

CROWN ESTATE SCOTLAND

and

[]

LEASE

of

**Rights for Cable Route [and Substation Site]
upon Bed of the sea at [] Windfarm**

LEASE

BETWEEN:

CROWN ESTATE SCOTLAND (in Gaelic, Oighreachd a' Chrùin Alba) established as a body corporate in terms of the Crown Estate Scotland (Interim Management) Order 2017 (previously carrying on business under the name of "Crown Estate Scotland (Interim Management)", (in Gaelic, Oighreachd a' Chrùin Alba (Stiùireadh Eadar-amail)) and renamed in terms of the Scottish Crown Estate Act 2019), having its principal office at Quartermile Two, 2nd Floor, 2 Lister Square Edinburgh EH3 9GL and acting in exercise of the powers conferred on it by the Scotland Act 1998 (as Amended) and the Scottish Crown Estate Act 2019 on behalf of Her Majesty The Queen and its successors ("the **Landlord**") and

[] (Company No []) a company incorporated under the Companies Acts (and having their Registered Office at []; ("the **Tenant**")

WITNESSES as follows:-

1 Definitions and interpretation

In this Lease unless the context otherwise requires:-

- 1.1 "**Authority**" means an authority whether statutory public local European international or otherwise government department or agency or a court of competent jurisdiction
- 1.2 "**Commencement Date**" means ●
- 1.3 "**CDM Regulations**" means the Construction (Design and Management) Regulations 2015
- 1.4 "**Conduit**" means a pipe drain sewer channel gutter cable wire or other conduit for the passage or transmission of water soil gas oil air smoke electricity communications information light or other thing and all ancillary structures and equipment
- 1.5 "**Decommissioning Programme**" means a decommissioning programme applicable to the Works approved by the Secretary of State under Energy Act 2004 including any modifications or conditions which the Secretary of State may from time to time specify
- 1.6 "**Cable Corridor**" means, in relation to each cable, (subject to variation from time to time under the provisions of Schedule Part 1):
 - 1.6.1 the part of the foreshore and seabed which from time to time lies inside the Territorial Limit; and
 - 1.6.2 the area which from time to time lies within a Renewable Energy Zone,

in each case within the strip [running from the boundary of the Substation Site] **or** [running from such part of the Substation Site as is required to accommodate the linkage of the Supply Cables to any substation(s) within a Substation Site] to another Substation Site or the shore having a width of [30] metres and in a proposed position approved by the Landlord (such approval not to be unreasonably withheld) within the area extending [●] metres either side of the line shown by the [●] line and the co-ordinates contained in Schedule Part 7. The actual position of the Cable Corridor will be confirmed by attaching a map detailing the as-built cable route as the Exhibit. References to the Cable Corridor or Areas include references to any part of it or them. The Landlord and the Tenant may amend the Cable Corridor by mutual agreement;
- 1.7 "**Dredging Restriction Zone**" means the area extending to 235 metres either side of the Cable Corridor

- 1.8 **"EML Consultant"** means a firm of insurance advisers of international repute with experience of the offshore wind industry selected by either the Tenant or the Landlord (as appropriate), approved by the Landlord or the Tenant (as appropriate) and jointly appointed by the Landlord and the Tenant in accordance with Schedule Part 5;
- 1.9 **"EML Study"** means a study performed by the EML Consultant pursuant to the terms of this Lease;
- 1.10 **"Estimated Maximum Loss"** means the estimated maximum loss arising from the worst case credible scenario that could be expected to affect the Works as determined in accordance with Schedule Part 5;
- 1.11 **"Force Majeure"** means fire storm tempest other exceptionally inclement weather conditions war hostilities rebellion revolution insurrection military or usurped power civil war labour lock-out strikes local combination of workmen and other industrial disputes riot civil commotion disorder decree of Government non-availability of materials or equipment delay in delivery of materials or equipment delay by a local authority or statutory undertaker in carrying out work in pursuance of its statutory obligations or failure by such authority or statutory undertaking to carry out such work (including any failure or delay in completing works pursuant to grid connection arrangements) unforeseen site conditions loss or damage by any one or more of the Insured Risks or any other cause or circumstance provided that in the case of any of the foregoing events, the event
- 1.11.1 adversely affects the performance of the obligations in clause 3.2.2 or 3.2.7 (as the case may be) and
- 1.11.2 cannot be reasonably avoided or provided against by the Tenant or its contractors or professional team
- 1.12 **"Generator Cables"** means Conduits for the passage or transmission of electricity between the turbines from time to time comprised in the Windfarm Works [and the Substations]
- 1.13 **"Group"** means in relation to the Tenant, the Tenant, any Subsidiary or Holding Company from time to time of the Tenant and any Subsidiary from time to time of a Holding Company of the Tenant;
- 1.14 **"Group Company"** means in relation to the Tenant, any member of its Group
- 1.15 **"Holding Company"** means a "holding company" as defined in section 1159 of the Companies Act 2006
- 1.16 **"Implementation Date"** means the earlier of the following dates:-
- 1.16.1 the first anniversary of the Commencement Date
- 1.16.2 the date on which the Tenant or persons authorised by it first enter upon the Substation Site or exercises the Rights for the purpose of installing the Specified Works
- 1.17 **"Insured Risks"** means fire lightning explosion earthquake aircraft and other aerial devices and articles dropped from them riot civil commotion storm impact by vessels subsidence landslip heave malicious damage terrorism and mechanical breakdown and such other risks as the Tenant may insure against and such other risks as the Landlord may reasonably require the Tenant to insure against
- 1.18 **"Legal Obligation"** means an obligation imposed by or under or a requirement of any of the following (in so far as it relates to the Substation Site or to their occupation or use or to the Works or to the exercise of the Rights or to any substance or article upon in under or over the

Substation Site but irrespective of the person on whom such obligation is imposed or such requirement is made):-

- 1.18.1 any present or future international convention or other international obligation or present or future legislation (whether an Act of the United Kingdom Parliament, the Scottish Parliament, European Union legislation or otherwise) or
 - 1.18.2 any statutory instrument by law regulation direction order requirement notice plan code of practice or guidance note made under or pursuant to any of the matters referred to in clause 1.18.1 or by any Authority or
 - 1.18.3 any of the matters referred to in Schedule Part 3 or
 - 1.18.4 any condition of a Necessary Consent
- 1.19 **“Necessary Consents”** means all consents licences permissions orders exemptions and approvals required from any Authority (and shall include for the avoidance of doubt all assessments which may be required to be undertaken before the issue of any of the foregoing) [or required in consequence of any of the matters referred to in Schedule Part 3]
- 1.20 **“Non Operational Rent”** has the meaning given in Schedule Part 4;
- 1.21 **“OFGEM”** means The Office of Gas and Electricity Markets or such successor body to it;
- 1.22 **“OFTO”** means the offshore transmission owner or owners appointed and licensed by the Gas and Electricity Markets Authority (or any successor Authority) to acquire and own the Supply Cables and ancillary equipment forming part of the offshore electricity transmission system
- 1.23 **“OFTO Option Agreement”** means an Option Agreement dated [●] made between Crown Estate Scotland and [●];
- 1.24 **“Oil and Gas Works”** means any pipelines platforms wellheads or other works for the exploration for or exploitation of oil and gas in respect of which the consents of the Secretary of State required under a licence issued pursuant to the Petroleum Act 1998 have been given
- 1.25 **“Option Site”** has the meaning given to it in the OFTO Option Agreement
- 1.26 **“Plan”** means the plan attached to this Lease, forming Schedule Part 6 (Plan)
- 1.27 **“Renewable Energy Zone”** means an area designated by an Order in Council made pursuant to Section 84(4) Energy Act 2004 within which the rights to which Section 84 Energy Act 2004 applies are exercisable, including any modification to the boundaries of that area as may from time to time be made by legislation or as may from time to time otherwise arise]
- 1.28 **“Rent”** means the rent ascertainable and payable as provided in Schedule Part 4
- 1.29 **“Rights”** means the rights set out in Schedule Part 1
- 1.30 **“Schedule”** means the Schedule in 8 parts annexed and signed as relative hereto
- 1.31 **“Scottish Crown Estate Property”** means any interest in land to which section 90B(5) of the Scotland Act 1998 applies;
- 1.32 **“Specified Works”** means the [substation and ancillary structures equipment and Conduits (excluding Generator Cables) within the Substation Site and] [●] Supply Cable(s) within the Cable Corridor together with certain ancillary works and other activities all as further described in Schedule Part 8

