



## POWER AUCTION AGENCY AGREEMENT

**THIS AGREEMENT** is made on:

(to be completed by NFPAS)

**BETWEEN:**

- (1) The party referred to below (the "**Principal**");
- (2) **NFPAS LIMITED**, a company incorporated in England and Wales with registered number 4334396, whose registered office is situated at Fourth Floor, Higham House, New Bridge Street West, Newcastle upon Tyne, NE1 8AN ("**NFPAS**").

**WHEREAS:**

- (A) The Principal wishes to enter into one or more PPAs in respect of one or more Facilities with a supplier.
- (B) NFPAS has established an Auction on behalf of the Principal and other Principals in order to facilitate the sale to a supplier of power and associated renewables benefits under the terms of the PPA.
- (C) The Principal has agreed to appoint NFPAS as its agent to invite bids, and to accept the highest bid in relation to such PPAs on the terms of an Auction Code, and thereafter to manage the billing and settlement arrangements under the PPA in accordance with the terms of this Agency Agreement.

### PARTICULARS OF THE PRINCIPAL

Name of Principal (company name): .....

Registration number (if relevant): .....

Address: .....

.....  
Telephone number: ..... Facsimile number: .....

Attention: ..... E-mail address: .....

**In Witness** this Agreement has been executed by or on behalf of the Principal and NFPAS on the date set out above.

Signed by: ..... (**NFPAS Ltd**)

Print name: ..... for and on behalf of **NFPAS LIMITED**

Signed by: ..... (**Principal**)

Print name: ..... for and on behalf of **THE PRINCIPAL**

**IT IS AGREED** as follows:

## **1. DEFINITIONS AND INTERPRETATIONS**

### **1.1 Definitions:**

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

**"Act"** means the Electricity Act 1989;

**"Affected Party"** has the meaning given in clause 9.1;

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

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

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

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

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

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

**"CCL Rules"** has the meaning given in the PPA;

**"Commencement Date"** has the meaning given in the PPA;

**"Contract Fee"** means £1 for each MWh invoiced to the Successful Bidder pursuant to the PPA, subject to a minimum fee;

**"Contract Term"** in relation to any Facility, has the meaning given in PPA in relation to that Facility;

**"Export Payment Opt Out Notification"** has the meaning given in the PPA;

**"Facility"** means the generating Facility particulars of which are set out in Schedule 1;

**"FIT Accreditation"** has the meaning given in the PPA;

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

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

governmental restraint, any Act of Parliament, other legislation, by-law, prohibition, measure or directive of any kind of any governmental, parliamentary, local or other competent authority; provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of such party;

"**Metered Output**" has the meaning given in the PPA;

"**Metering Data**" has the meaning given in the PPA;

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

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

"**MWh**" means megawatt hour;

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

"**Payment Date**" means, in respect of any sum received by NFPAS in respect of the PPA pursuant to this Agreement, one month and 7 Banking Days following the end of the month in which the Metered Output was generated;

"**PPA**" has the meaning given to it in the Auction Code;

"**Questionnaire**" means the questionnaire sent by NFPAS to the Principal in respect of each of their Facilities;

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

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

"**Registration Agreement**" means the Registration Agreement for participation in the NFPAS Merchant Power Auctions between suppliers and NFPAS as amended from time to time;

"**Renewables Benefits**" has the meaning given in the PPA;

"**Reserve Price**" means the price notified by the Principal pursuant to clause 6.4 as the minimum price at which the Metered Output will be sold at an Auction;

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

"**ROC Price**" means the average ROC price obtained in the most recent ROC auction held by NFPAS;

"**ROC Register**" means the register in respect of ROCs established and maintained by the Authority, in line with procedural guidelines issued and updated from time to time by the Authority;

"**RO Order**" means the Renewables Obligation Order 2009;

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

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

"**Services**" means in relation to each Facility listed in Schedule 1 to this Agreement:

- (a) to invite bids, and to accept the highest bid, for the Metered Output of the Facility generated during the Contract Term and Renewables Benefits associated with that Metered Output on the terms of the PPA;
- (b) to provide invoicing and settlement services in relation to the PPA,

in accordance with the terms of this Agreement;

"**Specified Day**" has the meaning given in the RO Order or the ROS Order, as applicable;

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

"**Successful Bid Price**" means the final bid price of the Successful Bidder which is accepted by NFPAS; and

"**Triad Avoidance Benefits**" has the meaning given in the PPA.

## 1.2 Interpretation

In this Agreement:

- 1.2.1 the singular includes the plural and vice versa; or
- 1.2.2 headings and the use of bold typeface shall be for convenience only and shall not affect the interpretation or construction of this Agreement;
- 1.2.3 references to any enactment or statutory provision shall include references to such enactment or statutory provision as it may from time to time be amended, supplemented or re-enacted;
- 1.2.4 a reference to a clause, paragraph or Schedule is, unless indicated to the contrary, a reference to a clause, a paragraph or schedule to this Agreement;
- 1.2.5 if a period of time is specified as from a given day, or from the day of an act or event, shall be calculated exclusive of that day;
- 1.2.6 references to writing shall include any modes of reproducing words in any legible form and shall include email except where expressly stated otherwise;
- 1.2.7 a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation"; and
- 1.2.8 except to the extent that it 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.

