analogous action in consequence of debt; or
  - 6.1.4 if one or more Facilities are disconnected by the Local Distributor and remain so disconnected for a period of 30 (thirty) continuous days; or
  - 6.1.5 if the Buyer or the relevant member of the Buyer's Group who is credited with the Export Output ceases to hold a relevant licence or exemption under the Act; or
  - 6.1.6 if the Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity, and at the time that such consolidation, amalgamation, merger or transfer the resulting, surviving or transferee entity fails to assume all the obligations of such Party to which its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the Buyer; or
  - 6.1.7 If the Seller consolidates or amalgamates with or merges with or into or transfers all or substantially all of its assets to another entity and such

action does not constitute an event as described in paragraph (6.1.6) above but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of the Seller immediately prior to such action and the resulting surviving or transferee fails to provide credit support within 20 (twenty) business days upon a request from the Buyer; or

6.1.8 if in the reasonable opinion of the Buyer, the Seller suffers one or more events which cause a material adverse change in the creditworthiness and/or financial standing of the Seller or its Credit Support Provider which affects the Seller's ability to meet its financial or other obligations and where the Seller fails to provide credit support within 20 (twenty) Business Days upon a request from the Buyer; or

6.1.9 if the SSNOA is terminated or comes to an end howsoever caused and is not replaced; or

6.1.10 material breach of this Agreement being:

6.1.10.1 in respect of the Seller, "Material Breach" as defined in clause 3.3;

6.1.10.2 in respect of the Buyer, failure to pay an undisputed invoice amount if the amount remains outstanding 30 days after a reminder notice is served by the Seller on the Buyer not less than 60 days after the invoice due date;

6.1.10.3 in respect of either Party:

(a) material breach by that Party of clause 16 (Confidentiality);

(b) any breach by that Party of the Bribery Act 2010 in connection with this Agreement or the Parties to this Agreement or their personnel;

(c) material breach by that Party of any statutory duty in connection with this Agreement.

## 7 Early Termination

7.1 **Termination by the Seller.** The Seller may by notice to the Buyer forthwith terminate this Agreement on the occurrence of an Event of Default set out in paragraphs 6.1.2, 6.1.3, 6.1.4 or 6.1.5 above or in accordance with clause 2.3.

7.2 **Termination by the Buyer.** The Buyer may by notice to the Seller forthwith terminate this Agreement on the occurrence of any Event of Default or in accordance with clause 2.3, provided that if the Buyer terminates on the occurrence of the Event of Default in paragraph 6.1.5 or 6.1.9, the Buyer shall be the "Defaulting Party" for the purposes of paragraph 6 unless such Event of Default was caused by breach of this Agreement by the Seller.

8 **Clause Exhaustive**

The Parties agree that this Schedule 6 states the only circumstances in which either Party may terminate this Agreement.

9 **Survival of Rights on Termination**

Termination of this Agreement shall not affect any rights or obligations which may have accrued prior to such termination and shall not affect continuing obligations of each of the Parties.

10 **De-registration**

10.1 The Seller shall procure that the Buyer is de-registered from taking the Export Output, such de-registration not to be actioned until notice is given under the Agreement that it is being terminated, such de-registration to take effect the moment immediately after this Agreement terminates. The Seller shall indemnify the Buyer for all and any losses it suffers through the Seller not performing this paragraph 10 AND the Seller agrees that the Buyer can take all Export Output and associated benefits without charge after termination of this Agreement and before de-registration by the Seller.

10.2 The Buyer is entitled to remove any property it has ownership of from each of the Facilities, including any Metering Communications Link, at its own cost.

11 **Consequences of Termination**

11.1 In the event that this Agreement is terminated due to the Event of Default by one Party (the "**Defaulting Party**", the other Party being the "**Non-Defaulting Party**") the Defaulting Party shall be liable to pay the Non-Defaulting Party the aggregate of:

11.1.1 an amount, based on the prices obtainable in the open market which the Non-Defaulting Party would be required to pay (if any) as consideration for entering into a replacement agreement or other agreements with an independent counterparty in the same market and on similar or comparable terms as this Agreement and which would have the effect of preserving for the Non Defaulting Party the economic equivalent of the transaction described in this Agreement (if the amount so calculated is a negative number it shall be deemed to be zero);

11.1.2 Non-Defaulting Party's direct costs, losses and expenses arising from the early termination of this Agreement other than those included above.

For the avoidance of doubt, this paragraph 11 shall be subject to the financial limitation of liability set out in clause 8.2 of the Agreement and this paragraph 11 shall also not apply in the event of termination in accordance with clause 2.3 (Force Majeure).

## RELEVANT CHANGE IN LAW

## ROCs and Power

- 12 In this Schedule 7, the following words shall unless the context requires otherwise have the meanings assigned to them below:

**"Change in Law"** has the meaning ascribed to this term in clause 1.1 of the Agreement;

**"New Benefit"** means any new benefit, exemption or right (including those that replace (in whole or in part) exemptions, benefits or rights that are specifically set out in this Agreement and amendments to such exemptions, benefits or rights) associated with the Facilities or the Export Output;

**"BSC P305"** means the "BSC P305: Electricity Balancing Significant Code Review" proposals to implement the changes to cash out arrangements approved by the Authority on 2 April 2015;

**"Relevant Change in Law"** means any Change in Law as a result of which:

- (a) ROCs are no longer issued or are no longer capable of presentation to the Authority in satisfaction of all or any part of the Renewables Obligation;
- (b) the Renewables Obligation ceases to exist in the form it is in as at the date of the Agreement, or in substantially the same form in all material respects; or
- (c) the performance of the Agreement or any material part of either becomes illegal or unenforceable by either Party or the mechanics of the Agreement or any material part of either are no longer operable.
- (d) a New Benefit is introduced.
- (e) there are (or will be) changes to the method for calculating charges for imbalance levied on the Buyer under the BSC as a result of delivery or non-delivery of Active Energy (as defined in the BSC) for any Settlement Period, including but not limited to BSC P305.

- 13 Effect of Relevant Change in Law

- 13.1 On the occurrence of a Relevant Change in Law:

- 13.1.1 either Party may give notice to the other of the occurrence of the Relevant Change in Law;
- 13.1.2 the Parties shall meet no later than 5 (five) Business Days following receipt of the notice referred to in paragraph 13.1.1 to consult and seek to agree that a Relevant Change in Law has occurred and the effect of that Relevant Change in Law to the Agreement. If the Parties, no later than 5 (five) Business Days after this meeting, have not agreed on the occurrence or the effect of the Relevant Change in Law, either Party may refer those questions, and the question of the changes to be made to the Agreement pursuant to paragraph 13.1.3, for resolution in accordance with clause 10 of this Agreement;
- 13.1.3 where it is agreed under paragraph 13.1.2 that a Relevant Change in Law has occurred, the Parties shall seek to agree in good faith such amendments to the Agreement as may be necessary or appropriate to take account of such Relevant Change in Law so that the Agreement places each Party in substantially the same position as it was in prior to such Relevant Change in Law and performance of the Agreement is legal and enforceable.

14 Limit of effect of Change in Law:

- 14.1 The Parties agree that where the Export Output, ROCs, and other benefits (each, a "**Product**") being purchased under this Agreement is affected by a Relevant Change in Law in accordance with paragraph 13.1.3, only the part of this Agreement that relates to the affected Product will be amended and the remaining provisions of the Agreement as it relates to the remaining Products remain unchanged and will continue to be in full force and effect.
- 14.2 The Buyer may give notice that it wishes to exercise its right to purchase any New Benefits at a price(s) to be agreed between the Parties (both Parties at all times acting reasonably and in good faith) and the Seller shall be obliged to sell those New Benefits to the Buyer. If the Parties fail to agree a price(s) for the New Benefits within 30 (thirty) days of the date of the aforementioned notice from the Buyer then either Party may refer the issue for resolution in accordance with clause 10 of this Agreement.

15 Right to suspend performance

- 15.1 Either Party may suspend performance of those of its obligations under the Agreement which are affected by a Relevant Change in Law, by written notice to the other Party, following the agreement or determination under paragraph 13.1.2 that there has been a Relevant Change in Law. Where the Parties are not able to agree, in good faith, amendments to the Agreement which would:
  - 15.1.1 make its performance legal and enforceable; and

15.1.2 place each Party in substantially the same position as it was in prior to such Relevant Change in Law,

then no later than 30 (thirty) Business Days (or such longer period as the Parties may agree) following the commencement of the relevant suspension or, if no such suspension has taken place, then following the commencement of discussions pursuant to paragraph 13.1.3, either Party may refer the Dispute to the Expert for determination in accordance with clause 10 of this Agreement. The role of the Expert in imposing changes to the Agreement upon the Parties for the purposes of this Schedule shall be solely as set out in paragraphs 15.1.1 and 15.1.2 above and to ensure the mechanics of the Agreement are operable. By way of example and without limitation, the Parties do not intend the Expert to impose any allocation or reallocation of risks and/or costs in this Agreement and do not intend the Expert to introduce new commodities (including possibly replacing a Product) into this Agreement. The Parties agree to cooperate to ensure the Expert complies with the requirements of this paragraph 15.

16 Other Changes in Law

16.1 Except as provided above, the impacts of any Change in Law which is not a Relevant Change in Law shall be borne by the Party affected and shall not be a basis for terminating or amending the Agreement. For the avoidance of doubt, none of the following constitutes a Relevant Change in Law:

16.1.1 a change in the Buy-Out Price (irrespective whether such change has the effect of increasing or reducing the value of ROCs to Buyer);

16.1.2 the introduction of any domestic, European or international scheme for trading carbon emissions (including the introduction of the European Union Emissions Trading Scheme) or any Change of Law implemented as a result thereof.

SIGNED by )  
duly authorised for and on behalf of )  
**THE GREATER LONDON AUTHORITY** )  
in the presence of: )

Witness Signature .....

Name: .....

Address: .....

.....

.....

Occupation: .....

SIGNED by )  
duly authorised for and on behalf of )  
**[XXXXXXXXXX] [LIMITED]** in the )  
presence of: )

Witness Signature .....

Name: .....

Address: .....

.....

.....

Occupation: .....

**SCHEDULE 4-PRICING**

**To be determined at mini-competition level.**