- 1.33 **"Subsidiary"** means "subsidiary" as defined in section 1159 of the Companies Act 2006
- 1.34 **"Substation"** means the substations comprising part of the Works from time to time on the Substation Site
- 1.35 **"Substation Site"** means the area shown coloured [] on the Plan and by the co-ordinates contained in Schedule Part 7 and references to the Substation Site include reference to any part of it.
- 1.36 **"Supply Cables"** means [] ***[Note: the number of cables to be laid in the Cable Corridor]*** Conduits (other than Generator Cables) and ancillary structures and equipment which are:
- 1.36.1 from time to time in, on or under the Cable Corridor; and
- 1.36.2 required for the passage or transmission of electricity generated by the Windfarm Works [between the Substations and the shore] or otherwise required for the operation of the Works and Windfarm Works
- 1.37 **"Tenant"** where the context admits includes the Tenant's successors in title
- 1.38 **"Term"** means a term of [60] years commencing on (and including) the Commencement Date and expiring on [●] ***[Note: Wind farm lease and OFTO lease to run concurrently may require amendment if OFTO Lease is associated with multiple projects.]***
- 1.39 **"Termination of the Term"** means termination of the Term or this Lease by expiry re-entry notice surrender or otherwise
- 1.40 **"Territorial Limit"** means the seaward limit from time to time of the territorial seas adjacent to Great Britain
- 1.41 **"Transmission Cessation Date"** means the date on which the Supply Cables [and the Substation] cease to transmit electricity from the Windfarm Site as part of the offshore electricity transmission system;
- 1.42 **"VAT"** means value added tax or other similar tax and unless otherwise expressly stated all Rent and other sums payable by the Tenant under this Lease are exclusive of any VAT charged or chargeable and the Tenant shall pay such VAT in addition to and at the same time as the sum in question;
- 1.43 **Windfarm AFL Event of Default** means an event of default under the Windfarm Option Agreement;
- 1.44 **"Windfarm Option Agreement"** means the option agreement in respect of rights for a windfarm site upon the bed of the sea at [] dated [] and made between [the Landlord] and the Windfarm Company;
- 1.45 **"Windfarm Company"** means [] (Company No []) and having its Registered Office at [] and their successors and assignees as tenants under the Windfarm Lease;
- 1.46 **"Windfarm Lease"** means the lease granted by the Landlord to the Windfarm Company
- 1.47 **"Windfarm Lease Event of Default"** means an event of default under the Windfarm Lease;
- 1.48 **"Windfarm Site"** means the Site as defined in the Windfarm Lease and references to the Windfarm Site include reference to any part of it
- 1.49 **"Windfarm Works"** means the turbines Generator Cables and ancillary works (but not Supply Cables) from time to time within the Windfarm Site

- 1.50 **“Works”** means the Specified Works, all renewals or replacements of them and all alterations or additions to them but does not include the Windfarm Works
- 1.51 **“Works Completion Date”** means the date on which occurs the satisfactory completion of such procedures and tests as from time to time constitute usual industrial standards and practices to demonstrate that the whole of the Specified Works are capable of commercial operation
- 1.52 the expression “alteration” when used in respect of the Works includes (without limitation) removal of the Works or any part of them
- 1.53 the expression “decommission” when used in respect of the Works has the meaning given in section 104 Energy Act 2004
- 1.54 words importing one gender include other genders
- 1.55 words importing the singular include the plural and vice versa
- 1.56 references to persons include bodies corporate and vice versa
- 1.57 obligations of a party comprising more than one person are obligations of such persons jointly and severally
- 1.58 an undertaking made by Crown Estate Scotland or implied on behalf of Her Majesty and Her Successors or the Landlord is made or implied by the Landlord acting in exercise of the powers under the Scotland Act 1998 (as amended) and the Scottish Crown Estate Act 2019 without imposing liability in any personal or private capacity
- 1.59 an undertaking made with the Landlord is made separately with Her Majesty and Her Successors and the Landlord and any person charged with the management of Scottish Crown Estate Property
- 1.60 an undertaking by the Tenant not to do something shall be construed as including an undertaking not to permit or knowingly to suffer it to be done by any other person
- 1.61 a consent or approval to be given by the Landlord is not effective for the purposes of this Lease unless it is in writing and signed by or on behalf of the Landlord
- 1.62 reference to a statute directive or regulation includes any amendment modification extension consolidation or re-enactment of it and reference to any statute or directive includes any statutory instrument regulation or order made under it for the time being in force
- 1.63 references to numbered clauses and schedule parts are references to the relevant clause or part of the schedule to this Lease and references in any schedule parts to numbered paragraphs are references to the numbered paragraphs of that part of the schedule
- 1.64 the clause headings do not affect the construction of this Lease

2 Lease

- 2.1 In consideration of the Tenant paying the Rent to the Landlords in accordance with the provisions of Schedule Part 4 the Landlord lets the Substation Site and grants the Rights to the Tenant from the Commencement Date for the Term
- 2.2 EXCEPT AND RESERVING the matters set out in Schedule Part 2
- 2.3 TO HOLD the Rights to the Tenant for the Term

2.4 SUBJECT TO:

- 2.4.1 the public rights of navigation and fishing;
- 2.4.2 the matters referred to in Schedule Part 3;
- 2.4.3 the rights of third states or their nationals under rules of international law; and
- 2.4.4 all other rights and servitudes exercisable over the Substation Site and the Cable Corridor

2.5 This Lease is warranted by the Landlord from fact and deed only and the Tenant will have no claim against the Landlord or Her Majesty in respect of any loss or damage caused by the exercise of any of the rights hereby reserved and the Landlord does not warrant that the Rights and the Substation Site may lawfully be used or are otherwise suitable for any purpose authorised under this Lease

3 Tenant's Obligations

The Tenant undertakes to the Landlord to observe and perform the obligations in this clause 3

3.1 Rent and other payments

- 3.1.1 To pay the Rent and the Non Operational Rent in accordance with the terms of this Lease without deduction or set off whether legal or equitable and (so long as the Substation Site and the Cable Corridor form part of Scottish Crown Estate Property) to the Landlord by electronic transfer to any account nominated by the Landlord and notified to the Windfarm Company
- 3.1.2 To observe and perform such of the provisions contained in Schedule Part 4 as are expressed as obligations on the Tenant's part
- 3.1.3 If any Rent or other sum becoming payable under this Lease by the Tenant to the Landlord remains unpaid for more than 21 days after becoming due (whether formally demanded or not) then the Tenant shall (if required but without prejudice to the Landlord's right of termination or any other right or remedy of the Landlord) as from the date on which it becomes due until the date of actual payment pay interest on it (as well after as before any judgment) at the rate of 3% per annum above the base lending rate from time to time of Royal Bank of Scotland plc (or such other bank as the Landlord nominates from time to time) or if such base rates cease to be published at any time such other comparable rate of interest as the Landlord designates and the interest shall be deemed to be part of the Rent and recoverable in like manner as rent in arrear but shall not itself bear interest
- 3.1.4 To pay all existing and future rates taxes assessments impositions duties charges and outgoings whatsoever payable whether by the owner or occupier in respect of the Substation Site the Works or the exercise of the Rights except for taxes (other than VAT) payable by the Landlord on the receipt of the Rent
- 3.1.5 To pay and indemnify the Landlord against:-
 - (a) all VAT which is chargeable on the Rent or any other sum payable by the Tenant under this Lease upon receipt of a valid VAT invoice addressed to the Tenant; and
 - (b) all VAT incurred in relation to any costs or expenses which the Tenant is obliged to pay or in respect of which it is required to indemnify the Landlord under the terms of this Lease save where such VAT is recoverable or available for set off by the Landlord as input tax

3.2 Installation of Specified Works

- 3.2.1 To use reasonable endeavours to procure that the Specified Works are designed using the reasonable skill care and diligence expected of appropriate professional designers experienced in designing projects of a similar size scope and complexity having due regard to the industry's knowledge and standards at the time of design and installation of the Specified Works
- 3.2.2 To commence the installation of the Specified Works within 12 months after the Commencement Date provided that if the Tenant is prevented from commencing the installation of the Specified Works during such period of 12 months due to Force Majeure then such period of 12 months shall be extended by such period or periods (if any) as may be appropriate as a consequence of the delay caused by Force Majeure
- 3.2.3 To give to the Landlord at least 7 days prior written notice of the Implementation Date
- 3.2.4 To carry out and complete the installation of the Specified Works:-
 - (a) in a good and workmanlike manner;
 - (b) using only suitable good quality materials of their several kinds;
 - (c) in accordance with all Necessary Consents and Legal Obligations; and
 - (d) with all reasonable speed
- 3.2.5 To obtain each Necessary Consent required for the installation and operation of the Specified Works as it is required and to give all notices required to be given in connection with it
- 3.2.6 To notify the Landlord in writing immediately the Works Completion Date occurs and to provide the Landlord with such evidence as the Landlord may reasonably require to prove it occurred on the date notified
- 3.2.7 To procure that the Works Completion Date occurs by [insert 6th anniversary of the Commencement Date of the Windfarm Lease] notwithstanding any event of Force Majeure.
- 3.2.8 To provide to the Landlord details of any event of Force Majeure as soon as it occurs and to provide immediately upon written request such evidence of the period of delay caused by such event as the Landlord may reasonably require
- 3.2.9 As soon as reasonably practicable to provide to the Landlord a copy of any notice which must be given by any Authority before the operation of the Specified Works may lawfully commence and not to commence the operation of the Specified Works before such notice is given
- 3.2.10 To provide to the Landlord from time to time on reasonable written request details of the consultants and contractors engaged by the Tenant and the principal suppliers of goods and services to the Tenant and the principal sub-contractors having design responsibility in connection with the Specified Works
- 3.2.11 To provide to the Landlord as soon as reasonably practicable after the Works Completion Date plans and co-ordinates showing the location of the Specified Works as installed

- 3.2.12 At the requisite time and in accordance with all Legal Obligations and to perfect the requirements of OFGEM from time to time in force, to assign this Lease to an OFTO in accordance with clause 3.10.