## 2. APPOINTMENT

The Principal appoints NFPAS as its sole and exclusive agent in relation to the Services in accordance with the provisions of this Agreement and NFPAS agrees to act in this capacity in accordance with the provisions of this Agreement. For the avoidance of doubt, the Principal understands and agrees that NFPAS shall be offering and providing similar services to other Principals in respect of other generating facilities.

## 3. TERM OF APPOINTMENT

The appointment of NFPAS as agent pursuant to this Agreement shall commence on the date hereof and shall continue until unless this Agreement is terminated in accordance with clause 10.

## 4. OBLIGATIONS OF NFPAS

NFPAS hereby agrees with the Principal that in performing the Services under this Agreement it shall:

### 4.1.1 **Sale of Metered Output including associated Renewables Benefits**

Carry out the function of agent for the Principal for the purpose of the sale to the Successful Bidder of its Metered Output, including any associated Renewables Benefits, from each Facility on behalf of the Principal in accordance with the terms of this Agreement.

### 4.1.2 **Auction**

Invite bids for the sale of Metered Output (including any associated Renewables Benefits) from each Facility under the terms of the PPA by holding an Auction on the terms of the Auction Code, which in respect of any Facility shall be held no later than 1 Month prior to the start of the Contract Term in relation to the relevant Facility and to maintain an Auction Site and to operate the Auction Code in respect of such Auction.

### 4.1.3 **Failure to hold Auction or sale of Metered Output**

If an Auction is not held in respect of the Metered Output or the Metered Output is not sold within the 1 month referred to in Clause 4.1.2 the Principal may withdraw that Metered Output made available and NFPAS agrees that no Contract Fee shall be payable in respect of such withdrawn Metered Output.

### 4.1.4 **Description as Agent**

Make a statement on the Auction Site that NFPAS acts as agent for the Principal in relation to each Facility listed in Schedule 1 and in the PPA.

### 4.1.5 **Notification**

Notify the Principal within 2 Banking Days of the end of the Auction of the Successful Bidder and of the Successful Bid Price in relation to each Facility.

### 4.1.6 **PPA**

Require any bidder to enter into a PPA with the Principal in relation to any Facility for which it is the Successful Bidder and to execute such PPA and return such PPA to NFPAS.

#### 4.1.7 **Changes to the NFPAS Auction Code or the PPA**

Be entitled to, in its discretion, make changes to the Auction Code or the PPA in respect of future Auctions in respect of Metered Output which has not yet been made available to NFPAS for sale. Any such revisions to the Auction Code or the PPA will be posted on the website of NFPAS. NFPAS shall notify the Principal of any change to the Auction Code or the PPA which is material to the Principal. NFPAS shall not make any material changes to the PPA in relation to which Metered Output has already been made available to NFPAS for sale to the Successful Bidder without the consent of the Principal, such consent not to be unreasonably withheld or delayed.

#### 4.1.8 **Withdrawal**

Withdraw, postpone or cancel the sale of Metered Output from the Auction upon request by the Principal, provided such request is received no less than 2 days before the start of the Auction and upon request by the Principal to withdraw, postpone or cancel the sale of the Metered Output from the Auction upon being notified by the Principal of an error in the information provided relating to such Metered Output, provided such notification is received prior to the commencement of the Auction.

#### 4.1.9 **Revocation of Certificates**

Remit all sums received from the Principal pursuant to clause 6.8 to the Successful Bidder within 5 Banking Days of receipt.

#### 4.1.10 **Onward Transmission of ROCs, LECs and REGOs**

Following receipt of payment by the Successful Bidder in respect of Metered Output and any associated ROCs, LECs, REGOs or other Renewables Benefits, arrange for the onward transmission of such associated ROCs, LECs, REGOs or other Renewables Benefits (which have previously been transferred by the Principal to NFPAS) to the Successful Bidder in accordance with the terms of the PPA and with the Authority's rules and procedures as set out from time to time.

### **5. INDEMNITY**

The Principal hereby covenants with NFPAS to indemnify and keep NFPAS and its officers, employees, agents and sub-contractors fully indemnified against any and all damages, losses, costs (including reasonable legal costs), claims or expenses suffered by NFPAS, its officers, employees, agents or sub-contractors in respect of a breach by the Principal of the Auction Code or this Agreement or otherwise in the course of carrying on the agency or its other obligations hereunder or in any contract collateral hereto (including for the avoidance of doubt any non-recovery of Value Added Tax) save to the extent that the same has arisen as a direct result of the wilful default or negligence of NFPAS or its officers, employees, agents or sub-contractors.

### **6. OBLIGATIONS OF THE PRINCIPAL**

The Principal hereby agrees:

## 6.1 Compliance with PPA

- 6.1.1 That it will enter into a PPA in respect of the Metered Output for each Facility in respect of which a successful bid is received to which it is a party provided that receipt of compensation under clause 6.1.2 shall be NFPAS's sole remedy in relation to a breach of this clause 6.1.1.
- 6.1.2 In the event a PPA is terminated by the Successful Bidder due to default by the Principal, the Principal shall be liable to compensate NFPAS in respect of any and all commission not paid or payable as a result of such default, calculated by reference to the expected Metered Output for the remainder of the Contract Term multiplied by the respective rates of commission (being the Contract Fee) set out in this Agreement.
- 6.1.3 For the purpose of clause 6.1.2, the expected Metered Output shall be calculated by reference to historic Metering Data in relation to the expired part of the Contract Term or if no such Metering Data is available, by reference to NFPAS's reasonable estimate of such expected Metered Output.
- 6.1.4 Not to give its consent or agree to any amendment or variation to, or assignment or transfer of, a PPA without having obtained the prior written consent of NFPAS in accordance with the terms of the PPA.

