

Date:

20[•]

(1) [GENERATOR]

(2) [BUYER]¹

POWER PURCHASE AGREEMENT

relating to

[a ground based solar photovoltaic project]

**Bird & Bird LLP
12 New Fetter Lane
London EC4A 1JP
United Kingdom**

¹ This template has been prepared on the assumption that the Buyer will be a UK licensed supplier buying all the electrical output and renewable energy benefits of the plant.

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THIS AGREEMENT is made the [●] day of [●] 20[●]

BETWEEN:

- (1) [●] a company incorporated under the laws of [●] with registered number [●] whose registered office is at [●] ("**Generator**"); and
- (2) [●] a company incorporated under the laws of [●] with registered number [●] whose registered office is at [●] ("**Buyer**").

WHEREAS:

- (A) The Generator wishes to sell the entire Electrical Output and associated renewable benefits from the Facility.
- (B) The Buyer is a purchaser of electricity and wishes to buy the Electrical Output and associated renewable benefits referred to in recital (A) above on the terms set out in this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"**Act**" means the Electricity Act 1989 as amended by the Utilities Act 2000 and as otherwise amended from time to time;

"**Affected Party**" has the meaning given in Clause 17.1;

"**Applicable Law**" means [*to be negotiated*];

"**Assignable Benefits**" means [*to be negotiated*];

"**Associated Benefits**" shall mean any Assignable Benefits, any ROCs and any REGOs;

"**Authority**" means the Gas and Electricity Markets Authority established by section 1(1) of the Utilities Act 2000 and includes the Office of Gas and Electricity Markets (Ofgem) or any successor to that Authority having responsibility at law for the implementation and administration of the Renewables Obligation and/or the REGO Regulations;

"**Balancing and Settlement Code**" or "**BSC**" means the document designated by the Secretary of State, as modified from time to time, setting out electricity balancing and settlement arrangements established by the Transmission System Operator pursuant to its transmission licence;

"**Change in Law**" means [*to be negotiated*];

"**Competent Authority**" means the Authority and any national, federal, regional, state, local, European Union or other court, arbitral tribunal, administrative agency or commission or other governmental, administrative or regulatory body, authority, agency or instrumentality;

"**Conditions Precedent**" means the conditions given in Clause 2.1;

"**Connection Agreement**" means an agreement or any alternative arrangement between (i) the Generator and (ii) the [Distribution Network Operator]/[Transmission System Operator] for the provision and maintenance of a connection of the Facility to the [Distribution Network]/[Transmission System];

"**Contract Period**" has the meaning given in Clause 2.2;

"**CUSC**" means the Connection and Use of Systems Code that is the contractual framework for connection to, and use of, the Transmission System in Great Britain, as amended from time to time;

"**Data Aggregator**" means the one or more person(s) appointed to carry out the aggregation of metering data received from the Data Collector and to forward such data to the person responsible for determining the quantities to be taken into account in respect of settlement under the BSC;

"**Data Collector**" means the persons appointed to retrieve, validate and process metering data received from the Metering Equipment at the Facility;

"**Defaulting Party**" has the meaning given in Clause 20.1 (*Event of Default*);

"**Delivery Point**" means the Export Meter for the Facility;

["**Distribution Network**" means the network consisting (wholly or mainly) of electric lines owned or operated by the Distributor Network Operator for the Facility and used for the distribution of electricity;]

["**Distribution Network Operator**" means any person who is authorised by a licence under Section 6(1)(c) of the Act to distribute electricity and whose standard conditions in section C (in whole or in part) of its licence have effect in respect of the geographic area within which the Facility is situated;]

"**Effective Date**" means the first day following the date of satisfaction of the Conditions Precedent in full;

"**Electrical Output**" means the total aggregate amount of electricity generated by the Facility (excluding the Facility Requirement and, for the avoidance of doubt, any electricity lost between the Facility and the Delivery Point);

"**Electricity Price**" means [*to be negotiated*];

"**End Date**" means [●];

"**Event of Default**" has the meaning given in Clause 20.1 (*Event of Default*);

"**Export Meter**" means the export electricity meter owned by the Generator and registered in the name of the Registrant and located on land at or near the point of connection between the Facility or other property (including cables and equipment) owned by the Generator and the [Distribution Network]/[Transmission System], at such precise location as may from time to time be agreed between the Generator and the [Distribution Network Operator]/[Transmission System Operator];