3.3 Alterations and Signs

- 3.3.1 Not to construct install erect fix or place on in over or under the Substation Site or the Cable Corridor any building erection structure works Conduit or materials except:-
- (a) the Specified Works;
 - (b) any renewal or replacement of the Specified Works (in materially the same form and layout); and
 - (c) any alteration or addition to the Works in accordance with clause 3.3.2
- 3.3.2 Not to make any alteration or addition to the Works unless:-
- (a) the alteration/addition comprises the alteration of or additions to [the Substation Site and ancillary equipment] structures and Conduits within the Substation Site and/or the alteration or addition of Supply Cables within the Cable Corridor;
 - (b) the Tenant has obtained all Necessary Consents for the alteration/addition;
 - (c) the Tenant has submitted to the Landlord detailed plans and specifications showing the proposed alteration/addition; and
 - (d) the Tenant has obtained the Landlord's consent to carry out the alteration/addition (such consent not to be unreasonably withheld or delayed)
- 3.3.3 To comply with the provisions of clauses 3.2.1 3.2.4 3.2.5 3.2.9 and 3.2.11 (mutatis mutandis) in respect of any renewal or replacement of the Specified Works or any alteration or addition to the Works in so far as applicable
- 3.3.4 Not to place affix or display any sign advertisement notice flag poster or other notification whatsoever within the Substation Site except for such warning or other notices relating to the operation or use of the Works as may either be required under any Legal Obligation or may be approved by the Landlord (such approval not to be unreasonably withheld or delayed)

3.4 CDM Regulations

- 3.4.1 The Tenant warrants that it has the competence to perform the duties imposed on a client by the CDM Regulations
- 3.4.2 To comply with the provisions of the CDM Regulations in respect of the Works including without limitation all requirements relating to the provision and maintenance of a health and safety file and to provide on request to the Landlord a copy of the health and safety file and any documents within it
- 3.4.3 To supply all information to the Landlord that the Landlord reasonably requires to comply with the Landlord's obligations (if any) under the CDM Regulations
- 3.4.4 Prior to commencing any Works to make a written election that it is to be treated as the only client for the purposes of the CDM Regulations in respect of those

Works and to provide a copy to the Landlord of the election (and the Landlord agrees to the election to the extent it actually is a client in respect of the Works)

3.5 Seabed Provisions

- 3.5.1 Not to dig extract or remove any sand stone beach shingle or other minerals or mineral substances from the Substation Site except in so far as is reasonably necessary for the installation of the Works permitted under this Lease and the exercise of the Rights
- 3.5.2 Not to cause waste spoil or destruction on the Substation Site or the Cable Corridor except in so far as is reasonably necessary for the installation of the Works permitted under this Lease and the exercise of the Rights
- 3.5.3 As soon as reasonably practicable following any disturbance of the seabed within the Substation Site or the Cable Corridor in the installation of the Works permitted under this Lease or the exercise of the Rights to restore the same to a safe and (allowing for the presence of the Works) proper condition and in accordance with all Legal Obligations
- 3.5.4 [Not to damage or interfere with the Conduits referred to in Schedule Part 3]

3.6 Repair

- 3.6.1 To keep the Substation and the Works in good and safe repair and condition
- 3.6.2 To keep the Works properly maintained and in good working order

3.7 Legal obligations

- 3.7.1 At the Tenant's own expense to observe and comply with all Legal Obligations and not to do or omit to do in relation to the Substation Site or their occupation and use or the Works or the exercise of the Rights anything by reason of which the Landlord may incur any liability under a Legal Obligation whether for penalties damages compensation costs or otherwise
- 3.7.2 To do all works and things and to bear and pay all expenses required or imposed by any Legal Obligation and to use all reasonable endeavours to obtain all Necessary Consents required from time to time in order to install or operate the Works
- 3.7.3 If the Tenant receives from an Authority formal notice of a Legal Obligation forthwith to produce a copy to the Landlord and if such Legal Obligation is in the Landlord's reasonable opinion contrary to the Landlord's interests (but without prejudice to the requirements of clause 3.7.1 and 3.7.2) to make such objection representation or appeal against such Legal Obligation as the Landlord reasonably requires but at the Landlord's cost (except where such notice arises from the act neglect or default of the Tenant in which event any objection representation or appeal shall be made at the Tenant's cost)
- 3.7.4 Not to do or omit to do anything which may cause any Necessary Consent which has been obtained for the installation or operation of the Works to be modified or revoked without the consent of the Landlord (which shall not be unreasonably withheld or delayed)
- 3.7.5 Following the termination of the Term (unless a new lease is granted to the Tenant) the Tenant shall at any time if so required by the Landlord use reasonable endeavours (subject to reimbursement of the Tenant's reasonable and proper costs of doing so) to procure that any Necessary Consent for the installation and

operation of the Works (which does not automatically transfer for the benefit of the Substation Site) is transferred (in so far as it is transferable) to or is reissued or amended to be in favour of any person to whom a lease or option agreement is granted by the Landlord in respect of the Substation Site and the Rights

- 3.7.6 Clauses 3.7.4 and 3.7.5 shall remain in full force and effect notwithstanding the termination of the Term

3.8 Use and Operation

- 3.8.1 After the Works Completion Date to keep the Works in operation in accordance with the Tenant's obligations contained in its transmission licence from OFGEM during the Term for the purpose of the voltage transformation and/or conversion of alternating to direct current switching and transmission of electricity generated by the Windfarm Works except:-

- (a) insofar as the Tenant is prevented from doing so by an event or circumstance which is beyond its reasonable control including (without limitation) unsuitable weather conditions and safety reasons;
- (b) to the extent that temporary cessation of operation is necessary to carry out any inspection testing maintenance alteration repair enhancement or renewal of the Works in accordance with the terms of this Lease;
- (c) to the extent and for such time only as National Grid - Electricity System Operator (or any successor organisation) requests the Windfarm Company to cease or constrain the generation of electricity by the Windfarm Works; or
- (d) during the period reasonably required by the Tenant to decommission the Works immediately prior to termination of the Term

Provided That in the circumstances set out in clauses 3.8.1(a) and (b) the Tenant shall use all reasonable endeavours to bring the Works back into operation as soon as reasonably possible

- 3.8.2 Not to use the Substation Site or exercise the Rights for any purpose except:-

- (a) the installation of the Works permitted under this Lease;
- (b) the conversion and transmission of electricity generated by the Windfarm Works; and
- (c) (in the case of the Supply Cables) such other purposes that are ancillary to the operation of the Works or the Windfarm Works

- 3.8.3 Not to do any act or allow any substance or article to remain on in under or over the Substation Site or to exercise the Rights in a manner which:-

- (a) may be or become or cause a danger nuisance (other than a nuisance which is not actionable by reason of statutory authorisation) damage or injury to the Landlord or any other person or premises; or
- (b) may cause pollution or harm to the environment or human health (except in so far as such pollution or harm is lawful by reason of the Necessary Consents for the purpose)

3.9 Diversion

To observe and perform the Tenant's obligations in respect of any diversion of any Supply Cables required under paragraphs 4 and 5 of Schedule Part 1

3.10 Alienation

3.10.1 Not to assign or mortgage or charge a part of the Substation Site or Rights (as distinct from the whole) [nor to assign or mortgage or charge the Substation Site or the Rights separately from each other (as distinct from together)] and not to underlet part with or share the possession of or grant any licence in respect of the whole or part of the Substation Site or Rights nor hold the Substation Site or Rights on trust for any other person

3.10.2 Not to assign the whole of the Substation Site and Rights together without the consent of the Landlord such consent not to be unreasonably withheld or delayed Provided That:-

- (a) the Landlord shall not be regarded as unreasonably withholding its consent if it withholds it on the ground of any of the circumstances set out in clause 3.10.4
- (b) the Landlord shall not be regarded as giving its consent subject to unreasonable conditions if it gives its consent subject to any of the conditions set out in clause 3.10.5

3.10.3 The provisos in clause 3.10.2 shall operate without prejudice to the entitlement of the Landlord to withhold its consent on any other ground or grounds where such withholding of consent would not be unreasonable or to impose any further or subsequent condition or conditions upon the grant of consent where the imposition of such condition or conditions would not be unreasonable

3.10.4 The circumstances referred to in clause 3.10.2(a) are:-

- (a) where in the reasonable opinion of the Landlord the proposed assignee is not of sufficient financial standing to enable it to comply with the Tenant's obligations under this Lease
- (b) the proposed assignee is not resident in the United Kingdom or in a jurisdiction where reciprocal enforcement of judgments exists

3.10.5 The conditions referred to in clause 3.10.2(b) are:-

- (a) that prior to the assignment the Tenant pays all arrears of Rent and other sums made payable under this Lease
- (b) that the proposed assignee executes and delivers an undertaking to the Landlord in such form as the Landlord may reasonably require to pay the Rent and observe and perform the obligations and the other provisions of this Lease to be observed and performed by the Tenant
- (c) that, where the proposed assignee is not incorporated in Scotland or England and Wales, the proposed assignee procures a legal opinion letter from a firm of solicitors in the relevant jurisdiction addressed to and approved by the Landlord (acting reasonably) and provides to the Landlord an irrevocable address for service in Scotland or England and Wales for notices under this Lease and proceedings with solicitors or other agents approved by the Landlord (acting reasonably)