## 6.2 Availability of ROCs, LECs, REGOs and other Renewables Benefits

To transfer to NFPAS for onward transmission to the Successful Bidder under the Auction the ROCs, LECs, REGOs and other Renewables Benefits associated with the Metered Output and in each case to identify to NFPAS:

- (A) the unique number given to each ROC by the Authority (if requested by NFPAS); and
- (B) any other information in respect of such ROCs, LECs, REGOs and other Renewables Benefits as NFPAS, acting reasonably, may require to operate the Auction or otherwise to discharge its obligations under this Agreement, on making the ROCs, LECs, REGOs and other Renewables Benefits available for onward transmission to the Successful Bidder in accordance with the terms of this Agreement.

## 6.3 Correction of information

To inform promptly NFPAS if such information is discovered to be incorrect.

## 6.4 Reserve Price

- 6.4.1 That it shall notify NFPAS in writing of its intended Reserve Price in relation to the sale of the Metered Output no less than 3 days before the Auction Date.
- 6.4.2 That NFPAS shall have the right to reject a proposed Reserve Price no less than 2 days before the Auction Date.
- 6.4.3 That, if NFPAS rejects the proposed Reserve Price pursuant to clause 6.4.2, it shall have no obligation to sell the Metered Output unless the Principal, by written notice to NFPAS given no less than 2 days before the Auction Date,

- (A) revises the Reserve Price to a level acceptable to NFPAS; or
  - (B) withdraws the requirement for a Reserve Price.
- 6.4.4 That, if the Principal does not revise the Reserve Price in accordance with clause 6.4.3, NFPAS shall have no obligation to sell the relevant Metered Output on behalf of the Principal.
- 6.4.5 That, if NFPAS does not reject the proposed Reserve Price pursuant to clause 6.4.2, the proposed Reserve Price will become binding for the relevant Auction of the Metered Output.

#### **6.5 Acknowledgements**

That, and acknowledges that, NFPAS will not be responsible for or liable for:

- 6.5.1 the negotiation or contents of the PPA;
- 6.5.2 the validity, enforceability or effectiveness of the PPA;
- 6.5.3 the failure of any Successful Bidder duly and punctually to observe or perform any of its obligations under the PPA; or
- 6.5.4 the consequences of relying on any communication or document reasonably believed by NFPAS to be genuine and correct and in particular any such document provided by the Principal in respect of the information required under clause 6.

#### **6.6 Information to the Authority**

That it shall provide all true and accurate information to the Authority necessary for the Authority to issue ROCs, LECs, REGOs and any other Renewables Benefits relating to Metered Output generated during the Contract Term to the Principal and to transfer such ROCs, LECs, REGOs and any other Renewables Benefits from the Principal to NFPAS and from NFPAS to the Successful Bidder within the timeframe specified by the Authority from time to time.

#### **6.7 Onward transmission and Delivery of ROCs, LECs and other Renewables Benefits**

That NFPAS is authorised by the Principal to procure the onward transmission to the Successful Bidder of ROCs, LECs, REGOs and other Renewables Benefits for which it has received payment to the Successful Bidder and to procure the transfer of such ROCs, LECs, REGOs and other Renewables Benefits to NFPAS and subsequently to the Successful Bidder. NFPAS shall be authorised on behalf of the Principal to act for them in respect of requests for amendments to the ROC Register or any register relating to LECs, REGOs or other Renewables Benefits.

#### **6.8 Revocation of ROCs**

- 6.8.1 Subject to clause 6.8.2, in the event that a ROC which has been transferred to the Successful Bidder pursuant to the PPA is subsequently revoked by the Authority prior to the Specified Day in respect of the obligation period to which the revoked ROC relates, the Principal must pay to NFPAS (within 10 Banking days of an invoice from NFPAS) such amount as is required by NFPAS to refund the Successful Bidder the ROC Price paid by the Successful Bidder in respect of the

revoked ROCs.

- 6.8.2 The Principal's obligation to make payment in accordance with clause 6.8.1 is subject to the Successful Bidder notifying the Principal within 7 Banking Days of receipt of notice of the ROC revocation from the Authority.

**6.9 Intellectual Property**

That, and acknowledges that, all copyright, trade marks, and other intellectual property rights in and relating to the Auction, the Auction Site and the Auction Code are owned by NFPAS or its third party licensors.