"**Facility**" means [*include description*];

"Facility Requirement" means the total amount of electricity generated by the Facility that it requires for purposes directly related to its operation;

"Force Majeure Event" means [*to be negotiated*];

"Generation Period" means the period from the Start Date until the End Date for the Facility;

"Meter(s)" means the device(s) for metering the Electrical Output of the Facility;

"Meter Operator(s)" means the person(s) appointed to install, commission, test, maintain and rectify the Metering Equipment at the Facility;

"Metered Volume Reallocation Notification Agent" has the meaning given to it in the BSC;

"Metering Equipment" means Meter(s), metering equipment, infrastructure and measurement transformers (both voltage, current or combination units) metering protection equipment including alarms, circuitry and wiring and any other measuring and communication equipment and apparatus at the Delivery Point;

"Month" means a calendar month;

"Monthly Statement" has the meaning given in Clause 11.1;

"Negative Trading Charges" means Trading Charges charged to the Generator or the Buyer;

"New Benefits" means [*to be negotiated*];

"Obligation Period" means a period, specified by or pursuant to the Renewables Obligation Order, in relation to which a 'designated electricity supplier' defined therein is held to account in relation to the Renewables Obligation;

"Party" means one or other of the parties to this Agreement;

"Pre-Contractual Statements" has the meaning given to it in Clause 26.2;

"Reasonable and Prudent Operator" means [*to be negotiated*];

"Registrant" has the meaning given to it in the Balancing and Settlement Code;

"REGO" has the meaning given to the term "guarantee of origin" in the REGO Regulations;

"REGO Account" means an account at the Authority in which REGOs are held;

"REGO Accreditation" means confirmation that the Facility is accredited as being a generating station capable of generating from renewable energy sources as set out in the REGO Regulations;

"REGO Price" means [*to be negotiated*];

"REGO Register" means the register in respect of REGOs established and (as at the date of this Agreement) maintained by the Authority, in line with the procedural

guidelines issued and updated from time to time (as at the date of this Agreement) by the Authority;

"REGO Regulations" means The Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations 2003 (SI 2003/2562) as amended and/or replaced from time to time;

"REGO Transfer" means a transfer by the Generator to the Buyer of a REGO or REGOs pursuant to this Agreement and the transfer of those REGOs from the Generator's REGO Account to the Buyer's REGO Account;

"REGO Transfer Date" means the date a REGO which is the subject of a REGO Transfer is transferred to the Buyer's REGO Account;

"REGO Transfer Request" means a written request made by the Generator to the Authority (in any form prescribed by the Authority from time to time) for the Buyer to be substituted as the holder of the REGOs which are attributable to the electricity generated by the Facility during the applicable Generation Period;

"Renewables Obligation" means the obligation specified by the Renewable Obligations Order, whereby a "designated electricity supplier" defined therein shall, subject as set out therein, produce to the Authority evidence in relation to supplies of electricity that it makes to customers in the United Kingdom from eligible renewable sources of electricity during an Obligation Period;

"Renewables Obligation Order" means the Renewables Obligation 2015 (SI 2015/1947) as amended and/or replaced from time to time;²

"Revocation" means [*to be negotiated*] and Revoked shall be construed accordingly;

"RO Accreditation" means confirmation that the Facility is accredited as being a generating station capable of generating electricity from eligible renewable sources as set out in the Renewables Obligation Order definition of "accreditation";

"ROC" means a renewables obligation certificate issued by the Authority as evidence that a MWh of electricity has been generated by a qualifying, accredited, renewable generator for the purpose of the Renewable Obligation Order;

"ROC Account" means an account at the Authority in which ROCs are held;

"ROC Price" means [*to be negotiated*];

"ROC Register" means the register in respect of ROCs established and (as at the date of this Agreement) maintained by the Authority, in line with the procedural guidelines issued and updated from time to time (as at the date of this Agreement) by the Authority;

"ROC Transfer" means a transfer by the Generator to the Buyer of a ROC or ROCs pursuant to this Agreement and the transfer of those ROCs from the Generator's ROC Account to the Buyer's ROC Account so that the same appears as an unqualified and absolute registration on the Buyer's ROC Account;

"ROC Transfer Date" means the date a ROC which is the subject of a ROC Transfer appears as an unqualified and absolute registration on the Buyer's ROC Account;

² Northern Irish/Scottish legislation to be included if appropriate.