- (d) that all Necessary Consents for the installation and operation of the Works are transferred or granted to the proposed assignee on or before the completion of the proposed assignment
 - (e) on or before completion of the proposed assignment the proposed assignee is the owner of the Works and licensed to operate them by the Gas and Electricity Markets Authority or any successor Authority
 - (f) if the Landlord reasonably requires, the provision by a suitable guarantor or guarantors (or the provision of such other security acceptable to the Landlord) of a guarantee (in an acceptable form) to the Landlord or such other security for the due performance of the prospective assignee's obligations in such terms as are acceptable to the Landlord and as it may require.
- 3.10.6 Not to grant security over or charge the whole of the Substation Site and Rights together without the consent of the Landlord such consent not to be unreasonably withheld provided that the consent of the Landlord shall not be required for a security over or charge of the whole of the Substation Site and Rights together in favour of a reputable bank or other reputable and substantial financial institution provided that any security holder or chargee exercising a power of sale (or otherwise dealing with the Substation Site and Rights) shall be subject to the same terms and conditions relating to sub-letting or assignation as are set out in this clause 3.10
- 3.10.7 Within one month from their respective dates to lodge in the Landlord's office for registration all assignments of the Substation Site and Rights orders of court and other instruments affecting the devolution of this Lease or the Term and all securities and charges of them and on demand to pay the Landlord's reasonable registration fees
- 3.10.8 The Tenant may (but without prejudice to the other provisions of this Lease), permit the Windfarm Company to carry out activities on the Substation Site in connection with the generation of electricity from the Windfarm Works and the interface of the Windfarm Works and the Works including, without limitation, any of the following activities for those purposes:
- (a) installing, using, commissioning, maintaining, inspecting, accessing, removing, operating, modifying, altering, repairing and decommissioning equipment comprising part of the Windfarm Works on the Substation Site; and
 - (b) providing services to the Windfarm Company,
- but that subject to any such activities being carried out in accordance with the terms of the relevant interface agreement between the Tenant and the Windfarm Company and no relationship of landlord and tenant being created or allowed to arise.

3.11 Indemnity

- 3.11.1 To indemnify and keep the Landlord indemnified against all actions proceedings claims and demands brought or made and all proper costs and expenses and all losses damages and liabilities incurred suffered or arising directly or indirectly in respect of or otherwise in connection with:-
- (a) the occupation and use of the Substation Site;
 - (b) the exercise or purported exercise of the Rights;

- (c) the installation existence or use of the Works;
- (d) the state of repair and condition of the Substation and the Works;
- (e) any act neglect or default of the Tenant or anyone deriving title through or under the Tenant or anyone at the Substation Site or exercising the Rights with the express or implied authority of such persons;
- (f) any breach of any undertaking or other provision of this Lease to be observed and performed by the Tenant; or
- (g) any Works remaining on in or under the Substation Site or the Cable Corridor after the termination of the Term (whether or not in breach of clause 3.15 and whether or not the Tenant has been negligent) including (without limitation) any removal or disposal of those Works pursuant to clause 8.3.2

3.11.2 The following provisions apply to clause 3.11.1:-

- (a) clause 3.11.1 shall not apply to the extent that any such actions proceedings claims and demands are brought or made or any losses damages costs expenses and liabilities are incurred or suffered as a consequence of the breach by the Landlord of its obligations under this Lease or the negligence of the Landlord or its servants agents and contractors;
- (b) the Landlord shall take reasonable steps to mitigate its losses in respect of which it claims an indemnity under clause 3.11.1;
- (c) the Landlord shall not make any admission of liability nor compromise or settle any actions proceedings claims and demands in respect of which it claims an indemnity under clause 3.11.1 without first notifying the Tenant and having due regard to the Tenant's timely representations;
- (d) the Tenant may with the consent of the Landlord (which shall not be unreasonably withheld) conduct on the Landlord's behalf any proceedings in respect of which the Landlord claims an indemnity under clause 3.11.1 in which case:-

3.11.3 the Tenant shall give full indemnity and security to the Landlord in relation to all costs expenses damages and liabilities incurred suffered or arising from such proceedings and

3.11.4 the Tenant shall act so as to minimise any liability or other adverse effects on the Landlord

- (a) clause 3.11.1 shall remain in full force and effect and form a continuing contract notwithstanding the termination of the Term; and
- (b) the Landlord shall not be entitled under clause 3.11.1 to an indemnity in respect of the Landlord's loss of use loss of contracts and/or any other indirect loss of the Landlord but this limitation shall not apply to loss of rent under the Windfarm Leases nor to any other person's losses and shall not limit any other right or remedy of the Landlord apart from clause 3.11.1

3.11.5 Notwithstanding the other terms of this Lease, the Tenant's liability to the Landlord but only in respect of actions, proceedings, claims and demands brought or made and all proper costs or expenses and all losses, damages and liabilities incurred suffered or arising directly or indirectly as referred to in clause 3.11.1 shall not

exceed the sum of [] (£ []) Sterling (as indexed on each fifth anniversary of the Commencement Date), in aggregate in any one year, exclusive of all if any Value Added Tax which shall be payable in addition if applicable.

3.11.6 The Tenant's liability under this Lease shall cease on the expiry of a period of 5 years after the date of expiry or earlier termination of this Lease.

3.12 Costs

3.12.1 To pay and indemnify the Landlord against all proper (and in the case of clause 3.12.1(a) reasonable) fees charges disbursements costs and expenses connected with incidental to consequent upon and (where appropriate) in proper contemplation of:-

- (a) an application for the Landlord's consent (whether or not the consent is given or the application is withdrawn) unless such consent is unlawfully withheld or is subject to an unlawful qualification or condition because it is unreasonable or otherwise;
- (b) the inspection of the Substation or Works in accordance with paragraph 1.3.2 of Schedule Part 2 (where such inspection reveals a breach of the Tenant's covenants in this Lease) and the superintendence of any works required to remedy any breach of the Tenant's covenants in this Lease;
- (c) a notice pursuant to a provision of this Lease of any breach of any provision in this Lease or proceedings relative thereto even if irritancy or forfeiture is avoided otherwise than by relief granted by the Court;
- (d) the recovery of arrears of Rent or other sums payable under this Lease; or
- (e) the enforcement of any covenant or obligation of the Tenant under this Lease.

3.13 Insurance

3.13.1 To effect and maintain the following insurances:

- (a) insurance of the Works against destruction or damage by the Insured Risks in a sum at least equal to the Estimated Maximum Loss (as indexed) and Terrorism Estimated Maximum Loss (as indexed) ; and
- (b) third party and public liability insurance in respect of the Substation the Works and the exercise of the Rights in the sum of £25,000,000, or in such other sum as the Landlord may from time to time reasonably require, in respect of each and every occurrence (except for pollution and product cover which may be on an annual aggregate basis if unavailable on an each and every occurrence basis), on terms

3.13.2 The insurances required by clause 3.13.1 shall:

- (a) be with an insurer holding a credit rating of at least A- with Standard & Poor's Rating Group (or an equivalent credit rating from another internationally recognised credit rating agency):
- (b) name the Landlord as co-insured;

- (c) contain waiver of subrogation, separate policy provision and non-vitiating endorsements in a form acceptable to the Landlord (acting reasonably); and
 - (d) be on terms in accordance with normal insurance practice for offshore wind farms from time to time (including the level of any deductible) approved by the Landlord (acting reasonably).
- 3.13.3 The Tenant shall not be obliged to insure under clause 3.13.1(a) if and to the extent that such insurance is not available in the European insurance market on commercially reasonable terms or is only available at uneconomic rates
- 3.13.4 To produce to the Landlord upon request from time to time (but no more frequently than once every 12 months) a copy of or full details of each policy of insurance and evidence that each policy is in force
- 3.13.5 If the Works or any part of them are damaged or destroyed by an Insured Risk to apply for and use reasonable endeavours to obtain all Necessary Consents to reinstate the Works and as soon as reasonably practicable after they are obtained to apply the insurance monies received under the policy of insurance in reinstating the Works with all reasonable speed making up any shortfall out of its own resources
- 3.13.6 To pay to the Landlord the premium and other costs which the Landlord may incur in effecting and maintaining any insurance which the Tenant fails to effect or maintain in accordance with the provisions of this clause 3.13 To observe and perform the terms of any insurance policy effected pursuant to this clause 3.13 and all requirements from time to time of the insurers and not to do or fail to do anything which shall or may cause any such policy to be void or voidable or any monies payable under it to be irrecoverable

3.14 Servitudes

- 3.14.1 To use reasonable endeavours to prevent all servitudes and unlawful acts on the Substation Site which may prejudice the Landlord's title to them and if any claim is made to the Substation Site or to any right profit or servitude in or out of or affecting them forthwith to give notice of it to the Landlord and not to admit or acknowledge it in any way whatsoever