**6.10 Warranty**

The Principal warrants as at the date hereof and as at the Commencement Date that to the best of its knowledge and belief:

- 6.10.1 the Facility details as set out in Schedule 1 and as described by the Principal in their written response to the Questionnaire are true and accurate;
- 6.10.2 it is the sole legal and beneficial owner of the ROCs, LECs, REGOs and other Renewables Benefits identified to NFPAS in relation to the sale to the Successful Bidder in the Auction pursuant to the PPA and that it has an unrestricted right to transfer title to the Successful Bidder free from all third party rights or claims;
- 6.10.3 the ROCs, LECs, REGOs and other Renewables Benefits have been issued to the Principal by the Authority or have otherwise been properly registered in the name of the Principal in the ROC Register in accordance with the RO Order, the ROS Order or the RONI Order or in any other register relating to such LECs, REGOs or other Renewables Benefits and that such ROCs, LECs, REGOs and other Renewables Benefits have not been revoked and it knows of no reason by which such ROCs, LECs, REGOs and other Renewables Benefits would be revoked in the future; and
- 6.10.4 it has paid in full any taxes or other amounts payable in relation to such ROCs, LECs, REGOs and other Renewables Benefits; and
- 6.10.5 in respect of any Facility with a FIT Accreditation or in respect of which FIT Accreditation is expected to be granted prior to the start of the Contract Term in respect of that Facility], that the Principal has or will have by the start of the Contract Term in respect of the Facility served a valid Export Payment Opt Out Notification and shall maintain a valid Export Payment Opt Out Notification for the duration of the Contract Term in respect of the Facility.

**Revocation Notice**

- 6.11 To notify NFPAS, or procure that the Authority notifies NFPAS, as soon as reasonably practicable in the event that any ROCs, LECs, REGOs and other Renewables Benefits transferred to NFPAS for onward transmission to the Successful Bidder in the Auction is or will be revoked. For the avoidance of doubt, and notwithstanding any other provision of this Agreement, NFPAS shall have no obligation to sell a revoked ROC, LEC, REGO or other Renewables Benefits on behalf of the Principal.

**6.12 Access to Information**

That NFPAS shall have no obligation to disclose to the Principal any information concerning the Auction (including the number of or identity of bidders, the price bid by a bidder or the price paid by a Successful Bidder for Metered Output, ROCs, LECs, REGOs or other Renewables Benefits) other than as required pursuant to clause 4.1.5 and 7.1.5.

#### 6.13 **Information to NFPAS**

In respect of any Facility that has a FIT Accreditation, that the Principal shall, when requested by NFPAS at any time during the Contract Term, promptly provide a copy of a valid Export Payment Opt Out Notification in respect of that Facility.

### 7. FINANCIAL PROVISIONS

#### 7.1 **Obligations of NFPAS**

NFPAS hereby agrees with the Principal:

##### 7.1.1 **Invoicing**

To invoice the Successful Bidder monthly in accordance with the payment terms of the PPA in respect of the Metered Output. For the avoidance of doubt, this includes calculating the Triad Avoidance Benefits using the Metering Data provided by the Successful Bidder and invoicing the Successful Bidder for such amounts.

##### 7.1.2 **Accounting for Sums Received**

Notwithstanding the provisions of 10.4.2, to notify the Principal within 10 Banking Days of the end of each Month of the Metered Output in that Month in respect of the PPA pursuant to this Agreement and to pay to the Principal on or before the Payment Date in respect of that Month, or, if later, to pay within 10 Banking Days of receipt of an invoice (including a VAT invoice) from the Principal, the total sum received by it in respect of the PPA pursuant to this Agreement in that Month provided that NFPAS shall be entitled to and shall deduct from or set off any amounts due to NFPAS from the Principal under clause 7.2 or otherwise under this Agreement from such payment (and NFPAS shall render an invoice (including a VAT invoice) in respect of such set-off amount or deduction in accordance with clause 7.1.4 accordingly).

##### 7.1.3 **Account**

To pay, or procure that there are paid, all monies received by it in connection with the PPA pursuant to this Agreement into such account or accounts in the United Kingdom as the Principal shall notify in writing to NFPAS.

##### 7.1.4 **VAT**

To deliver to the Principal a VAT invoice in respect of any amount under this Agreement for which VAT is payable by the Principal.

##### 7.1.5 **Failure of Successful Bidder to Pay**

(A) In the event that payment is not received 3 Banking Days after the due date, NFPAS will notify the Principal and will issue a reminder within 5 Banking Days. NFPAS shall not be required to be involved beyond this in collecting

sums due from the Successful Bidder pursuant to the PPA and shall not be liable to account for or pay monies due which have not actually been received by it.

- (B) In the event of such non payment by a Successful Bidder, NFPAS shall calculate the Contract Fees in respect of the amounts outstanding from the Successful Bidder over the Contract Term and shall submit an invoice to the Principal for such amount. The amounts outstanding from the Successful Bidder over the Contract Term shall be calculated by using the expected Metered Output, calculated in the same way as under clause 6.1.3, multiplied by the respective rates of commission (being the Contract Fee) set out in this Agreement. The Principal shall pay such amount within 10 Banking Days receipt of an invoice from NFPAS (irrespective of whether the Principal has received payment from the Successful Bidder).