"ROC Transfer Request" means a written request made by the Generator to the Authority (in any form prescribed by the Authority from time to time) for the Buyer to be substituted as the holder of any of the ROCs which are attributable to the electricity generated by the Facility during the applicable Generation Period;

"Security" means any security including standard security, mortgages, charges, pledges, liens, hypothecations, assignments or security interest or any other agreement or arrangement having the same legal or economic effect as any of the foregoing;

"Start Date" means [*the later of [date] and [●]*];

"Trading Charges" means [*to be negotiated*];

"Transfer" means a ROC Transfer or a REGO Transfer (as applicable);

"Transfer Date" means a ROC Transfer Date or a REGO Transfer Date (as applicable);

"Transfer Failure" has the meaning given in Clause 7.1.1;

"Transfer Failure Date" means the date on which a Transfer Failure occurs;

"Transfer Request" means a ROC Transfer Request or a REGO Transfer Request (as applicable);

"Transfer Request Date" means the date on which a ROC Transfer Request or REGO Transfer Request (as applicable) is made by the Generator to the Authority;

[**"Transmission System"** means the high voltage grid system operated by a Transmission System Operator for the transmission of electricity in England and Wales;]

[**"Transmission System Operator"** means the company licensed by the United Kingdom Secretary of State under section 6(1)(b) of the Act to transmit electricity for the area of England and Wales in which the Facility is located;]

"VAT" means any value added tax or any replacement or other tax levied by reference to value added; and

"Working Day" means a day (other than a Saturday or Sunday) on which the clearing banks in London are open for general business.

1.2 Interpretation

1.2.1 Unless otherwise stated, a reference to a Clause or Schedule is a reference to a Clause or Schedule to, this Agreement and a reference to this Agreement includes the Schedule.

1.2.2 Headings in this Agreement and in the Schedule are for ease of reference only and do not affect its construction.

1.2.3 Words indicating one gender include all genders.

1.2.4 Any reference to the words include or including shall be construed without limitation.

- 1.2.5 Any reference to time shall be a reference to time in London, England.
- 1.2.6 References to any statutory provisions shall be deemed to include any amendment or re-enactment thereof for the time being in force.
- 1.2.7 Provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing, and signed by both Parties.
- 1.2.8 If there is a conflict between the main body of this Agreement and a Schedule, the main body of this Agreement shall prevail except as provided for in this Agreement.

2. CONDITIONS PRECEDENT AND CONTRACT PERIOD

2.1 Conditions Precedent

- 2.1.1 The obligations of the Parties under this Agreement, other than those arising under Clauses 2 (*Conditions Precedent*), 21 (*Confidentiality*), 23 (*Assignment*), 25 (*Waiver*), 26 (*Variation*), 27 (*Entire Agreement*), 29 (*Severance*), 30 (*Notices*), 31 (*Third Party Rights*) and 32 (*Governing Law and Jurisdiction*) which are binding on the Parties from the date of this Agreement, are conditional upon the satisfaction of the following:

2.1.1.1 [to be negotiated];

On the date on which the Generator becomes aware that the Conditions Precedent have been satisfied in full, it shall promptly give notice to the Buyer, together with details of the circumstances constituting such satisfaction.

- 2.1.2 If the Conditions Precedent have not been satisfied in full or, waived by the Buyer by [●], this Agreement shall automatically terminate and neither Party shall have any liability to the other in respect of such termination.

2.2 Contract Period

Subject to Clause 2.1, this Agreement shall come into force on the date of this Agreement and shall expire on earlier of the termination of this Agreement in accordance with Clause 20 (*Termination*) and the [●] anniversary of the Effective Date.

2.3 Survival

- 2.3.1 The termination of this Agreement for any reason whatsoever, or its expiry:
 - (a) shall not affect any provision of this Agreement which is expressed to survive or to operate in the event of the termination of this Agreement (which shall include without limitation Clauses [●]); and
 - (b) shall not prejudice or affect the rights of either Party against the other in respect of any breach of this Agreement or in respect of any monies payable by one Party to the other in respect of any period prior to termination. This Clause 2.3 shall not affect any rights contained in this Agreement which expressly allow a Party to withhold payment in specified circumstances.

3. SALE AND PURCHASE

3.1 Electrical Output from the Facility

The Generator agrees to sell and the Buyer agrees to purchase and pay for all of the Electrical Output generated by the Facility during the applicable Generation Period in accordance with the provisions of this Agreement.

3.2 Associated Benefits

The Generator agrees to sell and transfer to the Buyer all Associated Benefits that relate to the electricity generated by the Facility (other than Facility Requirement) during the applicable Generation Period and the Buyer agrees to pay for and accept delivery of such Associated Benefits in accordance with the provisions of this Agreement.

3.3 New Benefits

If, at any time after the date of this Agreement, New Benefits in respect of the electricity generated by the Facility become available to the Generator, then [*to be negotiated*].

4. PAYMENTS

4.1 Electrical Output, ROCs and REGOs

The Buyer shall pay the Generator in respect of electricity generated by the Facility during the applicable Generation Period:

- 4.1.1 the Electricity Price for each MWh of the Electrical Output delivered to the Delivery Point in that Month from the Facility;
- 4.1.2 the ROC Price for each ROC issued by the Authority in respect of electricity generated by the Facility that has been transferred to the ROC Account of the Buyer in that Month, which has not been Revoked; and
- 4.1.3 the REGO Price for each REGO issued by the Authority in respect of electricity generated by the Facility that has been transferred to the REGO Account of the Buyer in that Month, which has not been Revoked.

5. ROC AND REGO TRANSFERS

5.1 ROC and REGO Transfers

Each Party shall effect ROC Transfers and/or REGO Transfers subject to and in accordance with Clauses 5, 6, 7 and 8 of this Agreement.

5.2 Title

- 5.2.1 Pursuant to each ROC Transfer, the Generator shall sell with full title guarantee and as beneficial owner and the Buyer shall purchase and pay for each ROC or ROCs which are attributable to the electricity generated by the Facility during the applicable Generation Period in accordance with and subject to this Agreement.

- 5.2.2 Pursuant to each REGO Transfer, the Generator shall sell each REGO or REGOs which have been issued in relation to the electricity generated by the Facility during the applicable Generation Period in accordance with and subject to this Agreement.

Title shall pass from the Generator to the Buyer on the relevant Transfer Date.

6. OBLIGATIONS IN RESPECT OF ROC AND REGO TRANSFERS

6.1 Transfer of ROCs and REGOs

- 6.1.1 The transfer of ROCs pursuant to this Agreement shall be carried out in accordance with the following procedure:

6.1.1.1 [to be inserted].

- 6.1.2 Each Party shall in relation to the Electrical Output and Associated Benefits, co-operate with and assist each other in good faith and provide to the Authority and any other Competent Authority all relevant information as may be requested from time to time by the Authority and/or the Competent Authority with a view to maximising the Electrical Output and Associated Benefits granted, approved or allowed by the Authority and/or the Competent Authority.

7. TRANSFER DEFAULT

7.1 Generator default

- 7.1.1 If the Generator is in breach of any Applicable Law and/or any of its obligations under this Agreement, and such breach results in:

7.1.1.1 a ROC or REGO not being issued by the Authority (or not being received or accrued by the Generator) in circumstances where it would have been issued (or received or accrued) had such breach of Applicable Law or obligations under this Agreement not occurred; or

7.1.1.2 a ROC or REGO which is attributable to the electricity generated by the Facility during the applicable Generation Period failing to be registered in the name of the Buyer on the ROC Register or REGO Register in accordance with Clause 6.1 (*Transfer of ROCs and REGOs*) (a "**Transfer Failure**"),

then [to be negotiated].

7.2 Buyer default

If the Buyer is in breach of any of its obligations under Clause 6 (*Obligations in respect of ROC and REGO Transfers*), and such breach results in a Transfer Failure, then [to be negotiated].

7.3 Invoicing of Transfer Failure payments

Any payments which result from Clause 7.1 (*Generator default*) or Clause 7.2 (*Buyer default*) shall be included in the Monthly Statement which is issued following the Transfer Failure Date.

8. REVOCATION

8.1 Revocation of a ROC or REGO

Where a ROC or REGO, which is the subject of this Agreement, is Revoked by the Authority after the relevant Transfer Request Date, then [*to be negotiated*].

9. ACCREDITATION

[*To be negotiated*]

10. BALANCING AND SETTLEMENT CODE AND CUSC

10.1 Metered Volume Reallocation Notification Agent

If the Generator becomes a party to the BSC, then [*to be negotiated*].

10.2 Negative Trading Charges

[*To be negotiated*]

11. BILLING AND PAYMENT

11.1 Monthly Statement

11.1.1 On or before the [●] Working Day of each Month from the Effective Date the Generator shall send to the Buyer a written statement (the "**Monthly Statement**") showing, in respect of electricity generated by the Facility during the applicable Generation Period:

11.1.1.1 the Electrical Output delivered to the Delivery Point of the Facility in the preceding Month (or since the Effective Date) and the total amount payable by the Buyer by way of the Electricity Price for the same;

11.1.1.2 the total number of ROCs that are attributable to such electricity that have been delivered to the ROC Account of the Buyer in the preceding Month which have not been the subject of Revocation and the total amount payable by the Buyer by way of the ROC Price, for the same;

11.1.1.3 the total number of REGOs that are attributable to such electricity that have been delivered to the REGO Account of the Buyer in the preceding Month which have not been the subject of Revocation and the total amount payable by the Buyer by way of the REGO Price, for the same;

11.1.1.4 any other amounts owing from one Party to the other pursuant to this Agreement in relation to the preceding Month (including amounts due from the Buyer to the Generator pursuant to Clauses 4.1 (*Electrical Output, ROCs and REGOs*), amounts due in respect of transfer defaults pursuant to Clause 7.1 (*Generator default*) or Clause 7.2 (*Buyer default*), amounts due in respect of Revocation pursuant to Clause 8.1 (*Revocation of a ROC or REGO*), amounts due in respect of Trading Charges pursuant to

Clause 10.2 (*Negative Trading Charges*) and amounts due as interest in accordance with Clause 11.4 (*Interest*);

11.1.1.5 the net amount payable from one Party to the other after taking into account all the matters set out above; and

11.1.1.6 VAT.

11.2 Payment mechanics

[*To be negotiated*]

11.3 Disputed payments

If following receipt of any invoice the Buyer notifies the Generator in writing of a bona fide dispute concerning the amounts payable under such invoice (indicating in such notice the basis for its dispute), the Buyer shall pay any undisputed amount but shall be entitled to withhold the amount in dispute pending resolution in accordance with Clause 32 (*Governing Law and Jurisdiction*). For the avoidance of doubt, the Generator's obligations under this Agreement shall in no way be affected by any bona fide dispute in relation to the amounts due or payment of them.

11.4 Interest

If the Buyer fails to make payment in accordance with this Clause 11, the Generator shall be entitled to charge interest on the overdue amount at a rate of [●]% above the base rate of [●] Bank plc. from time to time in force from the date on which such amount fell due until payment, whether before or after judgment.

11.5 Set off

[*To be negotiated*]

12. VAT

All sums due to the Generator under this Agreement are exclusive of VAT thereon, if any, which shall be charged in addition thereto in accordance with the relevant regulations in force at the time of making the relevant taxable supply and shall be paid by the Buyer against receipt from the Generator of a valid VAT invoice in respect thereof.

13. METERING

13.1 Metering Equipment and Meter Operator

The Generator shall, acting as a Reasonable and Prudent Operator, appoint a Meter Operator to install, maintain and inspect the Metering Equipment required to enable the Electrical Output of the Facility to be accurately measured at the Delivery Point.

13.2 Access

The Generator shall procure that the Buyer or its representative shall have access to the Delivery Point and to the Metering Equipment at the Facility during [*to be negotiated*] and upon giving reasonable advance notice to the Generator.

13.3 Registrant, Data Collector and Data Aggregator

[To be negotiated]

13.4 Delivery of Electrical Output

The Electrical Output of the Facility to be supplied by the Generator to the Buyer under this Agreement shall be delivered at the Delivery Point.

14. FORECASTS

[To be negotiated]

15. CHANGES IN LAW

[To be negotiated]

16. CHANGES TO THE BALANCING AND SETTLEMENT CODE

16.1 Balancing and Settlement Code

16.1.1 If:

16.1.1.1 there are any changes to the Balancing and Settlement Code or [insert]; and

16.1.1.2 as a result, either Party is unable to comply with one or more provisions of this Agreement,

then [to be negotiated].

17. FORCE MAJEURE

17.1 If a Party is or will be prevented from performing any of its obligations under the Agreement by a Force Majeure Event (the "**Affected Party**"), then it shall promptly give notice to the other Party giving the details of the nature of the Force Majeure Event, the expected impact of the Force Majeure Event on its ability to carry out its obligations under the Agreement and the anticipated duration of the Force Majeure Event. The Affected Party shall, having given notice, be excused from performance of such obligations for so long as such Force Majeure Event prevents it from performing them.

17.2 The Affected Party shall at all times use reasonable endeavours to minimise any delay in the performance of the Agreement as a result of a Force Majeure Event and to mitigate the effects of the Force Majeure Event. The Affected Party shall give notice to the other Party when it ceases to be affected by the Force Majeure Event.

17.3 The Affected Party shall continue to perform all of its obligations under the Agreement which are not affected by the Force Majeure Event.

17.4 The Parties shall bear their own costs arising as a result of a Force Majeure Event.

18. MAINTENANCE

[To be negotiated]

19. RISK AND INSURANCE

[To be negotiated]

20. TERMINATION

20.1 Event of Default

20.1.1 Event of Default means the occurrence at any time with respect to a Party (the "**Defaulting Party**") of any of the following events:

20.1.1.1 *[to be negotiated]*.

20.2 Rectification and Termination right

20.2.1 If, at any time, an Event of Default has occurred, then *[to be negotiated]*.

20.3 Consequences of termination

[To be negotiated]

21. CONFIDENTIALITY

21.1 Subject to Clause 21.2, the Parties shall not reveal to any third party (except as expressly agreed or as obliged by Law) any information exchanged between them, if and to the extent that it is stated or known by them to be confidential, and shall use such information only for the purposes of this Agreement.

21.2 Any Party may disclose information which would otherwise be confidential if and to the extent:

21.2.1 it is required to do so by Law or any securities exchange or regulatory or governmental body to which it is subject wherever situated;

21.2.2 it considers it necessary to disclose the information to any investor(s) or prospective investor(s) in that Party or any of that Party's Group Companies, provided that it does so on a confidential basis;

21.2.3 it considers it necessary to disclose the information to its professional advisers, auditors and bankers provided that it does so on a confidential basis;

21.2.4 the information has come into the public domain through no fault of that Party;

21.2.5 the information was previously disclosed to it without any obligation of confidence; or

21.2.6 each Party to whom it relates has given its consent in writing.

21.3 In the event that either Party becomes aware of unauthorised disclosure or use of any confidential information or material, contrary to this Clause 21, such Party shall immediately:

21.3.1 inform the other Party; and

- 21.3.2 reasonably assist the other Party in order to remedy the breach of this Clause 21.

22. REPRESENTATIONS, WARRANTIES AND COVENANTS

22.1 General

- 22.1.1 Each Party represents and warrants to the other Party that as at the Effective Date:

- 22.1.1.1 [to be negotiated].

22.2 Reasonable and Prudent Operator

The Generator will procure that the Facility is operated and maintained by Reasonable and Prudent Operators and it shall act as a Reasonable and Prudent Operator with a view to ensuring that the Facility is technically available to generate the maximum Electrical Output at all times during the applicable Generation Period other than during periods of Planned Maintenance or as the result or an event or circumstance of a Force Majeure Event.

23. ASSIGNMENT

- 23.1 Neither Party shall be entitled to assign, transfer, charge, hold on trust for any person or otherwise deal in any other manner with any of its rights under this Agreement nor any benefit, interest, right or cause of action arising under the Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), provided always that the Generator may assign the benefit of this Agreement by way of Security to any bank or financial institution and, in the event of any such assignment, all references in this Agreement to that Party shall be deemed to include its assigns.

24. LIABILITIES

- 24.1 Neither Party excludes its liability to the other Party for:

- 24.1.1 death or personal injury caused by its negligence; or

- 24.1.2 fraud or fraudulent misrepresentation; or

- 24.1.3 any matter which it would be illegal for it to exclude and limit or to attempt to exclude and limit its liability.

- 24.2 Except as provided under Clause 24.1, neither Party shall be under any liability whatsoever to the other (whether in Agreement, tort (including negligence), breach of statutory duty, restitution or otherwise) for any of the following types of losses (whether those losses arise directly in the normal course of business or otherwise):

- 24.2.1 loss of profits, loss of business, loss of revenue, loss of Agreement, loss or depletion of goodwill and/or business opportunity, loss of anticipated earnings or savings or like loss; and/or

- 24.2.2 any special, indirect or consequential losses.

- 24.3 [Notwithstanding anything else contained in this Agreement, the]/[The] aggregate liability of the Generator to the Buyer (whether in contract, tort (including

(negligence), breach of statutory duty, restitution or otherwise) will be limited to [*limit and exclusions to be negotiated*].

24.4 [Notwithstanding anything else contained in this Agreement, the]/[The] aggregate liability of the Buyer to the Generator (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) will be limited to [*limit and exclusions to be negotiated*].

24.5 Any liquidated damages payable under this Agreement are intended to represent a genuine pre-estimate of the loss and damage likely to be suffered by the applicable Party in the event that they become payable (including direct loss, and also loss of profits, business, contracts, anticipated savings, goodwill on revenue, loss or corruption of data, and any indirect or consequential loss or damage).

25. WAIVER

No failure or delay to exercise or enforce any right under or pursuant to this Agreement shall constitute a waiver, nor shall any partial exercise thereof preclude or restrict any further exercise or enforcement, of any such right.

26. VARIATION

No variation to any provision of this Agreement shall be valid unless it is in writing and signed by each Party.

27. ENTIRE AGREEMENT

27.1 This Agreement constitutes the entire agreement between the Parties in relation to its subject matter. It replaces and extinguishes all prior agreements, draft agreements, arrangements, collateral warranties, collateral contracts, statements, assurances, representations and undertakings of any nature made by, or on behalf of the Parties, whether oral or written, in relation to that subject matter.

27.2 Each Party acknowledges that in entering into this Agreement it has not relied on any oral or written statements, collateral or other warranties, assurances, representations or undertakings which were made by or on behalf of the other Party in relation to the subject matter of this Agreement at any time before its signature (together "**Pre-Contractual Statements**") other than those set out in this Agreement.

27.3 Each Party hereby waives all rights and remedies which might otherwise be available to it in relation to such Pre-Contractual Statements.

27.4 Nothing in this Clause 27 shall exclude or restrict the liability of either Party arising out of its pre-contractual fraudulent misrepresentation or fraudulent concealment.

28. RIGHTS CUMULATIVE

The rights and remedies of the Parties under this Agreement are cumulative and not exclusive of any rights or remedies which the Parties would otherwise have.

29. SEVERANCE

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions. If a provision of this Agreement that is fundamental to the accomplishment of the purpose of this Agreement is held to any

extent to be invalid, the Parties shall immediately commence good faith negotiations to remedy that invalidity and to agree any appropriate alternative provisions.

30. NOTICES

- 30.1 Any notice to be given by either Party under this Agreement shall be sufficiently served if sent by hand or by post to the other Party's registered office address or electronic mail to the email addresses set out below.

Generator's e-mail: [●]

Buyer's e-mail: [●]

- 30.2 Any notice sent by hand shall be deemed to be served on the date of delivery and any notice served by electronic mail shall be deemed to be served in full at the time recorded on the electronic mail (provided that an electronic mail shall not be deemed to be served where the sender receives an notice of non-delivery or failed delivery) provided that if any notice sent by hand or electronic mail is sent after 4.45p.m. on any day it shall be deemed to be served on the next Working Day. Any notice sent by post shall be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45p.m. on a Working Day and otherwise on the next Working Day.

31. THIRD PARTY RIGHTS

Subject to any rights that may accrue to any successor or permitted assigns of the Parties, the Parties do not intend that any term of this Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise by any person not a party to it.

32. GOVERNING LAW AND JURISDICTION

This Agreement, and any dispute or claim arising out of or in connection with it (including any dispute or claim relating to non-contractual obligations), shall be governed by, and construed in accordance with, English law.

[Subject to [*refer to any dispute escalation procedure*], the]/[The] courts of England and Wales shall have [exclusive]/[non-exclusive] jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement (including any non-contractual disputes or claims).

33. COUNTERPARTS

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

IN WITNESS WHEREOF this Agreement has been executed by the Parties on the date appearing on page 1:

THE GENERATOR

EXECUTED)
by)
[GENERATOR])
Acting by:)
)
)
)
)

THE BUYER

EXECUTED)
by)
[BUYER])
Acting by:)
)
)
)
)

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