3.15 Decommissioning

- 3.15.1 Prior to the termination of the Term:
 - (a) to decommission the Works and to restore the Substation Site and Cable Corridor in accordance with the Decommissioning Programme and in accordance with all Legal Obligations and
 - (b) (unless the Landlord otherwise agrees in writing) to remove the parts of any Supply Cables which are above the mean low water springs and restore their sites to their former or proper condition to the Landlord's reasonable satisfaction
- 3.15.2 On the termination of the Term to deliver up the Substation Site and Cable Corridor to the Landlord in good and safe order and condition in accordance with the Tenant's obligations in this Lease
- 3.15.3 To comply with the provisions of the Decommissioning Programme and all other Legal Obligations relating to the Works which continue to apply after the Tenant has complied with clause 3.15.1 (including (without limitation) those relating to

post decommissioning monitoring maintenance and management of the Substation Site and the Cable Corridor and this obligation shall continue in full force and effect after the termination of the Term for as long as any such provision of the Decommissioning Programme or Legal Obligation continues to apply

3.15.4 The Tenant shall not commence decommissioning of the Works before the Transmission Cessation Date without first obtaining the Landlord's consent (such consent not to be unreasonably withheld)

3.15.5 The Tenant shall co-ordinate the decommissioning of the Works with the decommissioning of the Windfarm Works where reasonably required to do so

4 Landlord's Obligations

4.1 The Landlord undertakes to the Tenant that the Landlord shall not:

4.1.1 without the Tenant's consent which shall not be unreasonably withheld or delayed

(a) carry out or grant any lease licence or consent (other than a lease licence or consent a term of which is that the Tenant's consent shall be obtained) for the construction of any works within the Cable Corridor; or

(b) exercise the rights reserved in paragraph 1.2 of Schedule Part 2 to install Conduits; or

4.1.2 carry out or grant any licence or consent for the dredging or removal of minerals within the Substation Site or the Cable Corridor or the Dredging Restriction Zone

4.2 Clause 4.1 shall not apply to [the renewal of any lease, licence or consent referred to in part 1 of Schedule Part 3 or any lease licence or consent (or renewal of them) granted pursuant to the matters referred to in part 2 of Schedule Part 3 nor] any Windfarm Works on in under or over any part or parts of the Cable Corridor lying within the Windfarm Sites nor for the avoidance of doubt to the exercise of the rights reserved in paragraph 3 of Schedule Part 2

4.3 The Landlord undertakes to the Tenant that they will not do or fail to do anything which shall or may cause any policy of insurance maintained under clause 3.13.1(b) to be void or voidable or any monies payable under it to be irrecoverable

4.4 The Landlord's obligations under this clause 4 shall cease upon termination of the Term

5 Termination on default

5.1 Subject to the terms of Clause 5.4 of the Lease, the Landlord may at any time after the occurrence of any of the following events detailed in Clause 5.1.1 and 5.1.5 bring this Lease to an end on giving written notice to the Tenant whereupon the Term shall cease and terminate (but without prejudice to any rights and remedies of the Landlord in respect of any arrears of Rent or any antecedent breach of this Lease and the continuing operation of any provision of this Lease which is expressed to continue to apply or remain in force and effect after or notwithstanding termination of the Term) but which irritancy is hereby declared to be contractual and not penal and will not be purgeable at the Bar:-

5.1.1 if any Rent remains unpaid 21 days after it is due (whether formally demanded or not); or

5.1.2 if any obligation or provision in this Lease which is to be observed or performed by the Tenant is not observed or performed and such non-observance or non-performance has or in the reasonable opinion of the Landlord is likely to have a material adverse effect on the Landlord; or

- 5.1.3 if the Tenant does or omits to do anything which causes any Necessary Consent which has been obtained for the installation or operation of the Works to be modified or revoked without the consent of the Landlord (which shall not be unreasonably withheld or delayed); For the avoidance of doubt, if the Tenant seeks to vary the Necessary Consents this shall not be construed as modification.
- 5.1.4 if the Works Completion Date has not occurred by the sixth anniversary of the Implementation Date whether or not the Tenant is in breach of any obligation or provision in this Lease and whether or not there is or has been an event of Force Majeure;
- 5.1.5 [in the event that the Windfarm Company has elected (in accordance with the relevant regulations and/or OFGEM guidance or policy) to install the Supply Cables and ancillary equipment forming part of the offshore electricity transmission system, there is:
- (a) a Windfarm AFL Event of Default which results in the termination of the Windfarm **Option** Agreement; and/or
 - (b) until such time as this Lease is assigned to an OFTO in accordance with clause 3.2.12, a Windfarm Lease Event of Default which results in the termination of all the Windfarm Lease;] ***[Include where the Windfarm Company is to go down the Generator Build route]***
- 5.2 The Landlord shall not take any steps to proceed with its right to bring this Lease to an end under clauses 5.1.1 to 5.1.5 until it has first given written notice of the breach to Tenant and any guarantor and to every creditor in any then existing standard security or floating charge (so far as the grant of such standard security or floating charge has been notified to the Landlord) affecting the Lease which notice should prescribe a time which is reasonable in the circumstances (such circumstances not including the financial position of the Tenant) within which such breach must be remedied and the Tenant (or any such creditor or guarantor) will have failed to remedy the breach within the time prescribed within the notice and declaring that (a) a reasonable time shall be 21 days (in the case of clause 5.1.1) and a reasonable time shall be 3 months (in the case of clause 5.1.2) from the date on which it gives notice of its intention of doing so (b) in the case of the Tenant going into liquidation or suffering an administrative receiver, receiver or an administrator to be appointed the Landlord will allow the liquidator or administrative receiver, receiver or administrator (as the case may be) and any such creditor as aforesaid a period of one year in which to dispose of the Tenant's interest in the Lease and will only be entitled to terminate the Lease if the liquidator or administrative receiver, receiver or administrator or such creditor as the case may be will have failed to dispose of the Tenant's interest at the end of the said period provided always that the liquidator or administrative receiver, receiver or the administrator or such creditor as the case may be will accept in probative writing within one month of the date of appointment or of such creditor's entry into possession of the Premises and implement full responsibility for payment of the Rent (whether due in respect of a period occurring before or after the date of liquidation or receivership or administration or entering into possession as the case may be) and for the performance of all other obligations of the Tenant under the Lease from the date of liquidation or receivership or administration or the date of such creditor's entry into possession as the case may be to the date of disposal or termination of the Lease including settlement of any arrears of the rents and the performance of any outstanding obligations which may subsist at the date of liquidation or receivership or administration or such creditor's entry into possession as the case may be and will if requested by the Landlord find caution for such payment and performance in an amount acceptable to the Landlord. And it is hereby declared that the Landlord will deal with any request for consent to assign the Lease made by such liquidator, administrative receiver, administrator or creditor as the case may be in the same manner as if the request had been made by the Tenant. The provisions relating to a liquidator, administrative receiver or administrator hereinbefore narrated will apply mutatis

mutandis to a trustee in sequestration and a trustee under a trust deed for the benefit of creditors if the Tenant is an individual or individuals or a partnership or an unincorporated body.

5.3 Clause 5.2 does not affect:

- 5.3.1 the Landlord's right to bring this lease to an end in respect of an event of which notice has been given under clause 5.2 on or at any time after the expiry of the relevant period referred to in clause 5.22 without further notice to the Tenant and chargee;
- 5.3.2 the exercise by the Landlord of any other right or remedy at any time and without notice to the Tenant, any guarantor, creditor and security-holder; or
- 5.3.3 the Landlord's right to bring this Lease to an end under clause 5.1.3 or clause 5.1.4

5.4 The Landlord and the Tenant agree that in the event that National Grid Electricity Transmission plc (or any successor organisation) (**NGET**) proposes an Offshore Agreement to Vary which significantly extends the date for connection of the Supply Cables to the National Grid beyond the initial date indicated by NGET provided that:

- 5.4.1 such extension is promptly identified to the Landlord by the Tenant; and
- 5.4.2 the Tenant or any person under its control or acting on its behalf has not influenced or requested such extension;

The Landlord will consider (in its reasonable discretion) any written proposal from the Tenant to extend the time period in Clause 5.3 above, to up to a maximum of two years (and therefore being no later than the eighth anniversary of the Implementation Date) and the Landlord will confirm the length of such extension (if any) in writing to the Tenant.

6 Right of termination upon Transmission Cessation

- 6.1 Subject to clause 6.5, the Tenant may bring this Lease to an end by serving not less than one month's written notice on the Landlord at any time after the Transmission Cessation Date.
- 6.2 Subject to clause 6.5, the Landlord may bring this Lease to an end by serving not less than 24 months' written notice on the Tenant at any time after the Transmission Cessation Date.
- 6.3 The Landlord may not give a notice to bring this Lease to an end under clause 6.2 which expires before the twenty second anniversary of the Commencement Date.
- 6.4 The Tenant shall comply with the obligations under clause 3.15 (other than clause 3.15.5) prior to the expiry of any notice given by the Landlord under clause 6.2.
- 6.5 This Lease shall only come to an end as a result of notice given by the Tenant under clause 6.1 if on expiry of the notice the Tenant has:
 - 6.5.1 paid all Rent due under this Lease up to (and including) the expiry of the notice;
 - 6.5.2 complied with clause 3.15 (other than clause 3.15.5) in all material respects;
 - 6.5.3 given vacant possession of the Substation Site to the Landlord.
- 6.6 The Landlord may in its absolute discretion waive compliance with all or any of the conditions or obligations set out in clause 6.5 but, unless otherwise expressly agreed in writing, such waiver shall not release the Tenant from liability to comply with the relevant condition or obligation.