## 7.2 Obligations of the Principal

The Principal agrees:

### 7.2.1 Contract Fee

- (A) To pay to NFPAS the Contract Fee plus VAT in respect of each Month of the Contract Term, such payment to be made by the 10<sup>th</sup> Banking Day following receipt of an invoice from NFPAS, unless such amount has been deducted or set-off by NFPAS in accordance with clause 7.2.3.
- (B) Any payment or refund under paragraph (A) shall be made within 10 Banking Days of NFPAS submitting the final invoices in respect of Metered Output, ROCs, LECs, REGOs and other Renewables Benefits to the Successful Bidder pursuant to the PPA.

### 7.2.2 VAT

To pay to NFPAS within 10 Banking Days of a written request (including a VAT invoice, where applicable) all amounts becoming due from time to time in respect of the sale to the Successful Bidder of Metered Output and associated ROCs, LECs, REGOs and other Renewables Benefits on account of VAT (or any tax in substitution therefor) to the extent that such amounts have not been previously paid by the Principal to NFPAS or deducted by NFPAS from the monies held by it on behalf of the Principal and to deliver to NFPAS a VAT invoice in respect of any amount under this Agreement for which VAT is payable by NFPAS, including the amount notified by NFPAS to the Principal pursuant to clause 7.1.2.

### 7.2.3 Set-Off

To allow NFPAS to deduct or set-off any amount due to NFPAS under this Agreement (other than any amount payable pursuant to clause 5) against monies received by NFPAS in respect of the PPA.

### 7.2.4 Monies Received

That nothing in this Agreement shall render NFPAS liable to account for monies due in respect of the PPA which have not actually been received by NFPAS.

#### 7.2.5 **Payment**

Payment of any amount due to NFPAS under this Agreement shall be by direct bank transfer to such bank account in the United Kingdom as NFPAS may notify to the Principal from time to time. Any such payment shall be made free of any restrictions or conditions and withholding (except to the extent required by law) on account of any other amount, whether by way of set-off or otherwise.

#### 7.2.6 **Repayments**

To pay to NFPAS within 10 Banking Days of demand such amount required by NFPAS in order that NFPAS may return to a Successful Bidder monies paid by the Successful Bidder to NFPAS that are determined or agreed between NFPAS and the Successful Bidder not to have been properly due from the Successful Bidder provided that NFPAS has first exercised any right of set-off that it may have against amounts due from the Successful Bidder to NFPAS.

#### 7.2.7 **Defaults and disputes**

To pay an amount representing the reasonable costs and expenses of NFPAS in respect of action taken under clause 7.1.5 unless such amount has been deducted or set off by NFPAS in accordance with such clause provided that:

- (A) NFPAS has first taken all reasonable endeavours to recover any such amount from the Successful Bidder or any other parties participating in an Auction; and
- (B) the Principal shall pay such amount to the extent that NFPAS has not recovered the same from the Successful Bidder or any such parties participating in an Auction.

#### 7.2.8 **Title**

Ownership of and title to the Metered Output, ROCs, LECs, REGOs and other Renewables Benefits purchased by the Successful Bidder shall remain with the Principal and shall not pass to the Successful Bidder until the Successful Bidder has made payment in full to NFPAS of the total amount due under the PPA.

### **8. LIABILITY**

#### **8.1 Exclusion of Liability**

Without prejudice to the Auction Code, neither NFPAS or its officers, agents and sub-contractors will be liable for any loss of profit or goodwill or for indirect or consequential loss (including any loss arising out of any liability of the Principal to any other person) resulting from negligence or any other tort or any breach of contract on the part of NFPAS or any of its officers, employees, agents or sub-contractors arising out of any act, event or circumstance or series of acts, events or circumstances relating to this Agreement or otherwise in the course of carrying on the agency or its other obligations hereunder or in any contract collateral hereto, and all conditions, warranties or other terms whatsoever inconsistent with the provisions of this sub-clause are hereby expressly excluded.

#### **8.2 Limitation of Liability**

Subject to clauses 8.3 and 8.4 of the aggregate liability of NFPAS, its officers, employees and agents and sub-contractors to the Principal arising out of any act, omission, event or circumstance or series of acts, omissions, events or circumstances relating to the Agreement or with respect to the matters contemplated herein shall in no circumstances exceed a total of £20,000.

#### **8.3 Liability for Death or Personal Injury**

Nothing in the Agreement shall exclude or limit liability for death or personal injury resulting from negligence.

#### **8.4 Exclusion Prohibited by Law**

Nothing in the Agreement is intended to limit or exclude any liability on the part of NFPAS or the Principal where and to the extent that applicable law prohibits such exclusion or limitation.

#### **8.5 No Claims Against Employees**

The officers and employees of either party shall have no liability to the other party arising from or in connection with this Agreement and neither party will make any claims against any of them save in case of fraud, fraudulent misrepresentation or any other criminal activity.

#### **8.6 Benefits of Limitation of Liability**

The Principal acknowledges and agrees that NFPAS holds the benefit of clause 8 for itself and as trustee and agent for and on behalf of and for the benefit of its officers, employees, agents and sub-contractors.

### **9. FORCE MAJEURE**

#### **9.1 Force Majeure**

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

- 9.1.1 as soon as reasonably practicable after the start of the event of Force Majeure the Affected Party notifies the Principal in writing of the act, event or circumstance relied on, the date on which such act, event or circumstance commenced, the effect of the event of Force Majeure on the Affected Party's ability to perform its obligations under the Agreement; and
- 9.1.2 the Affected Party continues to use its reasonable endeavours to perform its obligations under the Agreement.