- 6.7 Upon termination of this Lease under this clause 6 the Term shall cease and terminate but without prejudice to either party's rights and remedies in respect of any antecedent breach by the other of this Lease and the continuing operation of any provision of this Lease which is expressed to continue to apply or remain in force and effect after or notwithstanding termination of the Term.
- 6.8 Any notice given under this clause 6 shall be irrevocable.
- 6.9 Termination by the Landlord under this clause 6 does not give rise to any liability of the Landlord to pay compensation to the Tenant for such termination

7 Landlord's Right of termination for Oil and Gas Works

- 7.1 The Landlord may at any time during the Term bring this Lease to an end by giving reasonable prior written notice to the Tenant
- 7.2 The Landlord shall not give notice under clause 7.1 unless the Secretary of State for the purposes of the Petroleum Act 1998 has requested the Landlord to bring this Lease to an end because the Substation Site and/or the Cable Corridor are required for Oil and Gas Works or rights are required over the Site in connection with Oil and Gas Works
- 7.3 If notice is given under clause 7.1 then upon the expiry of that notice this Lease shall terminate but without prejudice to the rights and remedies of the Landlord in respect of any antecedent breach by the Tenant of its obligations under this Lease
- 7.4 The Tenant shall comply with the obligations under clauses 3.15.1 and 3.15.2 prior to the expiry of the notice given under clause 7.1
- 7.5 Termination under this clause 7 does not give rise to any liability of the Landlord to pay compensation to the Tenant for such determination

8 Miscellaneous

- 8.1 Except where and to the extent that any statutory provision prohibits the Tenant's right to compensation being reduced or excluded by agreement the Tenant shall not be entitled on quitting the Substation Site and/or Cable Corridor to claim from the Landlord any compensation on any ground
- 8.2 If there is any dispute or matter in this Lease expressed to be referable to an expert for determination:
- 8.2.1 the relevant expert shall be instructed to accept written representations and counter representations within such time as he shall direct as being reasonable having regard to the nature of the dispute or matter and the need for its timely resolution and in any event shall be instructed to seek to reach his decision within 28 days (or such further time as he shall determine to be reasonable having regard to the nature of the dispute or matter) of his appointment;
 - 8.2.2 the costs of the reference to the relevant expert and of his determination (including his own fees and expenses the fees and expenses of any other professional consulted in accordance with this Clause and the costs of the Landlord and Tenant) shall lie in his award;
 - 8.2.3 a relevant expert shall be entitled to seek the opinion of another professional of an appropriate different experience and qualification if he shall be concerned that he lacks relevant or sufficient experience or expertise;
 - 8.2.4 the relevant expert shall be required to give reasons for his decision and his decision will be final and binding save in case of manifest error; and

- 8.2.5 if a relevant expert shall die or otherwise be incapable of resolving the dispute either the Landlord or the Tenant may request (in default of agreement) a replacement person and the foregoing will apply.
- 8.3 The following provisions apply in respect of the Works:
- 8.3.1 the Works are the property of the Tenant and shall remain the property of the Tenant notwithstanding termination of the Term;
- 8.3.2 where any of the Works remain on in or under the Substation Site or the Cable Corridor after the termination of the Term (whether or not in breach of clause 3.15) the Landlord may (save where prohibited by a Decommissioning Programme) in its absolute discretion retain remove and dispose of those Works as it sees fit without any liability whatsoever to the Tenant and without prejudice to the Landlord's rights and remedies in respect of any breach by the Tenant of clause 3.15 and the continuing operation of clause 3.11
- 8.4 The Landlord does not warrant that the Substation Site or the Cable Corridor may lawfully be used or are otherwise suitable for any purpose authorised under this Lease
- 8.5 The Landlord shall incur no liability to the Tenant by reason of any approval given to or inspection made of the Works or any drawing plan or specification of them nor shall any such approval or inspection in any way relieve the Tenant from its obligations under this Lease
- 8.6 Any notice must be in writing and will be properly given if sent by Recorded Delivery or Registered Post in the case of a notice by the Tenant to the Landlord provided that so long as the Substation Site or the area over which the Rights are granted form part of Scottish Crown Estate Property or the Renewable Energy Zone any notice to be given to the Landlord shall be addressed to them at Quartermile Two, 2nd Floor, 2 Lister Square Edinburgh EH3 9GL (or at such other address as shall from time to time constitute the Landlord's principal office in Scotland)
- 8.7 Nothing contained or implied in this Lease gives the Tenant the benefit of or the right to enforce or prevent the release or modification of any undertaking agreement or condition relating to other premises

9 Proper Law

- 9.1 This Lease shall be governed by and construed in accordance with the Laws of Scotland and the Substation Site and Cable Corridor are to be regarded as if they were incorporated in the body of a county of Scotland
- 9.2 The Tenant irrevocably agrees for the exclusive benefit of the Landlord that the courts of Scotland shall have jurisdiction over any claim or matter arising under or in connection with this Lease and that accordingly any proceedings in respect of any such claim or matter may be brought in such courts. Nothing in this clause shall limit the right of the Landlord to take proceedings against the Tenant in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction or jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction or jurisdictions
- 9.3 The Tenant irrevocably appoints ● of ●, as its agent (the "Agent") to receive on its behalf in Scotland service of any notice or proceedings arising out of or in connection with this Lease. Such service shall be deemed completed on delivery to the Agent (whether or not it is forwarded to and received by the Tenant). If for any reason the Agent ceases to be able to act as agent or no longer has an address within Scotland, the Tenant shall forthwith appoint a substitute acceptable to the Landlord and deliver to the Landlord the new agent's name, address and fax number and evidence of their acceptance of such appointment in terms acceptable to the Landlord

- 9.4 The Tenant irrevocably consents to any notice or process in any legal action or proceedings arising out of or in connection with this Lease being served on the Agent (or any other agent appointed under clause ● above) in accordance with the provisions of this Lease relating to service of notices. Nothing contained in this Lease shall affect the right to serve process in any other manner permitted by the laws of the country in which service is to be effected.

10 Land Register of Scotland

No warranty is expressed or implied by or on behalf of the Landlord that this lease is capable of being registered in the Land Register of Scotland or if the Keeper of the Land Register of Scotland is minded to accept any application for registration of this Lease then the effect of such Land Certificate and of the terms of any indemnity or exclusion of indemnity the Keeper may attach thereto is not warranted by the Landlord all such matters being exclusively at the risk of the Tenant.

11 Direct Agreement

- 11.1 The Landlords acknowledge that the Tenant may require funding from a bank or other financial institutions ("**Funders**") to construct and/or operate and/or refinance the Supply Cables and in arranging such finance the Funders may require as a condition of the availability of that finance to enter into a direct agreement with the Landlords to cover (without limitation) the following principal matters:
- 11.1.1 an acknowledgement by the Landlord of any security taken by the Funders over the Tenant and its assets (including over this Lease);
 - 11.1.2 an obligation to give notice to the Funders in the terms of clause 5.4 of this Lease; and
 - 11.1.3 an obligation on the Landlord not to take any action to wind up, appoint an administrator or sanction a voluntary arrangement (or similar) in relation to the Tenant without first giving a prescribed period of notice to the Funders;
 - 11.1.4 a step in right (without giving rise to any express or implied assignment) to allow the Funders to ensure that the obligations of the Tenant are complied with so as to prevent any circumstances arising under which the Landlord could seek to determine this Lease; and
 - 11.1.5 provisions regulating the application of insurance proceeds in the event that all or a part of the Specified Works is destroyed or damaged which provisions will permit the Funders to recalculate financial ratios and conduct other economic tests (in respect of which the Funders shall take account of the Landlords' reasonable representations) relating to the fundamental financial viability of the Supply Cables and fundamental ability of the Tenant to meet debt service after the occurrence of a major insurable event and will further provide that if the specified economic tests are not satisfied, then any insurance proceeds received in respect of such insurable event shall be applied in repayment of amounts owing under any funding agreements rather than reinstatement of the relevant part or parts of the Specified Works.
- 11.2 The Landlord further acknowledge that they will act in good faith (at the cost and expense of the Tenant) to negotiate such a direct agreement where reasonably requested by the Tenant.

12 Consent to Registration

The parties consent to registration of these presents for preservation and execution: IN WITNESS WHEREOF these presents typewritten on this and the preceding [COMPLETE] pages together with the Schedule hereto are subscribed as follows:

THEY ARE SUBSCRIBED in terms of an Act of Parliament

aton20[] by:-

.....Authorised Signatory

.....Full Name

a signatory authorised by the **CROWN ESTATE SCOTLAND** to act on their behalf,

in the presence of:

.....