#### **9.2 Notification**

Immediately after the end of the event of Force Majeure the Affected Party shall notify the other party in writing that the event of Force Majeure has ended and shall resume performance of its obligations under the Agreement. For the avoidance of doubt, neither

party shall be released from any of its obligations under this Agreement as a result of an event of Force Majeure, and this Agreement shall, subject to Clause 3, 10 and 11, remain in effect for the duration of an event of Force Majeure.

## 10. TERMINATION

### 10.1 Notice of Termination

Either party may terminate this Agreement by giving two months notice to the other, such termination to take effect no earlier than the date on which any extant PPA is due to terminate.

### 10.2 Rights of Termination

Either party may terminate this Agreement upon the occurrence of an Event of Default in respect of the other party.

### 10.3 Event of Default

**"Event of Default"** means the occurrence at any time in respect of a party (the "**defaulting party**") of any of the following events (the "**non-defaulting party**" being NFPAS, where the defaulting party is the Principal, or the Principal where the defaulting party is NFPAS):

- 10.3.1 if the defaulting party defaults in the performance of any of its material obligations under the Agreement and in the case of a default which is, in the opinion of the non-defaulting party (acting reasonably), capable of remedy such default continues unremedied at the expiry of 30 days following the date on which the non-defaulting party shall have given notice thereof to the defaulting party; or
- 10.3.2 on the defaulting party failing to pay (other than by inadvertent error in funds transmission which is discovered by the defaulting party, notified to the non-defaulting party and corrected within 4 Banking Days of such notification) any amount due from it pursuant to the terms of the Agreement and such default is unremedied at the expiry of the period of 7 Banking Days immediately following receipt by the defaulting party of written notice from non-defaulting party of such non-payment; or
- 10.3.3 on the occurrence of any of the following in respect of the defaulting party:
  - (A) passing a resolution for the defaulting party's winding-up (other than for the purpose of and followed by a solvent reconstruction or amalgamation) or summoning a meeting to pass any such resolution; or
  - (B) the defaulting party having a petition for a winding-up order presented against it; or
  - (C) any step is taken to appoint an administrator in relation to the defaulting party; or
  - (D) a receiver, administrative receiver, receiver and manager or similar officer being appointed by any person of all or any part of the defaulting party's property, assets or undertaking; or
  - (E) the defaulting party making a proposal for a voluntary arrangement as

defined in section 1 of the Insolvency Act 1986; or

- (F) the defaulting party entering into any other arrangement with its creditors or any of them; or
- (G) taking or suffering any other action in consequence of debt including, without limitation, giving notice to its creditors or any of them that it has suspended or is about to suspend payment; or
- (H) the defaulting party being unable to pay its debts for the purposes of section 123 of the Insolvency Act 1986 in sub section 123(1)(a) thereof or any distress, execution or other process being levied upon the whole or a substantial part of the defaulting party's assets; or
- (I) the defaulting party, being the Affected Party in Clause 9 of this Agreement, fails to perform its obligations under this Agreement to any material extent for a continuous period of 90 days as a result of an event of Force Majeure; or
- (J) a proposal or threat to do any of the above acts or things being made; or
- (K) an event analogous to the aforesaid occurring in whatever jurisdiction,

if within 7 days of a request by the non-defaulting party the defaulting party has not provided to the non-defaulting party a guarantee of performance of the obligations of the defaulting party under the Agreement in such form and amount as the non-defaulting party (acting reasonably) may require.

#### **10.4 Termination for Change in Law**

If as a result of any change of law after the date of this Agreement NFPAS will suffer or incur additional costs or expenses in respect of the performance of this Agreement, or the performance of this Agreement will otherwise be rendered materially different than as at the date of this Agreement, NFPAS may notify the Principal of a proposed revision to the Contract Fee (the "Revised Contract Fee") and shall provide details of such additional costs or expenses or the materially different performance (as appropriate) and any steps taken by NFPAS to mitigate any such additional costs and expenses. The Principal shall notify NFPAS within 10 Banking Days of such notification whether or not it agrees to the Revised Contract Fee. If the Principal agrees to the Revised Contract Fee, the Revised Contract Fee shall replace the Contract Fee from the date that the relevant change takes effect (or such other date agreed between the parties), applying pro-rata to the remaining part of the current Contract Year (if appropriate). If the Principal does not agree to such Revised Contract Fee this Agreement will continue unamended in relation to the same and either party may terminate this Agreement on giving the other party 28 days' notice.

#### **10.5 Consequences of Termination**

- 10.5.1 Termination of the Agreement shall be without prejudice to any accrued rights or obligations of the parties. The provisions of clause 11 shall remain in full force and effect notwithstanding termination.
- 10.5.2 Upon the termination of the Agreement by either of the parties in accordance with clause 10, NFPAS agrees and acknowledges that, without prejudice to any accrued rights and obligations, it shall no longer be entitled to enforce any provision of the

PPA that confers rights on NFPAS, and that any reference to NFPAS shall be deemed to be a reference to the Principal.

- 10.5.3 If the termination of this Agreement has effect during an Auction Period, the sale to the Successful Bidder of Metered Output and any associated ROCs, LECs, REGOs and any other Renewables Benefits shall proceed in accordance with the terms of this Agreement and the PPA. Subject thereto, NFPAS agrees on termination to transfer back to the Principal or such other party as the Principal may direct any ROCs, LECs, REGOs or other Renewables Benefits held by it which have not been sold pursuant to this Agreement.

## 11. CONFIDENTIALITY AND ANNOUNCEMENTS

### 11.1 General Restriction

Subject to the exceptions provided in clause 11.2, neither party shall, at any time prior to or within 2 years after the termination or expiry of this Agreement, without the prior written consent of the others, divulge or suffer or permit its officers, employees, agents or sub-contractors to divulge to any person (other than to any of its or their respective officers or employees who require the same to enable them properly to carry out their duties) any of the contents of this Agreement or any commercially confidential information relating to the negotiations concerning the same or any commercially confidential information which may come to a party's knowledge in the course of such negotiations or otherwise concerning the operations, contracts, commercial or financial arrangements or affairs of the other party.

### 11.2 Exceptions

The restrictions imposed by clause 11.1 shall not apply to the disclosure of any information:

- 11.2.1 which now or hereafter comes into the public domain otherwise than as a result of a breach of an undertaking of confidentiality or which is obtainable with no more than reasonable diligence from sources other than the parties hereto;
- 11.2.2 which is required by law to be disclosed to any person who is authorised by law to receive the same;
- 11.2.3 which is required to be disclosed by the regulations of any recognised exchange upon which the share capital of the party making the disclosure is or is proposed to be from time to time listed or dealt in;
- 11.2.4 to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing party is a party;
- 11.2.5 to the Authority and otherwise in accordance with the provisions of the RO Order, the ROS Order, the RONI Order, the CCL Rules, the REGO Regulations, the FIT Order, the Connection Agreement or pursuant to any licence held under the Act;
- 11.2.6 in accordance with the Balancing and Settlement Code Framework Agreement;
- 11.2.7 to any consultants, banks or professional advisers of the disclosing party, provided enforceable undertakings to observe the same restrictions on the use of the relevant information as are contained in this clause 11 have been obtained prior to such disclosure. If disclosure is made to a bank or other adviser who is not a legal or financial adviser, the disclosing party must inform the other party in advance of the

disclosure and deliver the undertaking to the other party;

- 11.2.8 from any party to any instrument or agency of Government or the European Union having jurisdiction in respect of inter-state commerce, competition or energy;
- 11.2.9 to the Authority, the Scottish Ministries, the Secretary of State or the Department of Enterprise, Trade and Investment ("DETI") and their respective agents to enable the Authority, the Scottish Ministries, the Secretary of State or the DETI to monitor developments concerning the generation of electricity from non-fossil fuel sources or to enable those persons or entities to discharge their duties under the Act, the RO Order, the ROS Order, the RONI Order, the CCL Rules, the FIT Order or the REGO Regulations;
- 11.2.10 to or by NFPAS as necessary to facilitate the performance of this Agreement;
- 11.2.11 by NFPAS to any person as to the total number of ROCs, LECs, REGOs or other Renewables Benefits that have, or FIT accredited output that has, been sold to Successful Bidders in any Auction, the total amount payable by Successful Bidders to NFPAS in respect of such ROCs, LECs, REGOs, other Renewables Benefits or FIT accredited output and/or details of any ROCs, LECs, REGOs, other Renewables Benefits or FIT Accreditation that has been revoked; and
- 11.2.12 by NFPAS to its sub-contractors to the extent required to enable such sub-contractor to carry out NFPAS' obligations under this Agreement and who shall be made aware by NFPAS of its obligations under this Agreement and shall be required by NFPAS to observe the same restrictions on the use of the confidential information as are contained in this clause 11.

### 11.3 Announcements

- 11.3.1 Subject to clause 11.3.2 and 11.3.3, neither party shall issue public announcements regarding this Agreement without first having obtained prior approval of a copy of the announcement from the other party (such approval not to be unreasonably withheld).
- 11.3.2 The restrictions imposed by clause 11.3.1 shall not apply to the disclosure of any information which is required to be disclosed by the regulations of any recognised exchange upon which the share capital of the party making the disclosure is or is proposed to be from time to time listed or dealt in.
- 11.3.3 The restrictions imposed by clause 11.3.1 shall not apply to the disclosure by NFPAS to suppliers who have signed the Registration Agreement of the fact that the Principal is offering a PPA under the Auction.

## 12. ARBITRATION

### 12.1 Reference to Arbitration

Save for the recovery of an amount due and payable hereunder where the same is not disputed in good faith and save where expressly stated in this Agreement to the contrary and subject to any contrary provision of the Act, any licence held under the Act, the RO Order, the ROS Order, the CCL Rules, the FIT Order, any other applicable legislation, rules or regulations, or the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, any dispute or difference of whatever nature howsoever arising under

out of or in connection with this Agreement between any one or more parties hereto shall be and is hereby referred to arbitration pursuant to the arbitration rules in force from time to time of The Electricity Arbitration Association or, if the Electricity Arbitration Association ceases to exist, the London Court of International Arbitration.