Name of witness:

Address:

AND

SUBSCRIBED for and on behalf of []

at on 20[] by:-

..... Director

..... Full Name

..... Director

Full Name

This is the Schedule referred to in the foregoing Lease by Crown Estate Scotland to []
of the windfarm site on seabed at []

SCHEDULE PART 1

Rights

- 1 The following rights are granted to the Tenant:-
 - 1.1 the exclusive right to install operate inspect maintain repair renew and remove Works within the Substation Site together with such ancillary rights as may be necessary to enable the Tenant to comply with its obligations under this Lease in respect of the Substation Site
 - 1.2 to install Supply Cables and to use inspect maintain repair renew and remove any Supply Cables from time to time laid by the Tenant on in under or over the Cable Corridor and to divert any Supply Cable from time to time laid by the Tenant within the Cable Corridor; and
 - 1.3 to enter on the part of the Cable Corridor which from time to time lies inside the Territorial Limit to exercise the rights referred to in paragraph 1.2 subject to giving reasonable prior written notice to the Landlord where entry is for the purpose of installation renewal and major works of repair and maintenance
- 2 The rights granted under paragraph 1.1 and paragraph 1.2 in respect of those part(s) of the Substation Site and/or Cable Corridor which from time to time lie within a Renewable Energy Zone or Zones shall not exceed the rights exercisable by virtue of any Order or Orders in Council from time to time made pursuant to Section 84(4) Energy Act 2004 designating the Renewable Energy Zone or Zones in which the Substation Site and Cable Corridor are located
- 3 The rights granted under paragraphs 1.2 and 1.3 are subject to the following:-
 - 3.1 the right of the Landlord to carry out and grant leases licences and consents for the carrying out of works on in over or under the Cable Corridor subject only to the Landlord complying with the obligations under clause 4 (where relevant);
 - 3.2 the rights of the Landlord under paragraph 4; and
 - 3.3 the Tenant complying with its obligations under clauses 3.2, 3.3 and 3.5
- 4 The Landlord may from time to time upon giving at least thirty months' notice to the Tenant:-
 - 4.1 require the Tenant to divert any or all Supply Cables to such alternative position or positions within the Cable Corridor as the Landlord may reasonably require; and
 - 4.2 alter the position of the Cable Corridor and require the Tenant to divert the Supply Cables within it to such alternative positions within the new Cable Corridor as the Landlord may reasonably require
- 5 Where the Landlord exercises its rights under paragraph 4:-
 - 5.1 the Tenant shall carry out the diversion required prior to expiry of the notice given under paragraph 4;
 - 5.2 the Landlord shall pay to the Tenant the costs and expenses reasonably incurred by the Tenant in carrying out such diversion and reasonable compensation for any loss of income which the Tenant sustains as a direct consequence of any such diversion and which could not have reasonably been avoided by the Tenant or its servants agents or contractors; and

- 5.3 where the position of the Cable Corridor is changed, then on expiry of the notice given under paragraph 4 the Rights shall apply to the new area in place of the former area

SCHEDULE PART 2

Exceptions and Reservations

- 1 The following are excepted and reserved to the Landlord and all others from time to time authorised by the Landlord or otherwise entitled:-
 - 1.1 all mines minerals and mineral substances within the Substation Site and the Cable Corridor;
 - 1.2 the right to install Conduits and to use connect into inspect maintain repair renew and remove any Conduits (not forming part of the Works) from time to time on in under or over the Substation Site and the Cable Corridor; and
 - 1.3 the rights to:-
 - 1.3.1 enter the Substation Site and the Cable Corridor to exercise the rights referred to in paragraphs 1.2, 1.3.2 and 1.3.3;
 - 1.3.2 inspect the Substation Site and the Works; and
 - 1.3.3 carry out scientific research within the Substation Site
 - 1.4 the right to install works on the seabed outside the Substation Site and the Cable Corridor in such manner as it sees fit irrespective of whether the works affect or diminish the light air or wind which may now or at any time be enjoyed by the Substation Site or the Works subject only to the Landlord complying with the obligations under clause 4 (where relevant)
- 2 The exceptions and reservations under paragraph 1 are subject to the following terms:-
 - 2.1 in exercising the rights under paragraph 1.3, the Landlord shall take all reasonable steps not to interrupt the operation of the Works and shall make good any damage caused to the Works in the exercise of the rights as soon as reasonably practicable and to the reasonable satisfaction of the Tenant or if the Tenant shall reasonably require the Tenant may after giving written notice to the Landlord make good the damage to the Works caused by the exercise of the rights under paragraph 1.3 and the Landlord shall reimburse the Tenant for all reasonable costs and expenses incurred by the Tenant in making good the damage to the Works
 - 2.2 when exercising the right under paragraph 1.3.2, the Landlord shall where it is reasonably practical to do so take reasonable steps to enable the Tenant to provide a representative in whose presence the inspection is to be carried out;
 - 2.3 when exercising the right under paragraph 1.3.2, the Landlord shall where it is reasonably practical to do so engage for the purpose one of the contractors on the approved list of contractors from time to time supplied by the Tenant to the Landlord or (where it is not practicable to do so or no list is provided) use all reasonable endeavours to engage a contractor experienced in offshore windfarm developments for the purpose;
 - 2.4 the Landlord shall exercise the rights under paragraph 1.3.3 in accordance with a method statement which has been approved by the Tenant (such approval not to be unreasonably withheld); and
 - 2.5 where the rights referred to in paragraph 1.3.1 are exercised in respect of a Conduit installed pursuant to a consent under clause 4.1.1(b) then the terms of the consent shall apply in place of paragraph 2.2
- 3 The right is excepted and reserved to the Landlord to grant in the Windfarm Lease to the tenant under the Windfarm Lease and persons from time to time authorised by that tenant:

- 3.1 the right to install Generator Cables and to use inspect maintain repair renew and remove Generator Cables from time to time on in under or over the Substation Site; and
- 3.2 the right to enter the Substation Site to exercise the rights referred to in paragraph 3.1

SCHEDULE PART 3

Title Matters

Part A

The following are licences and leases granted by the Landlord where the Landlord has given undertakings/covenants to obtain the consent of the licensees/tenants specified below (which consents must be obtained by the Tenant under this Agreement) before any Works are carried out in the vicinity of the works specified below:

Date	Licensee/Tenant	Works

Part B

The following are works which are not authorised by the Landlord to the extent that they lie outside the territorial waters of the United Kingdom but of which the Landlord is aware and in respect of which consent from the owners and/or operators of such works may need to be obtained:

Date	Licensee/Tenant	Works

Part C

The following are licences and leases granted by the Landlord where no consent shall be obtained of the licensees/tenants specified below before any Works are carried out in the vicinity of the works specified below:

Date	Licensee/Tenant	Works

SCHEDULE PART 4

Rent and Non Operational Rent

1 Definitions and Interpretation

In this Schedule Part 4:-

- 1.1 "Index" means the Consumer Prices Index (CPI) all items (or any identical index published under a different title) published by the Office of National Statistics or any successor body upon which the duties in connection with such an index devolve
- 1.2 "Non Operational Rent" means the yearly rent ascertained in accordance with paragraph 4
- 1.3 "NOR Payment Date" means 1 January and 1 July in each year
- 1.4 "Review Date" means 1 July in each year of the Term
- 1.5 "Period of Non-Operation" means (subject to paragraph 6) a period commencing on (and including) the date 24 months after the Transmission Cessation Date and ending on the Determination of the Term
- 1.6 "Valuation Office" means the Valuation Office Agency of HM Revenue and Customs or a successor of it

2 Rent

- 2.1 Subject to paragraph 3 of this Schedule Part 4, the Tenant shall pay to the Landlord the Rent annually in advance on the Commencement Date and each anniversary of it during the Term.
- 2.2 The Rent payable from and including the Commencement Date shall be £1,000 per annum as from time to time reviewed in accordance with this Schedule Part 4.
- 2.3 The Rent shall be revised on each Review Date and with effect from each Review Date the Rent shall be the greater of:
 - 2.3.1 the amount of the Rent payable immediately before the relevant Review Date; and
 - 2.3.2 the yearly sum calculated using the following formula:

$$\text{Revised Rent} = Z \times (\text{Latest Index Figure} \div \text{Previous Index Figure})$$

Where:-

"Z" is the amount of the Rent payable immediately before the relevant Review Date

"Latest Index Figure" is the Index figure for the May immediately before the relevant Review Date

"Previous Index Figure" is the Index figure for the May that is 14 months before the relevant Review Date

3 Payment of Rent during Period of Non Operation

- 3.1 During each Period of Non Operation the Rent shall be a sum equal to the amount of the Non Operational Rent from time to time.
- 3.2 During each Period of Non Operation the Rent shall be paid by half yearly payments in advance on each NOR Payment Date during that Period of Non Operation provided that:-

- 3.2.1 where the Period of Non Operation commences on a date which is not a NOR Payment Date, the first payment of Rent for that Period of Non Operation shall be made on the date the Period of Non Operation commences and shall be made in respect of the period from and including the date the Period of Non Operation Commences up to the next NOR Payment Date; and
- 3.2.2 where the Period of Non Operation ends on a date which is not a NOR Payment Date, the last payment of Rent for that Period of Non Operation shall be made on the last NOR Payment Date that falls in the Period of Non Operation and shall be made in respect of the period from and including that NOR Payment Date up to the end of the Period of Non Operation,

each payment in paragraphs 3.2.1 and 3.2.2 being an apportionment of the yearly sum in accordance with the number of days in the relevant period.

4 **Non Operational Rent**

- 4.1 The Non Operational Rent for each Period of Non Operation shall be ascertained in accordance with this paragraph 4.
- 4.2 The Non Operational Rent at the commencement of the Period of Non Operation shall be the yearly sum of £1,000 or if greater the yearly sum calculated using the following formula:

$$\text{INOR} = \text{LDO} \times (\text{£}0.60 \times \text{LIF}) / \text{IIF}$$

Where:-

“INOR” is the initial amount of the Non Operational Rent at the commencement of the Period of Non Operation

“LIF” means the Index figure for the month which is 2 months before the month in which the Period of Non Operation commences

“LDO” means the length of the Cable Corridors, as taken from the as laid Specified Works at the Works Completion Date (expressed in metres).

“IIF” means the Index figure for the month immediately prior to the date of this Agreement

- 4.3 The Non Operational Rent shall be revised on each Review Date during the Period of Non Operation and with effect from each Review Date the Non Operational Rent shall be the greater of:

- 4.3.1 the amount of the Non Operational Rent payable immediately before the relevant Review Date; and

- 4.3.2 the yearly sum calculated using the following formula:

$$\text{RNOR} = \text{Y} \times (\text{Latest Index Figure} \div \text{Previous Index Figure})$$

Where:-

“RNOR” is the amount of the revised Non Operational Rent

“Y” is the amount of the Non Operational Rent payable immediately before the relevant Review Date

“Latest Index Figure” is the Index figure for the May immediately before the relevant Review Date

“Previous Index Figure” is the Index figure for the May that is 14 months before the relevant Review Date

5 Changes in the Index

- 5.1 If the reference base used to compile the Index changes between the month of the Initial Index Figure and the month of the Latest Index Figure in the formula in paragraph 4.2 or between the month of the Previous Index Figure and the month of the Latest Index Figure in the formula in paragraphs 2.2 and 4.3 then the Latest Index Figure shall be adjusted to the figure which would have applied if the reference base current at the month of the Initial Index Figure or (as the case may be) the Previous Index Figure had been retained and not changed.
- 5.2 If the Index ceases to be published or it becomes impossible by reason of any change in the methods used to compile the Index or for any other reason whatever to calculate the Rent under paragraph 2.2 or the Non Operational Rent under paragraphs 4.2 or 4.3 by reference to the Index or if any dispute or question whatever shall arise between the Landlord and Tenant with respect to the construction or effect of this Schedule Part 4 then either of them may by notice to the other require the Rent or the Non Operational Rent or other matter in dispute to be determined by the Valuation Office in accordance with paragraph 6 who shall:
- 5.2.1 have full power to determine what the increase in the Index would have been had it continued on the basis assumed for the operation of this paragraph 5 and in view of the information assumed to be available for it; but
- 5.2.2 if the determination in paragraph 5.2.1 is not possible, determine the relevant Rent or Non Operational Rent so as to reflect as far as possible the purpose and intent of the provisions of this Schedule Part 4 for the increase of the Rent or the Non Operational Rent (as the case may be).

6 Disputes

- 6.1 On determination of a matter arising under paragraph 5.2 by the Valuation Office:-
- 6.1.1 the Valuation Office shall act as if it were an independent expert;
- 6.1.2 the Landlord and the Tenant shall have the opportunity to make representations to the Valuation Office;
- 6.1.3 the Landlord and the Tenant shall take all steps reasonably necessary to enable the Valuation Office to determine the matter arising under paragraph 5.2 with all reasonable despatch and shall use their best endeavours to procure that it shall be so determined;
- 6.1.4 the determination of the Valuation Office shall be final and binding;
- 6.1.5 the Landlord and Tenant shall each bear their own costs of the determination; and
- 6.1.6 the costs of the Valuation Office shall be shared equally between the Landlord and Tenant
- 6.2 If the Valuation Office does not accept the appointment or ceases to exist or cannot complete the determination then the Landlord or Tenant may by notice to the other require the matter arising under paragraph 5.2 to be determined by an independent chartered surveyor
- 6.3 If the Landlord and Tenant do not agree on the joint appointment of the independent chartered surveyor either the Landlord or the Tenant may apply to the President of the Royal Institution of Chartered Surveyors to make such appointment.

- 6.4 The independent surveyor shall act as an arbitrator in accordance with the Arbitration Acts in force at the time and his fees and expenses (including those relating to his appointment) shall be met in whatever way he decides.

7 **Late ascertainment of Indexation**

- 7.1 Where the Rent or the Non Operational Rent payable with effect from a Review Date is not ascertained before the relevant Review Date:

7.1.1 the Tenant shall continue to pay the Rent at the rate of the Rent or the Non Operational Rent (as the case may be) applicable immediately before that Review Date ("the Interim Rent"); and

7.1.2 if the revised Rent or Non Operational Rent (as the case may be) once ascertained exceeds the Interim Rent, then on or before the day (the "Due Date") 14 days after the revised Rent or Non Operational Rent is ascertained, the Tenant shall pay to the Landlord an amount equal to the total of the sums by which each instalment of the Rent would have exceeded each instalment of the Interim Rent had the revised Rent or Non Operational Rent been ascertained by that Review Date together with interest on each of those sums in accordance with clause 3.1.3 from and including the day it would have been due up to and including the day before the Due Date but at the rate of 3% below the interest rate specified in clause 3.1.3.

- 7.2 The provisions of paragraph 7.1 shall apply (mutatis mutandis) where the Non Operational Rent payable at the commencement of a Period of Non Operation has not been ascertained at the date on which that period commences except that:

7.2.1 the Interim Rent shall be paid at the rate of £[**see note below**]; and

Note: insert figure calculated as follows:

[total length of all the Supply Cables (in metres)] x [£0.60 (indexed to commencement of Lease)]

7.2.2 references to the Review Date shall be to the date on which the Period of Non Operation commences

8 **Miscellaneous**

- 8.1 Time shall not be of the essence for the purposes of this schedule Part 4.
- 8.2 The provisions of this schedule Part 4 shall continue to apply notwithstanding the termination of the Term

SCHEDULE PART 5

Determination and Review of Estimated Maximum Loss

1 Initial Estimated Maximum Loss

- 1.1 Within 5 days of the date of this Lease, the Tenant shall select an EML Consultant to perform an EML Study in order to derive the Estimated Maximum Loss and shall notify the Landlord of its selection in writing for the Landlord's approval (such approval not to be unreasonably withheld or delayed).
- 1.2 The Landlord shall promptly consider the proposed EML Consultant and shall, within 5 days of having received the notification from the Tenant under paragraph 1.1 above, notify the Tenant in writing that the proposed EML Consultant is either approved or rejected.
- 1.3 Where the Landlord has rejected the proposed EML Consultant pursuant to paragraph 1.2, the Tenant shall, within 5 days of the rejection having been notified to it, select an alternative EML Consultant and the provisions of paragraphs 1.1, 1.2 and, where relevant, this paragraph 1.3 shall apply to such selection mutatis mutandis.
- 1.4 Where the Landlord approves the proposed EML Consultant, the Landlord and the Tenant shall, within 4 days of the Landlord having notified the Tenant of its approval, jointly appoint the approved EML Consultant to perform an EML Study in order to derive the Estimated Maximum Loss and deliver to each of the Landlord and the Tenant such EML Study.
- 1.5 In performing the EML Study and deriving the Estimated Maximum Loss, the EML Consultant shall:
 - (a) act impartially;
 - (b) have due regard to the Works and the location of the Works;
 - (c) use the "as low as reasonably practicable principle";
 - (d) have due regard to "Sue and Labour", "Removal of Wreck" and "Vessel Costs"; and
 - (e) include all ancillary costs, professional fees and VAT.
- 1.6 The Estimated Maximum Loss as derived from the EML Study shall be final and binding on the Parties, save in the case of manifest error or fraud.
- 1.7 The cost of appointing the EML Consultant in accordance with this paragraph 1 shall be borne solely by the Tenant.

2 Reviewing the Estimated Maximum Loss

- 2.1 On one occasion during each five year period during the Term, either Party may by notice in writing to the other Party propose that the Parties jointly appoint an EML Consultant to perform a further EML Study to assess the Estimated Maximum Loss at that time.
- 2.2 Within 7 days of a request under paragraph 2.1, the Party that requested the EML Study to be performed under paragraph 2.1 shall select an EML Consultant to perform an EML Study in order to derive the Estimated Maximum Loss and shall notify the other Party of its selection in writing for that other Party's approval (such approval not to be unreasonably withheld or delayed) and the provisions of paragraphs 1.1 to 1.4 shall apply mutatis mutandis to such

selection and the provisions of paragraphs 1.6 and 1.7 shall apply equally to such further EML Study.

- 2.3 The cost of appointing the EML Consultant shall be borne solely by the Party which requested that the EML Study be performed.
- 2.4 Following a determination under this paragraph 2, the Estimated Maximum Loss for the purposes of clause 3.13.1(a) shall be adjusted to the amount so determined by the EML Consultant.

Schedule Part 6

Plan

Schedule Part 7

Coordinates

Schedule Part 8

Specification