#### 12.2 Arbitration Act

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

#### 12.3 Third Party Claims

Subject always to clause 12.5, if any third party brings any legal proceedings in any court (as defined in the Civil Procedure Rules 1998) against one of the parties, to the Agreement (the "**defendant contracting party**") and the defendant contracting party wishes to make a third party claim (as defined in clause 12.4) against the other party to this Agreement ("**other contracting party**") which would but for this clause have been a dispute or difference referred to arbitration by virtue of clause 12.1 then, notwithstanding the provisions of clause 12.1 which shall not apply and in lieu of arbitration, the court in which the legal proceedings have been commenced shall hear and completely determine and adjudicate upon the legal proceedings and the third party claim not only between the third party and the defendant contracting party but also between either or both of them and the other contracting party whether by way of third party proceedings (pursuant to the Civil Procedure Rules 1998) or otherwise as may be ordered by the court.

#### 12.4 Interpretation

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

- (A) any claim by a defendant contracting party against a contracting party (whether or not already a party to the legal proceedings) for any contribution or indemnity; or
- (B) any claim by a defendant contracting party against such a contracting party for any relief or remedy relating to or connected with the subject matter of the legal proceedings and substantially the same as some relief or remedy claimed by the third party; or
- (C) any requirement by a defendant contracting party that any question or issue relating to or connected with the subject matter of the legal proceedings should be determined not only as between the third party and the defendant contracting party but also as between either or both of them and a contracting party (whether or not already a party to the legal proceedings).

#### 12.5 Arbitration Commenced

Clause 12.3 shall apply only if at the time the legal proceedings are commenced no arbitration has been commenced between the defendant contracting party and the other contracting party raising or involving the same or substantially the same issues as would be raised by or involved in the third party claim. The tribunal in any arbitration which has been commenced prior to the commencement of legal proceedings shall determine the question, in

the event of dispute, whether the issues raised or involved are the same or substantially the same.

## 13. MISCELLANEOUS

### 13.1 Entire Agreement

This Agreement, together with agreements referred to herein, represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the parties with respect thereto and without prejudice to the generality of the foregoing excludes any warranty, condition or other undertaking implied at law or by custom.

### 13.2 No other Representation

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

### 13.3 Notices

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

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

- (A) in the case of delivery by hand, when delivered; or
- (B) in the case of first class prepaid post, on the second day following the day of posting or (if sent overseas by airmail, as appropriate,) on the fifth day following the day of posting; or
- (C) in the case of facsimile, on acknowledgement of the addressee's facsimile receiving equipment (where such acknowledgement occurs before 1700 hours on the day of acknowledgement) and in any other case on the day following the day of acknowledgement; or

- (D) in the case of notice given by electronic mail, when the communication is first stored in the recipient's electronic mail box. The place of receipt of e-mail will be deemed to be the postal address nominated by the recipient for the service of notices.
- 13.3.3 The particulars for notices of communications to be given to the Principal, until otherwise notified, are set out in the first page of this Agreement and the particulars for notices of communications to NFPAS, until otherwise notified, are:

Address: 4th Floor  
Higham House  
Higham Place  
New Bridge Street West  
Newcastle upon Tyne  
NE1 8AN

Telephone Number: 0191 245 7330  
Facsimile Number: 0191 245 7331  
Attention: Commercial Director  
E-mail Address: administration@nfpas.co.uk

#### 13.4 Counterparts

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

#### 13.5 Variation and Waiver

- 13.5.1 No delay by or omission of any party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or future exercise thereof or the exercise of any other right, power, privilege or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.
- 13.5.2 No variation to this Agreement shall be effective unless made in writing and signed by or on behalf of the Principal, the Successful Bidder and NFPAS.
- 13.5.3 NFPAS shall not unreasonably withhold or delay its consent to any variation pursuant to clause 13.5.2.

#### 13.6 Assignment and Transfer

- 13.6.1 Subject to clause 13.6.2 the Principal may not transfer or assign any of its rights or obligations under this Agreement nor enter into any sub-contracted relationships with any person relating to the performance of its obligations under this Agreement or delegate the performance of any of its obligations under this Agreement without in any case the prior written consent of NFPAS, such consent not to be unreasonably withheld.
- 13.6.2 The Principal agrees NFPAS may transfer or assign its rights, duties and obligations under this Agreement to any third party successor and the Principal shall enter into

such agreements and do all such things as are necessary to effect such transfer or assignment provided that NFPAS is able to demonstrate to the reasonable satisfaction of the Principal that such a third party successor is capable of fulfilling the obligations of NFPAS contained in clause 4 of this Agreement.

- 13.6.3 The Principal agrees that NFPAS may appoint any person as its agent to perform all or any of its obligations or exercise all or any of its rights under this Agreement and may sub-contract performance of this Agreement to such persons as it sees fit but shall at all times remain liable to the Principal in relation to all such obligations.

#### 13.7 **Third Party Rights**

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 the Agreement.

#### 13.8 **No Partnership**

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

#### 13.9 **Severance**

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

#### 13.10 **Law**

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

#### 13.11 **Jurisdiction**

Subject to clause 12, the Courts of England shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this Agreement and any matter arising therefrom.

## SCHEDULE 1

### FACILITY DETAILS

Name, address and contact number in respect of the Facility: