



**Crown Estate  
Scotland**  
Oighreachd a' Chrùin Alba

Private & Confidential

**OPTION AGREEMENT**

**between**

**CROWN ESTATE SCOTLAND**

**and**

**[ ]**

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**for**  
**Wind Farm Site upon Bed of the Sea at**  
**[ ]**

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## OPTION AGREEMENT

### BETWEEN:

- (1) **CROWN ESTATE SCOTLAND**, (in Gaelic, Oighreachd a' Chrùin Alba) established as a body corporate in terms of the Crown Estate Scotland 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 Quatermile Two, 2nd Floor, 2 Lister Square Edinburgh EH3 9GL and acting in exercise of the powers conferred on it by the Scottish Crown Estate Act 2019 on behalf of Her Majesty The Queen and its successors (the **Landlord**); and
- (2) **[TENANT]** (Company No [●]) having its registered office at [●] (**the Tenant** which expression includes any person to whom the benefit of this Agreement is assigned under clause 16).

**NOW IT IS HEREBY AGREED** as follows:

### 1 Interpretation

- 1.1 In this Agreement unless the context otherwise requires:
  - 1.1.1 words importing one gender include other genders;
  - 1.1.2 words importing the singular include the plural and vice versa;
  - 1.1.3 words used in this Agreement and not otherwise defined shall have the same meaning as is given to them in the Lease;
  - 1.1.4 references to persons include body corporates and vice versa;
  - 1.1.5 obligations of a party comprising more than one person are obligations of such persons jointly and severally;
  - 1.1.6 any obligation on the Tenant not to do or omit to do something shall be construed as including an obligation not to permit or knowingly to suffer it to be done by any other person;
  - 1.1.7 reference to a statute directive or regulation includes any amendment modification extension consolidation or re-enactment of it and references to any statute or directive includes any statutory instrument regulation or order made under it for the time being in force;
  - 1.1.8 references to the Landlord where the context admits includes their assigns;
  - 1.1.9 a consent or approval to be given by the Landlord is not effective for the purposes of this Agreement unless it is in writing and signed by or on behalf of the Landlord;
  - 1.1.10 the clause headings do not affect the construction of this Agreement; and
  - 1.1.11 references to clauses and schedules are references to the relevant clause in or schedule to this Agreement.
- 1.2 In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:

**Acceptable Credit Rating** means, in respect of an entity, a credit rating of at least BBB- with Standard & Poor's Rating Group (a division of the McGraw-Hill Group of Companies, Inc.) or Baa3 with Moody's Investor Services Inc. (or, if either cease to exist, an equivalent credit rating from another internationally recognised credit rating agency);

**Authority** means an authority whether statutory public local European international or otherwise government department or a court of competent jurisdiction;

**Cable Corridor** means the part of the [foreshore and] seabed within the Cable Route which will be as approved by the Landlord under clause 8 and which will form the Cable Corridor to be included in the Lease;

**Cable Route** means the part of the [foreshore and] seabed within which the Cable Corridor will be located as approved by the Landlord under clause 8;

**Change of Control** means a change in the Control of the Tenant;

**Conduits** means a pipe, drain, sewer, channel, gutter, cable, wire or other conduit for the passage or transmission of water, soil, gas, oil, smoke, air, electricity, communications, light, information or other thing and all ancillary structures and equipment.

**Consented Change of Capability** means a change in the Project Team to which the Landlord has given their written consent in terms of clause 16.5;

**Consented Change of Control** means:

1. an Intra Group Reorganisation; or
2. a change in the Control of the Tenant to which the Landlord has given their written consent;

**Control** has the meaning given in section 450 of the Corporation Tax Act 2010;

**Crown Estate Property** means any interest in land to which section 90B(5) of the Scotland Act 1998 applies;

**Data** means primary data, observations and metadata gathered and stored by or on behalf of the Tenant in relation to meteorological, aural, biological, sea user and geotechnical, geophysical, bathymetric, oceanographic, sedimentological, cultural and heritage investigations and monitoring on the Development Site, the Cable Route or surrounding areas;

**Development** means the installation by or on behalf of the Tenant upon the Development Site of an offshore wind farm (or wind farms, where the Tenant elects to construct the Development in phases in terms of clause 4) having (in aggregate where the Tenant elects to construct the Development in phases), the Intended Installed Capacity and including (without limitation) wind turbine generators, Generator Cables, substation(s), and supporting platforms and structures, energy storage equipment and all other required ancillary structures;

**Development Site** means (subject to clauses 10.12 and 15.1) the area of the Development shown for the purpose of identification coloured pink on the plan attached at Schedule Part 1 (*Development Site*) and more particularly described in the co-ordinates set out on that plan or such other area the Landlord may in their absolute discretion approve from time to time;

**Disposal Premium** a cash payment to be made by the Tenant to the Landlord at the time or times specified in, and calculated in accordance with, Schedule Part 9 (*Disposal Premium*);

**Execution Project Programme** means the programme set out in Schedule Part 4 (*Execution Project Programme*);

**Generator Cables** means the Conduits owned by the Tenant in on or under the Development Site for the passage of electricity generated by each of the turbines at the Development to an offshore substation or other point of connection to the Supply Cables;

**Funder** means a bank or other financial institutions providing funding to the Tenant to implement the Development;

**Health and Safety Incident** means any incident involving injury to workers, visitors or the general public occurring at the Development Site which is reportable under this Agreement at clause 6;

**HSI Notification** means the form of notification set out at Schedule Part 5 (*HSI Notification*) to this Agreement;

**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;

**Insolvency Event** means, with respect to the Tenant or any Security Provider, that it:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
  - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
  - (ii) is not dismissed, discharged, stayed or restrained in each case within thirty (30) Working Days of the institution or presentation thereof;
- (f) has exercised in respect of it one or more of the stabilisation powers pursuant to Part 1 of the Banking Act 2009 and/or has instituted against it a bank insolvency proceeding pursuant to Part 2 of the Banking Act 2009 or a bank administration proceeding pursuant to Part 3 of the Banking Act 2009;
- (g) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (h) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (i) has a secured party take possession of all or substantially all its assets or has an execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty (30) Working Days thereafter;

- (j) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (i) above; or
- (k) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;

**Intended Installed Capacity** means, in total for all Phases if applicable, [ ] megawatts (with the Intended Installed Capacity for each individual Phase (if applicable) being as shown in the Project Programme);

**Intra Group Reorganisation** means a Change of Control as a result of an intragroup reorganisation of the direct or indirect shareholders of the Tenant which has been intimated in writing to the Landlord;

**Key Project Consents** means in relation to the Development (or each Phase if applicable):

- (a) Consent under Section 36 of the Electricity Act 1989; and
- (b) a marine licence under the Marine (Scotland) Act 2010,

or any consents replacing either of the above;

**Laws and Regulations** means all applicable statutes, statutory instruments, regulations, orders, directives and other legislation of Scotland, England and Wales or the European Union and any codes of practice, consents, permissions and licences (and any directions made under such legislation or conditions to any such consents, permissions and licences);

**Lease** means the lease (or leases) of the Development Site (or Phase Site if applicable) to be granted by the Landlord and accepted by the Tenant which shall be in the form of the attached at Schedule Part 3 (*Lease*) subject to any alterations made pursuant to this Agreement;

**Lease Commencement Date** means the date thirty (30) Working Days after valid service of an Option Notice or such earlier date as may be agreed between the Landlord and the Tenant in writing;

**Milestone** means each of the key events identified as milestones (or which is required by clause 4.9 to be identified as a milestone) in the Project Programme;

**Milestone Date** means the date by which each Milestone needs to be satisfied as set out in (or which is required by clause 4.9 to be set out in) the Project Programme;

**Necessary Consents** means:

- (a) all consents licences permissions orders exemptions and approvals required from any Authority (and shall include for the avoidance of doubt the Key Project Consents and all assessments which may be required to be undertaken before the issue of any of the foregoing); and
- (b) those matters specified to be Necessary Consents in Schedule Part 2 (*Leases and Licences*);

**Necessary Consents Date** means the date (or dates) the Tenant has obtained all of the Necessary Consents in respect of the Development (or any Phase if applicable);

**Net Assets** means the fixed and current assets less the aggregate of the liabilities of the relevant entity based on financial statements prepared in accordance with the appropriate accounting policies and practices and as evidenced by its latest externally audited accounts;

**Non-Statutory Decommissioning Programme** means a programme for decommissioning activities for the removal of any equipment to be installed by the Tenant during the term of any Lease on Crown Estate Property and the restoration of any seabed and/or foreshore which does not fall within any Statutory Decommissioning Programme (as defined in the Lease) as agreed with the Landlord in terms of clause 8;

**OFGEM** means the Office of the Gas and Electricity Markets Authority in the United Kingdom (or its successor Authority);

**OFTO** means (i) the offshore transmission owner or owners appointed and licensed by OFGEM to acquire or (as the case may be) install and own the Supply Cables forming part of the offshore electricity transmission system or (ii) the Tenant where it has elected (in accordance with the relevant regulations and/or OFGEM guidance or policy) to install the Supply Cables forming part of the offshore electricity transmission system and it has notified the Landlord of such election;

**OFTO Agreement** means a lease and/or licence or an agreement to grant the same (as appropriate) between the Landlord and an OFTO in such form as shall be provided by the Landlord;

**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;

**Option Fee** means the sum of [ ] exclusive of Value Added Tax

**Option Notice** means written notice served by the Tenant on the Landlord within the Option Period pursuant to clause 7 signed by the Tenant requiring the grant of [a][the] Lease to take place;

**Option Period** means the period of [ ] years commencing on the date of signing of this Option Agreement by the Landlord subject to the provisions of clause 4.4;

**Parent** has the meaning given to it in Clause 21;

**Phase** means if applicable, each wind farm comprising a phase of the Development to be detailed in a Specification and Project Programme;

**Phase Site** means if applicable, the part of the Development Site as ascertained under clause 8.5 on which a Phase is to be built under any Lease but always excluding the Cable Corridor

**Phase Works** means if applicable, the part of the Specified Works applicable to any Phase

**Projected Output** means the anticipated annual electricity production of the Specified Works (or Phase Works if applicable) expressed in megawatt hours ascertained in accordance with clauses 8.5 and 8.6;

**Project Programme** means:

- (a) the Execution Project Programme; or
- (b) each Revised Project Programme;

**Project Team** means the entities involved in the delivery of the Development as identified in the Project Team Chart or any variant thereof following a Consented Change of Capability;

**Project Team Chart** means the chart showing the Project Team contained in Schedule Part 7 (*Project Team*);



**Reasonable and Prudent Developer** means a person seeking in good faith to perform its contractual obligations and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected of a skilled and experienced offshore wind farm developer complying with applicable law and engaged in the same type of undertaking and under the same or similar circumstances and conditions;

**[Renewable Energy Zone]** means an area designated pursuant to Section 84(4) of the Energy Act 2004 within which the rights to which Section 84 of the 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;]

**Requisite Net Assets** means Net Assets in excess of the sum of £100,000,000, which sum shall be increased annually by Indexation;

**Revised Project Programme** means the Project Programme as updated or amended in accordance with clause 4.1 or as delivered to the Landlord pursuant to the proper operation of clause 4.9;

**RIDDOR Reportable Incident** means a Health & Safety Incident giving rise to reporting requirement under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (as amended from time to time);

**SCDS Commitments** has the meaning ascribed to it in clause 24;

**Secretary of State** means the Secretary of State for the purposes of the Petroleum Act 1998;

**Security Document** means a guarantee or other form of credit support provided by the Tenant in a form as determined by the Landlord acting reasonably which may take the form of:

- (i) a guarantee from a guarantor, or guarantors, from an agreed Security Provider; and/or
- (ii) a letter of credit or bond from an agreed Security Provider;

and reference to Security Document shall include any permitted substitute security for the Tenant's obligations under this Agreement;

**Security Provider** means [ ] or such other bank, financial institution or other organisation approved by the Landlord (acting reasonably) having the Requisite Net Assets or an Acceptable Credit Rating providing security under any Security Document in terms of this Agreement;

**Serious Incident** means any fatal RIDDOR Reportable Incident or Health and Safety Incident which involves serious threat to life, harm or damage to the environment or property including but not limited to: vehicle or vessel collisions, structural collapses, explosions or fires, releases of flammable liquids and gases, hazardous escapes of substances;

**Spatial Proximity Check** means a search of existing and committed interests of the Landlord in the Development Site or in the vicinity of the Development Site contained in the Landlord's geographical information system;

**Specified Works** means all of the works which are required for the construction and implementation of the Tenant's Development on the Development Site (which may be parcelled and phased as part of any Phase Works if applicable);

**Specification** means the Tenant's specification of the Specified Works to be prepared pursuant to this Agreement and attached in the schedule to the Lease in its final agreed form;

**Statement of Commitment** means a statement in the form contained in Schedule Part 8 (*Statement of Commitment*)

**Supply Cables** means all Conduits, substations and ancillary equipment owned by the OFTO for the passage or transmission of electricity generated by the Specified Works or otherwise required for the operation of the Specified Works (but excluding the Generator Cables);

**VAT** means value added tax and unless otherwise expressly stated all sums payable by the Tenant under this Agreement are exclusive of VAT charged or chargeable and the Tenant shall pay such VAT in addition to and at the same time as the sum in question; and

**Working Day** means any day except Saturday Sunday and bank or other public holidays in England and Scotland.

## **2 Development Site Investigations**

2.1 In exchange for payment of the Option Fee on or prior to the date of signing of this Option Agreement by the Landlord and subject to clause 2.2 the Landlord grants to the Tenant rights to enter the Development Site to carry out such tests surveys and site investigations which do not entail the temporary or permanent installation of any works or structures on the seabed (other than required to complete environmental, geotechnical and metocean surveys for which the Tenant will have first obtained the Landlord's prior written consent which consent shall not be unreasonably withheld or delayed, but which may include reasonable conditions):

(a) for the purpose of complying with the Tenant's obligations under clauses 4 and 5; and

(b) for any other purpose reasonably required in connection with the exploration of the Development Site for the production of energy from wind

but for no other purpose save with the prior written consent of the Landlord.

2.2 The Tenant shall not exercise the rights granted under clause 2.1 unless it has first obtained all Necessary Consents for the purpose for which the rights are to be exercised and shall then only exercise the rights in accordance with such Necessary Consents.

2.3 The rights granted under clause 2.1 in respect of such part or parts of the Development Site as from time to time lie inside the Renewable Energy Zone shall not exceed the rights exercisable by virtue of any Order in Council from time to time made pursuant to section 84(4) of the Energy Act 2004 designating the Renewable Energy Zone.

2.4 The rights granted under clause 2.1 are granted subject to:

2.4.1 the public rights of navigation and fishing;

2.4.2 the matters referred to in Schedule Part 2 (*Leases and Licences*);

2.4.3 the rights of states or their nationals under rules of international law; and

2.4.4 all other servitudes, rights easements and quasi easements now exercisable over the Development Site.

2.5 The rights under clause 2.1 shall terminate on the earlier of:

2.5.1 the expiry of the Option Period or, if a valid Option Notice is served in accordance with clause 7, the Lease Commencement Date (if applicable to the extent of the relevant Phase Site only, the Lease Commencement Date of the relevant Lease); and

2.5.2 termination of this Agreement.

2.6 If the exercise of the licence granted under clause 2.1 causes any damage or disturbance to the seabed the Tenant shall restore the seabed to a safe and proper condition and in accordance with the requirements of the Landlord, any Necessary Consents and of any Authority as soon as

is reasonably practicable following that disturbance, always allowing for the presence of any equipment retained in accordance with Clause 2.8.

- 2.7 The Tenant shall notify the Landlord in writing of any lost or irretrievable equipment deployed by or on behalf of the Tenant under this clause 2, such notice to include, in so far only as the Tenant has the same, details of the location of that equipment or the last known location.
- 2.8 If the Tenant wishes to retain any temporary or permanent installation upon the Development Site after the Lease Commencement Date, it must apply to the Landlord for the grant of a suitable lease or licence of such installation (other than in the event that a Lease is granted and the equipment is included in the Specified Works). The Landlord shall act reasonably in considering any such application and shall be deemed to be acting reasonably in requiring a guarantee or other form of security for the tenant's obligation under lease or licence that, as a minimum, covers 120% of the estimated cost of decommissioning and removing the relevant installation as agreed between the Tenant and the Landlord (both acting reasonably).
- 2.9 Nothing in this clause 2 confers any right licence or privilege on the Tenant to conduct any activity (whether referred to in this clause 2 or not) on any part of Crown Estate Property outside the Development Site.

### **3 Data**

- 3.1 If the Landlord, acting in good faith, considers that it would be beneficial to the development of the offshore wind energy industry in Scotland, the Landlord may request and in which event, the Tenant shall provide, the Data to the Landlord on written request (but not more than annually) in a format which the Landlord reasonably requires.
- 3.2 The Tenant acknowledges and agrees that it has no interest or right (including copyright and database rights) in any format or database in which Data is put, stored or processed whether by the Tenant pursuant to its obligation under this clause 3 or by the Landlord or any third party.
- 3.3 The Tenant grants to the Landlord (and shall procure all necessary third party consents to enable it to do so) a perpetual royalty free non-exclusive right and licence to use and make publicly available for any purpose or in any manner or form Data provided to them pursuant to this clause 3.
- 3.4 The Landlord undertakes to the Tenant not to disclose any Data relating to wind resource provided under clause 3 to any third party for a period of three (3) years after the date on which that Data was gathered except:
  - 3.4.1 to employees of the Landlord and to government departments agencies or other government bodies and their respective employees;
  - 3.4.2 to national repositories for data provided that any such repository does not publish or distribute the Data in its entirety or only uses the Data in aggregation with other data for the production of charts or for the purposes of research and keeps the source of the Data confidential;
  - 3.4.3 as required by law or parliamentary questions;
  - 3.4.5 where, in the absolute discretion of the Landlord, disclosure is required under the Freedom of Information (Scotland) Act 2002 (FOISA), or the Environmental Regulations (Scotland) 2004 (EIRs) and the Tenant acknowledges and agrees that the Landlord may, acting in accordance with the codes of practice (Codes) issued and revised from time to time under Section 60 of the FOISA and regulation 18 of the EIRs, disclose such data either in certain circumstances as described in the Codes, without consulting the Tenant, or following consultation with the Tenant and taking its views into account in accordance with the Codes;
  - 3.4.6 in so far as already in the public domain through no fault of the Landlord;

- 3.4.7 the Option Period has expired and the Tenant has not served an Option Notice in terms of Clause 7;
- 3.4.8 this Agreement is terminated in accordance with Clause 14; or
- 3.4.7 as agreed by the Tenant;

and where disclosure is made under clause 3.4.1 or 3.4.2 the Landlord shall notify the person to whom the information is disclosed of the confidentiality of the information and shall take reasonable steps to ensure that such person observes the restrictions on disclosure in this clause 3.4

## **4 Project Programme and Management of Milestones**

- 4.1 The Tenant may from time to time update or amend the Project Programme but may not (subject as after mentioned) change or add to the Intended Installed Capacity, Milestones or Milestone Dates in it without the Landlord's prior written consent save that the Tenant may elect, by notice in writing to the Landlord to complete the Development in Phases in which event;
  - 4.1.1 any Phase must be for the development of a wind farm on the relevant Phase Site having an Intended Installed Capacity of not less than 100 megawatts;
  - 4.1.2 the Tenant shall provide the Landlord an updated Project Programme in the format contained in Table 2 contained in Schedule Part 4;
  - 4.1.3 the Milestones in such updated Project Programme may only be amended in accordance with the provisions of this clause 4;
  - 4.1.4 the updated Project Programme shall show the division of the Intended Installed Capacity for each Phase (with the aggregate total of all the Phases not being different to the Intended Installed Capacity committed at the date of signing of this Agreement); and
  - 4.1.4 any such notice must be accompanied by an updated SCDS prepared in accordance with the provisions in clause 24.2 and illustrating the impact of the proposal to construct the Development in Phases on the SCDS Commitments, the accompanying narrative explaining the calculation of the SCDS Commitments and the SCDS Outlook.
- 4.2 Subject to clause 4.3, the Tenant shall take all the actions that would be taken by a Reasonable and Prudent Developer to deliver the Project Programme and shall do so in accordance with all applicable Laws and Regulations.
- 4.3 The Tenant shall achieve or satisfy each Milestone on or before the relevant Milestone Date.
- 4.4 In the event that:
  - 4.4.1 Milestone 1 (Scoping opinion request) has not been satisfied by the date specified in the Project Programme then (subject to clause 4.4.2) the Option Period shall be reduced by the period of 2 years so that the Option Period shall be the period of [ ] years commencing on the date of signing of this Agreement by the Landlord; and/or
  - 4.4.2 Milestone 2 (Key Project Consents submission) is satisfied by the date specified in the Project Programme then, if the Option Period was reduced in terms of Clause 4.4.1, the Option Period shall be returned to be the period of *[insert original option period]* years commencing on the date of signing of this Agreement by the Landlord; and/or
  - 4.4.3 If Milestone 1 (Scoping opinion request) was satisfied by the date specified in the Project Programme but Milestone 2 is not then satisfied by the date specified in the Project Programme, the Option Period shall be reduced by the period of 2 years so that

the Option Period shall be the period of [ ] years commencing on the date of signing of this Agreement by the Landlord and/or

4.4.4 If Milestone 1 (Scoping opinion request) is missed (and the Option Period reduced in terms of clause 4.4.1) and Milestone 2 (Key Project Consents submission) is also missed then there will be no further shortening of the Option Period.

4.5 On the first Working Day after 10 January, 10 April, 10 July and 10 October in each year (commencing on the first of those dates to occur after the date of this Agreement) the Tenant shall report to the Landlord in writing on the Tenant's actions to deliver the Project Programme.

4.6 Without prejudice to clause 4.4 the report referred to in clause 4.4 shall include:

(a) a summary of the steps taken by or on behalf of the Tenant since the date of this Agreement or the date of the previous report (as appropriate) to deliver the Project Programme and achieve or satisfy the remaining Milestones;

(b) confirmation that either:

(i) the Tenant anticipates achieving the remaining Milestones by their relevant Milestone Dates, or

(ii) the Tenant will not or reasonably anticipates that it will not achieve any of the relevant Milestones by the relevant Milestone Dates

4.7 If a confirmation is made under clause 4.6(b)(ii) then the Tenant's report must include the following additional information:

(a) the duration of any anticipated delay;

(b) the Tenant's proposed alteration to any Milestone Date;

(c) the cause of the event giving rise to the proposed alteration to any Milestone Date;

(d) the consequences, if any, on any other Milestone Date of such delay; and

(e) the Tenant's proposals to address and reduce to a minimum any such delay.

4.8 If any such report shall identify any potential Milestone delay the Landlord shall confirm within twenty (20) Working Days from the date of receipt by the Landlord of the report whether or not they are willing to agree to any proposed alteration to any Milestone Date.

4.9 If the Landlord agrees (whether as a result of the operation of this clause 4 or otherwise in their absolute discretion) that there shall be amendment to one or more Milestones and/or Milestone Dates then the amended Milestones and/or Milestone Dates shall be recorded in writing by the Tenant issuing to the Landlord the Project Programme updated to reflect the amendments to Milestones and/or Milestone Dates as agreed by the Landlord. Such updated Project Programme shall be issued by the Tenant within ten (10) Working Days of the agreement or determination of the relevant amendments and shall be signed and returned by the Landlord within ten (10) Working Days of the receipt of the same by the Landlord.

4.10 If a confirmation is made under clause 4.6(b)(ii) then regardless as to whether any Milestone or Milestone Date is amended the Tenant shall adopt all steps available to it to ensure any delay is the minimum possible in the circumstances.

## **5 Consenting**

5.1 The Tenant shall:

- 5.1.1 provide such information as the Landlord shall reasonably require from time to time in respect of the progress of the applications for any Key Project Consent and shall forward a copy of any decision notice to the Landlord within five (5) Working Days of receipt by the Tenant;
- 5.1.2 use all reasonable endeavours to procure that the Key Project Consents for the Development (or for each Phase if applicable) are granted for the Development (or for each Phase if applicable) as soon as reasonably practicable after the relevant applications are submitted;
- 5.1.3 pursue any appeal proceedings (in relation to any Key Project Consent) against a refusal or onerous obligation or condition or if they are granted for less than the Intended Installed Capacity (or the Intended Installed Capacity for the first Phase if applicable) and/or any judicial review of any Key Project Consent, having first obtained leading counsel's opinion on the matter in point who in any such opinion (a copy of which is to be provided to the Landlord) determines that the Tenant has/had a better than fifty per cent (50%) chance of success in pursuing any appeal proceedings; and
- 5.1.4 not do anything which may cause any Necessary Consent for the Development which has been obtained to be modified or revoked without the consent of the Landlord (which is not to be unreasonably withheld or delayed).

## **6 Health and Safety**

### **Health and Safety – Incident Reporting**

- 6.1 The Tenant shall notify the Landlord of the following incidents occurring at the Development Site using the HSI Notification as follows:
  - (a) in relation to a non-fatal RIDDOR Reportable Incident within one (1) month; and
  - (b) in relation to a Serious Incident as soon as reasonably practicable and, in any event, within forty-eight (48) hours.
- 6.2 The Tenant shall co-operate with the Landlord's reasonable written requests for information relating to any Health and Safety Incident within two (2) Working Days, save that the Tenant shall in no event be required to disclose any documentation or other information which is subject to legal privilege.
- 6.3 In the event of a Serious Incident occurring:
  - (a) the Tenant must comply with its reporting obligations pursuant to clause 6.1(b);
  - (b) the Tenant shall notify the Landlord in the event that it proposes to release a press/public statement in connection with the same and shall provide a copy to the Landlord for information or in the event that it is not practicable to notify the Landlord in advance the Tenant shall notify the Landlord as soon as reasonably practicable following release of the press/public statement;
  - (c) the Landlord shall notify the Tenant in the event that it wishes to release a press/public statement in connection with the Serious Incident and shall provide a copy for the Tenant for information or in the event that it is not practicable to notify the Tenant in advance the Landlord shall notify the Tenant as soon as reasonably practicable following release of the press/public statement.

## **7 Option**

- 7.1 The Landlord grants to the Tenant the option and right to require the Landlord to grant to the Tenant a Lease (or Leases where the Development is to be phased) on the terms of this Agreement.

- 7.2 The Landlord and the Tenant agree that if an Option Notice is served in accordance with this clause 7 the Landlord (subject to clauses 14 and 15.1) shall grant and the Tenant shall accept a Lease on the terms of this Agreement.
- 7.3 An Option Notice shall only be valid if:
- 7.3.1 The Landlord has accepted the CPS (as defined in clause 24.1), for the relevant Phase if applicable, in accordance with clause 24.3;
  - 7.3.2 The Lowest Percentage Achievement figure as determined in accordance with clause 24.4 is 25% or greater;
  - 7.3.3 any CPS Payment due by the Tenant, together with all, if any, VAT thereon, has been paid in full by the Tenant;
  - 7.3.4 any Disposal Premium due by the Tenant, together with all, if any, VAT thereon, has been paid in full by the Tenant and/or the Landlord is satisfied that no transaction in respect of which a Disposal Premium, or further Disposal Premium, should have been paid has occurred;
  - 7.3.5 it specifies the part of the Development Site (including the co-ordinates to complete Schedule Part 6 (*Co-ordinates*) of the Lease) to be the premises to be leased under the relevant Lease as approved by the Landlord in accordance with clause 8;
  - 7.3.6 if applicable, specifies that area of the Cable Route (including the co-ordinates to complete Schedule Part 6 (*Co-ordinates*) of the Lease) to form the Cable Corridor to which rights will be granted in the Lease as approved by the Landlord in accordance with clause 8;
  - 7.3.7 the capacity density (expressed in megawatts per square kilometre) of the area to be the premises leased under the Lease is not less than 3 megawatts per square kilometre (save where agreed in writing with the Landlord prior to service of the Option Notice);
  - 7.3.8 the capacity of the Development (or the relevant Phase if applicable) results in a capacity density expressed in megawatts per square kilometre calculated for the whole Development Site of equal to or more than 1 megawatt per square kilometre (save where (i) agreed in writing with the Landlord prior to service of the Option Notice or (ii) where the Development Site is equal to or greater than 500 square kilometres, the capacity of the Development (or the relevant Phase if applicable) is at least 500 megawatts);
  - 7.3.9 the Key Project Consents granted for the Development (or the relevant Phase if applicable) permit the development of a wind farm on the premises to be leased under the Lease with a capacity of not less than 100 megawatts;
  - 7.3.10 is served after the Necessary Consents Date (for the relevant Phase if applicable) has been reached;
  - 7.3.11 is served after the Tenant has obtained confirmation that the insurances described in clause 3.13 of the Lease will be in force on the Commencement Date;
  - 7.3.12 is served after the Landlord has approved the Specification and the premises to be leased under the Lease (for the relevant Phase if applicable) in accordance with clause 8;
  - 7.3.13 is served after the Landlord has approved the identity of the entity to be the tenant under the Lease and, where the agreed tenant does not have an Acceptable Covenant (as defined in the Lease) in the reasonable opinion of the Landlord, is served after the Landlord has approved any proposed Security Document and Security Provider (for the avoidance of doubt, for the purposes of this clause 7.3.12, as such terms are defined in the Lease);
  - 7.3.14 if applicable, is served after a Non-Statutory Decommissioning Programme has been agreed with the Landlord in terms of clause 8;

- 7.3.15 is served upon the Landlord at the address stipulated in clause 25; and
- 7.3.16 is received (or deemed received in accordance with clause 25.3) by the Landlord within the Option Period (time being of the essence).
- 7.4 If the Landlord has not received a valid Option Notice from the Tenant by the expiry of the Option Period (time being of the essence) then the provisions of clause 14.1 shall apply.
- 7.5 For the avoidance of doubt the Tenant may serve more than one Option Notice where the Development is to be phased.

## **8 Specification, Non-Statutory Decommissioning Programme, Premises, Cable Corridor and Projected Output**

### **Specification**

- 8.1 If applicable, where the Specified Works are to be developed by the Tenant in Phases, a Specification shall be prepared in sections relating to each Phase, each of which can be referred to in isolation from the others and to be used as the "Specification" under the relevant Lease.

The Tenant shall be responsible for the preparation of the Specification. Any Specification prepared by the Tenant shall:

- 8.1.1 include details of the number of wind turbine generators, cables between them, substation(s), energy storage equipment and supporting platforms and structures, and ancillary structures comprising the Development or the relevant Phase (as relevant);
- 8.1.2 include a layout drawing showing, in particular, the distance between the centre of the tower of each wind turbine generator; and
- 8.1.3 include details of scour protection materials, anemometry equipment, Generator Cables, Supply Cables and other Conduits to be installed as part of the Development;

and shall be submitted (in a form acceptable to the Landlord (acting reasonably)) to the Landlord for approval, as soon as reasonably practicable after the Necessary Consents Date for the relevant Phase (if applicable) but in any event not less than 2 months prior to the expiry of the Option Period. The Landlord shall be entitled to refuse their approval of the Specification where the capacity of the Development is less than the Intended Installed Capacity (or for each relevant Phase if applicable).

### **Non-Statutory Decommissioning Programme**

- 8.2 In addition the Tenant shall submit to the Landlord for approval, their proposed Non-Statutory Decommissioning Programme (in a form provided by the Landlord) for decommissioning activities for the removal of any equipment detailed in the Specification to be installed by the Tenant on Crown Estate Property (for the relevant Phase if applicable) and which does not fall within any Statutory Decommissioning Programme (as defined in the Lease).
- 8.3 The Landlord shall not unreasonably withhold or delay approval of the Specification and the Non-Statutory Decommissioning Programme.
- 8.4 As soon as practicable after the approval of the Specification and the Non-Statutory Decommissioning Programme by the Landlord in accordance with Clauses 8.1 and 8.2, the Landlord and the Tenant shall use all reasonable endeavours to agree a reasonable estimate of the cost of the Tenant fully complying with its decommissioning obligations under the Non-Statutory Decommissioning Programme (for the relevant Phase if applicable). In the event of dispute as to such sum either party may refer the matter for determination by a mutually agreed



independent surveyor, or, failing agreement, who shall be appointed by the chairman of the Royal Institute of Chartered Surveyors on the application of either party.

### **Projected Output**

- 8.5 The following provisions shall apply to the determination of the Projected Output:
- 8.5.1 promptly following a written request to do so from the Landlord the Tenant shall provide to the Landlord such reasonable evidence and analysis of that evidence as the Landlord reasonably require of the Projected Output for the Development or the relevant Phase (as relevant);
- 8.5.2 if the Tenant produces to the Landlord an independent assessment of the Projected Output for the Development (or the relevant Phase (as relevant)) which has bona fide satisfied its Funders then the Tenant shall not be required under this clause 8 to obtain further analysis of the evidence of Projected Output;
- 8.5.3 clause 8.5.2 is without prejudice to the Landlord's right to require the production of further evidence and/or to require the Projected Output for the Development (or the relevant Phase (as relevant)) to be determined under clause 8.5.4; and
- 8.5.4 any difference arising between the Landlord and the Tenant as to the Projected Output for the Development (or the relevant Phase (as relevant)) may be referred by either the Landlord or the Tenant on notice to the other for determination by an independent electrical engineer (the "Expert Engineer") acting as an expert and who shall be nominated by the Landlord and approved by the Tenant (such approval not to be unreasonably withheld) or in default of agreement be nominated by the President of the Institution of Engineering and Technology or other acting chief officer for the time being on the application of either the Landlord or the Tenant.
- 8.6 If there is any dispute or matter in this Agreement expressed to be referable to an Expert Engineer for determination:
- 8.6.1 the relevant Expert Engineer 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 twenty (20) Working 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;
- 8.6.2 the costs of the reference to the relevant Expert Engineer and of his determination (including his own fees and expenses the fees and expenses of any other professional consulted in accordance with clause 8.6.3 and the costs of the Landlord and the Tenant) shall lie in his award;
- 8.6.3 the relevant Expert Engineer 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;
- 8.6.4 the relevant Expert Engineer shall be required to give reasons for his decision and his decision will be final and binding save in case of manifest error; and
- 8.6.5 if the relevant Expert Engineer 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.

### **Premises**

- 8.7 The premises to be leased under any Lease shall be the part of the Development Site upon which Specified Works (for the relevant Phase if applicable) are to be located and shall be

proposed by the Tenant and submitted to the Landlord for approval (such approval not to be unreasonably withheld or delayed)) as soon as reasonably practicable after approval of the Specification and the premises to be leased shall not include any part of the seabed which is not comprised within the Development Site or the subject of a prior lease granted.

### **Cable Route**

- 8.8 The Tenant may by notice in writing to the Landlord, request the Landlord's approval (such approval not to be unreasonably withheld or delayed) of their proposed Cable Route (for the relevant Phase if applicable) which shall be an area of seabed commensurate with the Development extending from the Development Site to the shore. The Landlord's approval of any proposed Cable Route shall be in writing and shall:
- 8.8.1 include a plan of the approved Cable Route; and
- 8.8.2 include details of any additional licences and leases granted by the Landlord to be added to Schedule Part 1 (*Rights*) to the Lease.

### **Cable Corridor**

- 8.9 Save where an OFTO Agreement has been granted in respect of a Cable Route (for the relevant Phase if applicable) in which case the terms of that OFTO Agreement shall apply, the Tenant may by notice in writing to the Landlord, request the Landlord's approval (such approval not to be unreasonably withheld or delayed) of their proposed Cable Corridor (for the relevant Phase if applicable) which shall be an area of seabed within the Cable Route to form the Cable Corridor for the purposes of any Lease. The Landlord's approval of any proposed Cable Corridor shall be in writing and shall:
- 8.9.1 include a plan of the approved Cable Corridor; and
- 8.9.2 include details of any additional licences and leases granted by the Landlord to be added to Schedule Part 1 (*Rights*) to the Lease.

## **9 Title**

- 9.1 The Tenant shall admit and accept without requisition or enquiry the Landlord's title to grant the Lease and no title guarantee will be given. The Tenant acknowledges that the Landlord have no recorded or registered title to the seabed. The Tenant acknowledges that when (if applicable) the Tenant applies to register the Lease in the Land Register of Scotland the Keeper may qualify his indemnity statement in the Land Certificate in terms of Section 12(2) of the Land Registration (Scotland) Act 1979 and the Tenant shall accept any such qualification in such terms as the Keeper may determine.
- 9.2 The Lease (or Leases if applicable) will be granted subject to the matters referred to in clause 2.4 of the Lease, clause 15 of this Agreement and Schedule Part 2 (*Leases and Licences*) to this Agreement.

## **10 Grant of a Lease**

- 10.1 This clause 10 shall take effect upon the service of a valid Option Notice (or each time a Valid Notice is served if the Development is to be phased) in accordance with clause 7.
- 10.2 The Landlord shall procure that its solicitors prepare the engrossments of any Lease (in duplicate) and deliver them to the Tenant or its solicitors. Within fifteen (15) Working Days of receipt the Tenant shall execute the Lease (in duplicate) and deliver both copies validly executed to the Landlord. Within fifteen (15) Working Days thereafter the Landlord shall execute both copies of the Lease and deliver one executed copy to the Tenant or its solicitors.

- 10.3 The Landlord and the Tenant agree that the Lease will commence on the Lease Commencement Date (or such other date as may be agreed in writing between the parties).
- 10.4 The terms of any Lease shall be those contained in the Lease as completed in accordance with this Agreement. Until such time as any Lease is fully and validly executed by the parties thereto each of the parties shall be bound by the whole obligations and conditions of the Lease from the Lease Commencement Date notwithstanding that the Lease has not been fully executed by the parties.
- 10.5 The Commencement Date (as defined in the Lease) shall be the Lease Commencement Date and the blank space in each Lease shall be completed accordingly.
- 10.6 The Specified Works (as defined in the Lease) shall be the Specified Works (or Phase Works if applicable) under this Agreement and the definition of Specified Works in each Lease shall be completed accordingly.
- 10.7 Schedule Part 3 of the Lease shall contain the matters listed in Schedule Part 2 (*Leases and Licences*) and such other matters as are added pursuant to clause 15.
- 10.8 The Landlord shall produce a Land Register compliant plan (showing the area over which rights are granted under clause 8.2) to attach to the Lease.
- 10.9 The Specification (as defined in the Lease) shall be the Specification prepared in accordance with this Agreement of the Specified Works (or Phase Works if applicable).
- 10.10 Details of the centre line of the area of seabed in which any Cable Corridor will be located, shall be inserted in the definition of Cable Corridor contained in the Lease;
- 10.11 If the Tenant does not have an Acceptable Credit Rating or the Requisite Net Assets the Tenant will deliver, on or prior to the Lease Commencement Date, to the Landlord a validly executed Security Document in a form and from a Security Provider approved by the Landlord (acting reasonably) together with, where the Security Provider is not incorporated in the United Kingdom, a legal opinion letter from a firm of solicitors practising in the jurisdiction of the Security Provider addressed to and approved by the Landlord (acting reasonably).
- 10.12 On the grant of the Lease of any Phase the premises leased under any such Lease shall no longer form part of the Development Site.

## **11 Insurance**

- 11.1 The Tenant shall effect and maintain third party and public liability insurance (including pollution cover, property damage, bodily injury and death resulting from sudden or unforeseen physical loss or damage, including any resultant pollution or contamination) in respect of the Development Site and the grant of any rights under Clause 2.1, in the sum of TWENTY FIVE MILLION POUNDS (£25,000,000), with a reputable insurer (the identity of which has been intimated to the Landlord) in respect of each and every claim (except for pollution and product cover which may be on an annual aggregate basis if unavailable on an each and every claim basis) and naming the Landlord as co-insured. Such insurance shall include without limitation removal of any vessel wreckage.
- 11.2 The Tenant shall at the request of the Landlord from time to time produce to the Landlord a copy of or full details of the insurance policy required by this clause 11 and satisfactory evidence of the payment of the premiums.
- 11.3 The Tenant shall observe and perform the terms of any insurance policy effected pursuant this clause 11 and all requirements from time to time of the insurers.
- 11.4 The Tenant shall not 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.

- 11.5 The Tenant shall not make any material alteration to the terms of any insurance policy which would result in such insurance no longer meeting the requirements of this clause 11 without the prior written consent of the Landlord.
- 11.6 If the Tenant fails to effect and keep in force the insurance it is required to effect and maintain under this clause 11 the Landlord may (at their option and without prejudice to any other right or remedy) effect and maintain the insurance and pay the premiums due. The Tenant shall pay the amount of the premiums (and any other costs associated with the Landlord effecting the insurance) to the Landlord immediately on demand.
- 11.7 From the date of the grant of the Lease, the provisions in the Lease for insurance shall apply.

## **12 Covenant Test**

- 12.1 On each anniversary of the date of this Agreement and at any other time within fifteen (15) Working Days of written request by the Landlord, the Tenant shall deliver evidence in a form satisfactory to the Landlord (acting reasonably) that the Tenant or, if applicable, the Security Provider (or, if there is more than one entity comprised in the Security Provider, all the entities comprised in the Security Provider) continues to have an Acceptable Credit Rating or, in the case of the Tenant or a Security Provider without an Acceptable Credit Rating, has the Requisite Net Assets evidenced in accordance with Clause 12.2.
- 12.2 In the case of any confirmation that the Tenant or a Security Provider has the Requisite Net Asset the Net Assets of the Tenant or Security Provider shall be evidenced by:
- 12.2.1 the provision of audited accounts in English in respect of the annual accounting period of the Tenant or Security Provider to be filed at Companies House or its equivalent in any other jurisdiction outside the United Kingdom where the Tenant or Security Provider files its audited report and accounts; or
- 12.2.2 the provision to the Landlord within fifteen (15) Working Days of 31 March and 30 September in each year of the unaudited balance sheet of the Tenant or the Security Provider certified by a person authorised by a director of the Tenant or the Security Provider as to fairly representing its financial condition as at the relevant quarter day.
- 12.3 If:
- 12.3.1 any Security Document ceases to be valid, binding or enforceable for any reason; or
- 12.3.2 the Tenant is unable to provide evidence to the Landlord that the Tenant or the Security Provider continues to have an Acceptable Credit Rating or, in the case of the Tenant or a Security Provider without an Acceptable Credit Rating, has the Requisite Net Assets evidenced in accordance with Clause 12.2; or
- 12.3.3 the Tenant wishes to replace the Security Document or Security Provider;
- then the Tenant shall propose a replacement Security Provider or alternative security arrangement. Subject to the prior approval of the Landlord to any proposed replacement Security Provider or alternative security arrangement (which in the case of a replacement guarantor shall not be unreasonably withheld where the replacement guarantor has an Acceptable Credit Rating or the Requisite Net Assets evidenced in accordance with Clause 12.2) then if an executed deed in such form as the Landlord shall reasonably require is provided to the Landlord within fifteen (15) Working Days of the relevant event the Landlord shall accept the proposed replacement Security Provider as the Security Provider in respect of this Agreement or the alternative security arrangement as the security for the performance of the Tenant's obligations in this Agreement.

## 13 Indemnity

- 13.1 The Tenant shall indemnify and keep the Landlord indemnified from and against all actions proceedings claims and demands brought or made and all proper costs and expenses (including reasonable legal fees and expenses) and all losses damage and liabilities incurred suffered or arising directly or indirectly in connection with:
- 13.1.1 the existence of any test survey or site investigation equipment deployed by or on behalf of the Tenant under clause 2 (including without limitation any such equipment that is lost or irretrievable);
- 13.1.2 the exercise of the licence given under clause 2.1;
- 13.1.3 any breach of the Tenant's obligations under clause 2;
- except to the extent that any such actions proceedings claims and demands are brought or made or loss damage costs expenses and liabilities are incurred or suffered as a result of the default or negligence of the Landlord or their servants agents and contractors and/or amount to loss of profit loss of opportunity loss of revenue loss of use loss of contracts and/or any indirect or consequential damages or losses of the Landlord and subject in the case of any loss of the Landlord to the Landlord taking such reasonable steps to mitigate the loss as the Tenant may reasonably request.
- 13.2 Subject to clause 13.3 the Tenant's liability to the Landlord in respect of the indemnities set out in clauses 13.1.1 to 13.1.3 (inclusive) shall not exceed £5,000,000, as increased by Indexation, in the aggregate.
- 13.3 Notwithstanding clause 13.2 the Tenant's liability to the Landlord in respect of the following shall not be limited in any way by:
- 13.3.1 death or personal injury caused by the Tenant's negligence, or that of its directors, officers, employees, advisors, agents, consultants or contractors (including sub-contractors); or
- 13.3.2 fraud or fraudulent misrepresentation by the Tenant or its officers or employees; or
- 13.3.3 any liability which cannot be excluded or limited by any Laws and Regulations; or
- 13.3.4 any liability which is covered by any insurance required under clause 11 (*Insurance*) (or would have been so covered but for any breach of clause 11 (*Insurance*)).

## 14 Termination

- 14.1 The Landlord may terminate this Agreement by written notice to the Tenant in any of the following circumstances (each of which shall be an **Event of Default**):
- 14.1.1 any representation or warranty of the Tenant to the Landlord whether given in terms of this Agreement or related to the grant of this Agreement, is proven to be false or materially misleading at the time it was made;
- 14.1.2 the Tenant materially fails to perform or observe any of its obligations in this Agreement and such failure or event is incapable of remedy or it is capable of remedy and the Landlord has served on the Tenant written notice specifying the failure or event and requiring it to be remedied within a reasonable time (to be specified in the notice and taking into account the nature of the obligation in question) and the Tenant has failed so to do;
- 14.1.3 the Tenant fails to serve a valid Option Notice within the Option Period;
- 14.1.4 the Tenant or any guarantor under any Security Document provided in terms of this Agreement, is in breach of any obligation under any such Security Document and such failure or event is

incapable of remedy or it is capable of remedy and the Landlord has served on the Tenant or any guarantor under any Security Document written notice specifying the failure or event and requiring it to be remedied within a reasonable time (to be specified in the notice and taking into account the nature of the obligation in question) and the Tenant or any guarantor under any Security Document has failed so to do

- 14.1.5 any Security Provider ceases to hold an Acceptable Credit Rating or the Requisite Net Assets and the Tenant has not procured a replacement Security Document in accordance with clause 12 within thirty (30) Working Days;
- 14.1.6 there is a Change of Control (which is not a Consented Change of Control);
- 14.1.7 there is a change in the Project Team (which is not a Consented Change of Capability);
- 14.1.8 there is a Disposal during the Disposal Period (as each such expression is defined in Schedule Part 9 (*Disposal Premium*) and any Disposal Premium due during the Option Period has not been paid in accordance with the provisions of Schedule Part 9 (*Disposal Premium*);
- 14.1.9 the Tenant, or any person employed by or acting on behalf of the Tenant (whether or not with the Tenant's knowledge), has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing any action in relation to the obtaining or complying with the Tenant's obligations under this Agreement or any other contract with the Landlord or in endeavouring to procure the grant of the Lease; or
- 14.1.10 an Insolvency Event occurs in respect of the Tenant or any Security Provider.
- 14.2.1 The Tenant may terminate this Agreement at any time prior to the Necessary Consents Date (or the Necessary Consents Date for the first Phase if applicable) following service and acceptance by the Landlord of written notice provided that it first demonstrates (in a manner satisfactory to the Landlord) that:
  - (a) the Development is no longer technically or environmentally viable or no longer viable on other reasonable grounds (as approved by the Landlord (acting reasonably)) by setting out cogent written evidence of its reasons; and
  - (b) the Tenant has specified what factors or requirements whether or not arising from its searches, tests and measurements carried out pursuant to this Agreement have varied or altered in a detrimental manner the information provided to the Landlord prior to the date of this Agreement.
- 14.2.2 The Landlord will consider all such written material as is provided for by the Tenant pursuant to clause 14.2.1 to establish whether or not the Development is viable and shall be entitled to request further information or responses to queries as they see fit from time to time before providing their response.
- 14.2.5 The Landlord shall seek to respond within twenty (20) Working Days of receiving all the information it requires from the Project Company under clause 14.2.2.
- 14.2.5 Following the Landlord's response and so long as the Landlord (acting reasonably) accept that the Development is no longer viable, the Tenant may terminate this Agreement
- 14.3 If this Agreement is terminated under this clause 14 (or this clause 14.3 is applied by clauses, 7.44 or 15.1) then:
  - 14.3.1 this Agreement shall cease to have effect but without prejudice to:
    - (a) the rights and remedies in respect of any antecedent breach by either party to this Agreement; and

(b) clauses 2.6, 3, 5.1.4, 13 and this clause 14 which shall remain in full force and effect.

- 14.3.2 if so required by the Landlord at any time the Tenant shall use reasonable endeavours (subject to reimbursement of its reasonable costs of so doing) to procure that any Necessary Consent for the Development (including any Necessary Consent for tests surveys and site investigations pursuant to clauses 2.1 and 2.2) and its operation and use (which does not automatically enure for the benefit of the land) is transferred (in so far as it is transferable) to or reissued or amended so as to be in favour of any person to whom the Landlord grant a lease or agreement for lease of the whole or part of the Development Site (but this clause 14 shall not apply to any such Necessary Consent that solely and independently relates to a Phase in respect of which a Lease has been granted prior to the termination of this Agreement pursuant to this clause 14.3).

## **15 Dealings affecting Development Site and adjacent areas**

- 15.1 Prior to an Option Notice being served the Landlord may at any time and from time to time terminate this Agreement in respect of the Development Site (or any Phase Site if applicable) any part or parts of it by giving prior written notice to the Tenant specifying the Development Site or Phase Site or part or parts of it or them in respect of which the notice is given provided that:
- 15.1.1 the Landlord shall not give notice under this clause 15.1 unless the Secretary of State has requested the Landlord to terminate this Agreement in respect of the Development Site [or Phase Site] or the part or parts of it specified in the notice because the Development Site [or Phase Site] or the part or parts of it specified in the notice are required for Oil and Gas Works or rights are required over the Development Site or Phase Site or the part or parts of it specified in the notice for Oil and Gas Works; and
- 15.1.2 if notice is given under this clause 15.1, clause 14.3 shall apply in respect of the Development Site or Phase Site or part or parts of it specified in the notice but without prejudice to the continuing operation of this Agreement in respect of the remainder of the Development Site or Phase Site (if any).
- 15.2 Schedule Part 2 (*Leases and Licences*) contains details of the results of the Spatial Proximity Check for the Development Site but no representation or warranty is made or given by the Landlord as to the accuracy of the results of the Spatial Proximity Check and the Tenant acknowledges and agrees that it will rely on its own information and surveys as to the laid position of matters referred to in Schedule Part 2 (*Leases and Licences*) and will place no reliance on the results of the Spatial Proximity Check which is provided for information only.
- 15.3 The Landlord shall not grant any rights, licence, consents or lease over all or any part of the Development Site to any other party save as permitted in terms of the Lease.
- 15.4 Nothing in this clause 15 shall prevent the Landlord from complying with any obligations of the Landlord in respect of any matter disclosed in Schedule Part 2 (*Licences and Leases*) and no grants thereunder shall be a breach of or affect the terms of this Agreement.

## **16 Alienation, Change of Control, Change of Capability and Change of Beneficial Ownership of Tenant**

### **Alienation**

- 16.1 The Tenant shall not assign or in any way deal or part with this Agreement or any interest under it without the Landlord's prior written consent which may not be unreasonably withheld or delayed provided that:
- 16.1.1 the Landlord shall not be regarded as unreasonably withholding their consent if they withhold it on the ground of any of the circumstances set out in clause 16.2;

- 16.1.2 the Landlord shall not be regarded as giving their consent subject to unreasonable conditions if they give their consent subject to any of the conditions set out in clause 16.3; and
- 16.1.3 the provisos in clauses 16.1.1 and 16.1.2 shall operate without prejudice to the entitlement of the Landlord to withhold their 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.
- 16.2 The circumstances referred to in clause 16.1.1 are:
- 16.2.1 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 Agreement and under the Lease and a valid Security Document is not agreed to be provided to the Landlord from an agreed Security Provider; and
- 16.2.2 the proposed assignee is not resident in the United Kingdom or in a jurisdiction where reciprocal enforcement of judgements exists.
- 16.3 The conditions referred to in clause 16.1.2 are:
- 16.3.1 prior to the assignment the Tenant pays all arrears of sums made payable under this Agreement;
- 16.3.2 the proposed assignee formally undertakes to the Landlord in such form as the Landlord may reasonably require to observe and perform the obligations of the Tenant under this Agreement;
- 16.3.3 where the proposed assignee is not incorporated in the United Kingdom 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 the United Kingdom for notices under this Agreement and the Lease and proceedings with solicitors or other agents approved by the Landlord (acting reasonably);
- 16.3.4 if the assignment or other dealing is a Disposal of Option Rights during the Disposal Period, the Landlord is satisfied that any Disposal Premium due has been or will be paid to the Landlord timeously in accordance the provisions of Schedule Part 9 (*Disposal Premium*); and
- 16.3.5 that any Necessary Consents for the installation and operation of the Development (and any tests surveys site investigations pursuant to clauses 2.1 and 2.2) which have been granted are transferred replaced or granted to the proposed assignee on or before completion of the proposed assignment.

#### **Change of Control**

- 16.4 Any Change of Control (other than an Intra Group Reorganisation which has been notified to the Landlord in writing) of the Tenant is prohibited without the Landlord's prior written consent which shall not be unreasonably withheld or delayed. In deciding whether or not to grant their consent the Landlord shall have regard to the following factors (considered individually and collectively):
- 16.4.1 the impact of the Change of Control on the ability of the Tenant to timeously and safely progress the Development and the ability of the Tenant to comply with its obligations under this Option Agreement in a timely and safe manner;
- 16.4.2 the selection process and factors taken into account by the Landlord in deciding to award the Option Agreement to the Tenant, including any special factors attributable to any shareholder whose ownership share of the Tenant will be reduced as a result of the Change of Control;
- 16.4.3 the impact of the Change of Control on the financial resources available to the Tenant to enable it enable it to perform its obligations under this Option Agreement;



- 16.4.4 whether the Change of Control would have an adverse effect on the capacity of the Tenant or otherwise available to the Tenant to enable it to perform its obligations under this Option Agreement;
- 16.4.5 whether the Change of Control would have an adverse effect on the experience and capability of the Tenant or otherwise available to the Tenant to enable it to perform its obligations under this Option Agreement
- 16.4.6 whether the Tenant is in breach of its obligations under this Option Agreement or any ancillary documents thereto;
- 16.4.7 that the entity taking on Control has delivered a Statement of Commitment to the Landlord validly signed by an officer of the relevant entity;
- 16.4.8 if the Change of Control results in a change in the direct or indirect legal or beneficial ownership of the Tenant or any Parent during the Disposal Period, that the Landlord is satisfied that any Disposal Premium due has been or will be paid to the Landlord timeously in accordance with the provisions of Schedule Part 9 (*Disposal Premium*); and
- 16.4.9 such other material factors (not specified above) that may reasonably appear to the Landlord or are identified by the Tenant to be relevant at the time which may positively or negatively impact on the Landlord's assessment as to whether or not to grant consent to the Change of Control.

#### **Change of Capability**

- 16.5 Any change in the Project Team is prohibited without the Landlord's prior written consent which shall not be unreasonably withheld or delayed. The Landlord shall not be unreasonably withholding their consent where the Landlord considers (acting reasonably) that the proposed change may have a materially adverse effect on the Tenant's ability to timeously and safely progress the Development and comply with its obligations under this Option Agreement considering the following factors (considered individually and/or collectively):
  - 16.5.1 the selection process and factors taken into account by the Landlord in deciding to award the Option Agreement to the Tenant, including any special factors attributable to any relevant Project Team member;
  - 16.5.2 the financial resources available to the Tenant;
  - 16.5.3 the experience and capability of the Tenant and the Project Team (considered before and after the proposed change);
  - 16.5.4 whether the Tenant is in breach of its obligations under this Option Agreement or any ancillary documents thereto;
  - 16.5.5 that any proposed new member of the Project Team has delivered a Statement of Commitment to the Landlord validly signed by an officer of any such proposed new member;
  - 16.5.6 if the Change of Capability results in a change in the direct or indirect legal or beneficial ownership of the Tenant or any Parent during the Disposal Period, that the Landlord is satisfied that any Disposal Premium due has been or will be paid to the Landlord timeously in accordance with the provisions of Schedule Part 9 (*Disposal Premium*); and
  - 16.5.7 such other material factors (not specified above) that may reasonably appear to the Landlord or are identified by the Tenant to be relevant at the time which may positively or negatively impact on the Landlord's assessment as to whether or not to grant consent to the proposed change in the Project Team.

## **Change of beneficial ownership of Tenant**

- 16.6.1 Save as provided in Clause 16.6.2, there shall be no change in the direct or indirect legal or beneficial ownership of the Tenant or any Parent as described in Clause 21.1 during the Disposal Period, whether by transfer or disposal of any interest in the shares of the Tenant or any Parent, or the issuance of any new shares in the Tenant or any Parent or otherwise, unless the Landlord is satisfied that any Disposal Premium has been or will be paid timeously in accordance with the provisions of Schedule Part 9 (*Disposal Premium*).
- 16.6.2 During the Disposal Period any intragroup reorganisation of the direct or indirect shareholders of the Tenant or any Parent from that described in 21.1 which does not result in a Change of Control shall be permitted without the requirement to pay any Disposal Premium with the prior written consent of the Landlord (such consent not to be unreasonably withheld or delayed) provided that the Landlord shall be deemed to be acting reasonably in withholding consent if they are satisfied that:
- (i) the object any such any intragroup reorganisation of the direct or indirect shareholders of the Tenant or any Parent is to avoid the requirements of Clause 16.6.1, the payment of any Disposal Premium or any other requirements or obligations under this Agreement; or
  - (ii) any such intragroup reorganisation of the direct or indirect shareholders of the Tenant or any Parent results in a Change of Capability to which they would not grant consent in terms of Clause 16.5.
- 16.6.3 The Tenant shall notify the Landlord promptly upon forming any intention (or becoming aware of any direct or indirect shareholders' intention) to take any action to transfer any shares in or dispose of any direct or indirect interest in the Tenant or any of the Parents.

## **17 Dispute Resolution**

- 17.1 If any dispute or difference arises in connection with this Agreement, directors or other senior representatives of the Landlord and the Tenant with authority to settle the dispute will, within ten (10) Working Days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- 17.2 If the dispute or difference is not resolved within ten (10) Working Days of such meeting the dispute shall be referred to the courts of Scotland in accordance with clause 27.2.

## **18 Miscellaneous**

- 18.1 This Agreement is not to operate or be deemed to operate as a lease of the Development Site or a grant of the Rights.
- 18.2 The Tenant shall subject to receipt of a valid VAT invoice pay to the Landlord VAT at the appropriate rate on all payments due to the Landlord under this Agreement.
- 18.3 This Agreement incorporates the entire contract between the parties and the Tenant acknowledges that it has not entered into this Agreement in reliance on any statement or representations made to the Tenant by or on behalf of the Landlord.
- 18.4 Any instalment of any sum due from the Tenant to the Landlord under this Agreement which is not paid when it is due (or within any period specifically allowed by this Agreement) shall bear interest at the rate set out in clause 3.1.3 of the Lease for the period from (but not including) the date when it fell due to the date of payment.
- 18.5 It is not intended that any third party shall be entitled to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) (Scotland) Act 2017.

## 19 Indexation

- 19.1 Where in this Agreement an amount is stated to be increased by **Indexation** or is to be **Indexed** the amount shall be that amount annually, on each anniversary of the date of signing of this Option Agreement (save where provided otherwise), multiplied by  $(CPI1 \div CPI2)$ , where:

**CPI1** is the higher of:

- (a) the value of the Index published in respect of the month two (2) months prior to the relevant calculation date; and
- (b) the highest value of the index published after the date of this Agreement; and

**CPI2** is [●] *[Note: Base Index figure immediately prior to execution to be inserted on execution.]*

- 19.2 If the reference base used to compile the Index changes after the date of this Agreement the figure taken to be shown in the Index after the change is to be the figure that would have been shown in the Index if the reference base current at the date of this Agreement had been retained.
- 19.3 If after the date of this Agreement:
- 19.3.1 the Index ceases to be published; or
- 19.3.2 it otherwise becomes impossible to operate the formula in clause 19.1 by reference to the Index

the Landlord and Tenant shall consult together with a view to agreeing an alternative index or method of adjusting the amounts stated to Indexed which as closely as possible gives effect to the purpose and intent of the parties as set out in this Agreement but in the event of any failure to agree or if any other dispute or difference arises between the Landlord and Tenant with respect to the calculation of the amounts stated to Indexed either party may require the matter to be determined by an arbitrator (to act as an arbitrator under the Arbitration Act 1996) to be appointed either by agreement between the parties or, in the absence of agreement, by the President of the Royal Institution of Chartered Surveyors (or the next senior officer).

## 20 OFTO Agreements

If applicable, following a Cable Route being approved by the Landlord in terms of Clause 8 (for the relevant Phase if applicable), the Landlord shall enter into an OFTO Agreement with an OFTO to permit the installation, laying, maintenance and operation of the Supply Cables, subject to such terms and conditions reasonably required by the Landlord and provided that the use permitted by the OFTO Agreement is consistent with all other current and future uses of the seabed the subject of the OFTO Agreement.

## 21 Representations and Warranties

- 21.1 The Tenant represents and warrants that its direct and indirect legal and beneficial ownership up to and including its ultimate owning entity or entities is as follows:

***[Insert Corporate Structure Diagram]***

For the purposes of this Agreement the term “**Parent**” means *[to be assessed once corporate structure charts are provided]*

- 21.2 On the date of this Agreement, and on the date on which the Lease is entered into, each party represents and warrants as regards itself that:

- 21.2.1 it has full power and authority to enter into and perform all its obligations under this Agreement in accordance with its terms;
- 21.2.2 this Agreement constitutes legal, valid and binding obligations enforceable against it in accordance with its terms;
- 21.2.3 the entry into and performance by it of its obligations under this Agreement have been duly authorised by all necessary corporate actions on the part of such party;
- 21.2.4 neither the entry into this Agreement nor the implementation of the obligations and transactions contemplated by them will result in:
- (a) a violation or breach of any provision of its statutes, by-laws or other constitutional documents;
  - (b) a breach of, or a default under, any contract or other agreement to which it is a party or by which it is bound; or
  - (c) a violation or breach of any applicable laws or regulations or of any order, decree or judgment of any court, governmental agency or regulatory authority applicable to it or any of its assets; and
- 21.2.5 no consent, authorisation, licence or approval of any governmental, administrative, judicial or regulatory body, authority or organisation is required to authorise the execution, validity, enforceability or admissibility in evidence of this Agreement, or the performance by it of its obligations under this Agreement.
- 21.3 On the date of this Agreement, and on the date on which the Lease is entered into, the Tenant represents and warrants that:
- 21.3.1 it is duly incorporated and in existence;
- 21.3.2 there is no litigation, dispute, arbitration or administrative proceedings current, pending or (in so far as it is aware) threatened against it;
- 21.3.3 no Event of Default (or event which with the giving of notice or the passing of time may become an Event of Default) has occurred in respect of the Tenant; and
- 21.3.4 it has complied with all applicable Laws and Regulations
- 21.3.5 any information provided to the Landlord which has been relied upon by the Landlord in connection with the grant of this Agreement to the Tenant is true and accurate in all respects.
- 21.3.6 The Tenant shall comply and use all reasonable endeavours to ensure that any of their or any person employed by or acting on behalf of the Tenant or any of their representatives comply, whether with or without the knowledge of the Tenant, with all the requirements of the Bribery Act 2010 and any form of Guidance issued in respect of the Bribery Act 2010.

## **22 Confidentiality**

### **22.1 Confidential Information**

For purposes of this clause 22 (and where used elsewhere in this Agreement) the following terms shall have the meanings ascribed to them:

**Affiliate** means, in relation to any specified person, any other person who, directly or indirectly:

- (a) owns or is owned by; or

- (b) is in control of or is controlled by; or
- (c) is under common ownership and control with, such specified person and for the purposes of this definition, **control** shall mean:
  - (i) the ownership of more than fifty percent (50%) of voting securities of; or
  - (ii) the ability to elect a majority of the directors of; or
  - (iii) the exercise of management control over and/or the exercise of a dominant influence upon,

a person, whether through contract, constitutional documents or otherwise; and any reference to an Affiliate of the Tenant shall include its Parent(s) and any Affiliates of such Parent(s)

**Confidential Information** of a disclosing Party shall mean and collectively include:

- (i) all information disclosed under this Agreement that would be regarded as confidential by a reasonable businessperson relating to the business, commercial and financial information of such disclosing Party, its Affiliates, their officers, directors and shareholders; and
- (ii) all technical information and other proprietary information of a disclosing Party disclosed under this Agreement, including but not limited to operations, processes, product information, know-how, designs and trade secrets;

Confidential Information includes, without limitation, graphic information, maps, drawings, magnetic media and other information or data in any form whatsoever together with any information or analysis derived from Confidential Information.

## 22.2 **Undertakings with respect to Confidential Information**

Each of the Parties undertakes:

- (a) to use Confidential Information only for the purposes of this Agreement and for the pursuit of the Development;
- (b) to preserve and in the case of the Tenant cause its Affiliates and its and their employees to preserve the secrecy of any Confidential Information; and
- (c) not to disclose to any third party (other than a Tenant or an Affiliate involved in the pursuit of the Development under the provisions of this Agreement) any Confidential Information or the existence or the terms and conditions of this Agreement without the agreement of the disclosing Party.

## 22.3 **Exceptions**

22.3.1 The obligations of confidentiality contained in this clause 22 (*Confidentiality*) shall not apply to Confidential Information if and to the extent that the same:

- (a) is or becomes part of public knowledge or literature, other than by a breach of this Clause 22 (*Confidentiality*);
- (b) is disclosed to the Party concerned without restriction as to use or disclosure by a third party (other than one disclosing on behalf of the other Party or its Affiliates) who could lawfully do so and who did not derive any such Confidential Information from the other Party or its Affiliates; or
- (c) is independently developed by the receiving Party without reference to the Confidential Information or

(d) is agreed by the Parties that it is not confidential or may be disclosed

22.3.2 Notwithstanding anything contained in this clause 22 (*Confidentiality*) to the contrary, a Party may disclose Confidential Information to the extent that:

- (a) such information has been required to be disclosed under Applicable Law, judicial proceedings, by a valid governmental order, decree, regulation or rule, or rule of any recognised stock exchange affecting the receiving Party or its Affiliates and after notification to the disclosing Party;
- (b) such information is to be disclosed to its external professional consultants or contractors retained in relation to the Development;
- (c) such information is to be disclosed to potential purchasers of shares in (or the assets of) the Tenant, their external professional consultants and advisers;
- (d) such information is to be disclosed to any bank or financial institution (and its external professional consultants and advisers) from whom the receiving Party is seeking or obtaining finance or financial advice; or
- (e) such information is required to be disclosed in order to comply with the Freedom of Information Act 2000 (**FOI**), Freedom of Information (Scotland) Act 2002 (**FOISA**) and/or the Environmental Regulations 2004 (**EIRs**) and/or the Environmental Regulations (Scotland) 2004 (**EISRs**),

provided that in the case of disclosure under paragraph (b) to (d) above, such third party is made aware of the confidential nature of the information before disclosure and is bound by a professional duty of confidence or has first executed a confidentiality agreement containing confidentiality provisions no less onerous than those herein and provided that paragraph (e) above shall not permit disclosure of Confidential Information otherwise prohibited under Clause 22.2 where the information is exempt from disclosure under Section 36(2) of the FOISA.

## **23 Supply Chain Engagement**

23.1 In order to maximise efficiencies in the supply chain (whether on a local or national basis) required for the development, construction and subsequent maintenance and operation of the Development, the Tenant shall (whether alone or in partnership with other offshore wind developers):

23.1.1 use reasonable endeavours to engage with and meet regularly local and national business forums, relevant supply chain organisation(s) and relevant economic development agencies with a view to ensuring their requirements for the efficient facilitation of the construction and subsequent maintenance and operation of the Development are understood by such forums and organisations and to inform them of progress, concerns and opportunities regarding their region or companies which they account manage; and

23.1.2 advertise all opportunities for sub-contractors and suppliers in a way which ensures suppliers for which the opportunities may be relevant, are aware of procurement activities related to the Development.

23.2 Where applicable, the Tenant shall provide the Landlord with all CfD Supply Chain Plan information at the time it is submitted as part of the Contract for Difference eligibility process.

## 24 Supply Chain Development Statements

### 24.1 Definitions

In this clause 24 the following terms have the meanings ascribed to them:

**CfD Supply Chain Plan** means any supply chain plan submitted as part of any application by the Tenant (or any one on their behalf) for a Contract for Difference for the Development;

**Contract for Difference** means a Contract for Difference which is entered into pursuant to a direction made by the Secretary of State under Section 10 of the Energy Act 2013 (or any replacement support scheme which may be receivable by the Tenant);

**CPS** means any contracted position statement to be provided by the Tenant to the Landlord in terms of clause 24.3;

**CPS Commitments** means the total Expenditure which the Tenant is able to substantiate with supporting information in a CPS for the Development disaggregated by Stages, Phases (if applicable) and by geographic area;

**CPS Payment** means the sum calculated as provided in clause 24.4.3

**Current SCDS** means the most recent SCDS accepted by the Landlord in terms of clause 24.2

**Development Stage** means (for each Phase if applicable) all activities conducted on the advancement of the Development to the point of permitting the valid service of an Option Notice in terms of Clause 7;

**Elsewhere Expenditure** means any element of the Expenditure incurred (i) by entities registered, resident or having their principal offices out with the United Kingdom and any EU member country and (ii) where the location of the services received or the product produced in exchange, is out with the United Kingdom and any EU member country.

**EU** means the European Union

**EU Expenditure** means any element of the Expenditure incurred (i) by entities registered, resident or having their principal offices in, any EU member country and (ii) where the location of the services received or the product produced in exchange, is in any EU member country

**Expenditure** means the costs (in money or monies worth expressed in GB Pounds Sterling and exclusive of any VAT), incurred and anticipated to be incurred (including costs incurred prior to the date of this Agreement) by the Tenant or any other member of the Project Team directly or indirectly in connection with each of the Stages of the development of the windfarm (or windfarms in each Phase if applicable) comprising the Development, including costs incurred in engaging third party contractors or consultants and any costs incurred by the Tenant or any other member of the Project Team in engaging employees and contractors to work on jobs arising from specific project activities connected with the Development but excluding any Disposal Costs (as defined in Schedule Part 9 (*Disposal Premium*)) but for the avoidance of doubt no element of the Expenditure shall be accounted for more than once;

**Initial SCDS** means the supply chain development statement contained in Schedule Part 6;

**Installation Stage** means, for (for each Phase if applicable), all activities on the installation, construction, testing and commissioning of the proposed windfarm required to achieve the Works Completion Date (as defined in the Lease or the Lease for the relevant Phase if applicable);

**Lowest Percentage Achievement** means the lowest percentage achieved of any category of CPS Commitment as determined in accordance with clause 24.4.1

**Manufacturing and Fabrication Stage** means (for each Phase if applicable) the activities involved in the manufacture, fabrication and supply of the wind turbine generators, Generator Cables, substation(s), and supporting platforms and structures, energy storage equipment and all other required ancillary structures for the proposed windfarm;

**Offshore Wind Sector Deal** means the Offshore Wind: Sector Deal published by the Department for Business, Energy & Industrial Strategy on 7 March 2019

**Operation Stage** means (for each Phase if applicable) the activities involved in the operation, maintenance, servicing and repair of the completed windfarm in the period of six years commencing on the Works Completion Date (as defined in the Lease or the Lease for the relevant Phase if applicable);

**rUK Expenditure** means any element of the Expenditure incurred (i) by entities registered, resident or having their principal offices within the United Kingdom but excluding Scotland and (ii) where the location of the service received or the product produced in exchange is in part of the United Kingdom but excluding Scotland.

**SCDS** means each supply chain development statement accepted by the Landlord in terms of clause 24.2;

**SCDS Ambition** means the sums being the Expenditure which the Tenant anticipates will be created by the Development (and which it is willing to disclose) disaggregated by Stages and Phases (if applicable), and by geographic area and which will be provided to the Landlord in the format set out in the table contained in Schedule Part 6;

**SCDS Commitments** means the sums being the Expenditure which the Tenant is able to commit to achieving in a CPS (including for reasons of commercial sensitivity) disaggregated by Stages, Phases (if applicable) and by geographic area and which will be provided to the Landlord in the format set out in the table contained in Schedule Part 6;

**SCDS Narrative** means information submitted to the Landlord in terms of Clause 24.2.2 (ii);

**SCDS Outlook** means the SCDS Ambition, the SCDS Commitments plus any other information within the SCDS which the Tenant accepts the Landlord may share with public sector partners and which will be considered to be public.

**Scottish Expenditure** means any element of the Expenditure incurred (i) by entities registered, resident or having their principal offices in Scotland and (ii) where the location of the service received or the product produced in exchange is in Scotland.

**Stages** means each of the Development Stage, Manufacture and Fabrication Stage, Installation Stage and Operation Stage

## 24.2 Supply Chain Development Statement

24.2.1 Not later than one year after the date of signing of this Option Agreement and thereafter not less than once every three (3) years during the Option Period commencing on the date of signing of this Option Agreement and, in addition, simultaneously with any notification to the Landlord in terms of clause 4.1 that the Tenant proposes to complete the Development in Phases, the Tenant will deliver to the Landlord an updated SCDS for acceptance by the Landlord;

24.2.2 Each SCDS shall consist of three parts:

- (i) a table setting out the SCDS Ambition and the SCDS Commitments (in Phases if applicable) (such table to be in the same format as that used for the Initial SCDS or as otherwise required by the Landlord);



(ii) an accompanying narrative explaining the calculation of the SCDS Ambition and the SCDS Commitments; and

(iii) the SCDS Outlook.

24.2.3 Each updated SCDS provided in terms of clause 24.2.1 must be accompanied by supporting information which sets out the reasons for any changes to the SCDS Ambition and the SCDS Commitments, an explanation of how the Offshore Wind Sector Deal and, where relevant, any CfD Supply Chain Plan have been applied in making any changes, and such other information that may be required by the Landlord in connection with its assessment of the relevant updated SCDS.

24.2.4 Where the Tenant proposes to amend the Current SCDS provided in terms of 24.2.1, the Tenant shall submit with its updated SCDS information on/evidence of:

- i. the previous assumptions in relation to the supply chain and why those assumptions have changed;
- ii. the engagement they have undertaken with the relevant supply chain organisation(s) to try to deliver the SCDS Ambition and the SCDS Commitments in the Current SCDS ;
- iii. the engagement that the Tenant has had with any relevant economic development agencies to try to enable the supply chain development required to deliver the SCDS Ambition and the SCDS Commitments set out in the Current SCDS; and
- iv. such other information as the Landlord may request.

24.2.5 The Landlord will accept an updated SCDS where they are satisfied that:

- (i) The magnitude of any change in the SCDS Commitments is in line with the change in any supply chain assumptions that have been set out in the SCDS Narrative;
- (ii) The Tenant has undertaken engagement with the relevant supply chain organisation(s) to seek to enable any supply chain development on which the previous SCDS was predicated; and
- (iii) The Tenant has undertaken engagement with any relevant economic development agencies to enable any supply chain development on which the previous SCDS was predicated

24.2.6 On acceptance by the Landlord of the updated SCDS provided in terms of clause 24.2.1 such SCDS will become the Current SCDS.

### 24.3 Contracted Position Statement

#### Submission of Contracted Position Statement

24.3.1 The Tenant must submit to the Landlord a CPS, for each Phase if applicable, no more than twelve (12) months prior to submitting an Option Notice in terms of clause 7 but not less than three (3) months after the date of acceptance of the Current SCDS.

24.3.2 If for any reason there is a delay in the service of the Option Notice such that it will be served more than twelve (12) months after the date of an acceptance by the Landlord of a CPS then a further CPS (which may be the same as the previously accepted CPS) must be submitted by the Tenant for acceptance by the Landlord.

24.3.3 The Landlord will use all reasonable endeavours to determine within one (1) month of receipt whether it accepts any CPS and to calculate any CPS Payment that may be due in accordance with clause 24.4.

- 24.3.4 No more than four (4) CPS's (per Phase if applicable) may be submitted to the Landlord during the Option Period.

**Content of CPS**

- 24.3.5 A CPS shall consist of four parts:

- a. Part (i) shall contain a table setting out the Tenant's CPS Commitments, for the relevant Phase if applicable, (such table to be in the same format as that used for the Initial SCDS or as otherwise required by the Landlord);
- b. Part (ii) shall contain supporting information providing: evidence of what the intended contracted position and its consequences on the Expenditure will be; and an explanation of how the principle of progressing the Development in a way which will support the sustainability of offshore wind development projects has been applied in setting the Tenant's CPS Commitments;
- c. Part (iii) shall contain confirmation from an officer of the Tenant that the contracting arrangements described in paragraph 24.3.5b above are, as at the date of the CPS, intended to be entered into; and
- d. Part (iv) shall contain details of the intended timescales and activities leading to the service of an Option Notice in terms of clause 7 and financial close for the Development, or the relevant Phase if applicable.

- 24.3.6 The Tenant's CPS Commitments in Part (i) of the CPS must provide separate amounts for Expenditure incurred on activities commenced on or prior to the date of the CPS and Expenditure which is anticipated will be incurred in respect of contracts and activities which are anticipated to be required in the future, both with the same breakdown by Phase, if applicable, Stage and geographic area as in the SCDS.

- 24.3.7 The supporting information to be provided in Part (ii) of the CPS must include:

- (i) details of how the Tenant has supported the sustainability of offshore wind development through the Option Period; and
- (ii) extracts from near final contracts demonstrating that the SCDS Commitments have been incorporated in the CPS in a way which is likely to secure the outcomes stated in the CPS.

- 24.3.8 Part (iii) of the CPS must contain confirmation that future contracts are, as at the date of the CPS, intended to be entered on terms outlined in the supporting information in letter(s) signed by an officer of the Tenant and also an officer from organisations whose contracts will have a material impact on the delivery of the CPS.

**Acceptance of CPS**

- 24.3.9 The Landlord will accept any CPS if (1) the supporting information (as required in accordance 24.3.5 and together with any letters to be provided under clause 24.3.8) provides evidence satisfactory to the Landlord that the Expenditure that is stated will be incurred as a consequence of the contracted position will be incurred via the Tenant's intended contracting arrangements in the location that it is stated it will be incurred and (2) contains details of (a) how the Expenditure that is stated will be incurred will support the sustainability of offshore wind development projects (as required in accordance with clauses 24.3.5.b and 24.3.7) and (b) sets out a plan (including intended timescales and activities) leading to the service of an Option Notice.

- 24.3.10 The Landlord may require an audit of the information relating to the Expenditure in advance of confirming acceptance of any CPS to ensure that the information provided in terms of this clause 24.3 in support of the CPS relating to the quantification and location of the Expenditure is accurate.

24.3.11 For the avoidance of doubt Expenditure is to be expressed in GB Pounds Sterling with conversion of already settled amounts from any other currencies to be done using the Bank of England daily spot rate at the date of such settlement, and conversion of projected future amounts to be done using the Bank of England daily spot rates at the date the relevant CPS is prepared.

#### 24.4 **Comparison of CPS and SCDS, and contractual remedies**

24.4.1 The Landlord will calculate if a CPS Payment is due by the Tenant, for the relevant Phase if applicable, by comparing each category of Stage and location of Expenditure in the accepted CPS with the equivalent Stage and location of Expenditure in the Current SCDS so as to determine the Lowest Percentage Achievement for all such categories on the following basis, for each relevant Phase if applicable

- i. If the Expenditure for any Stage and location contained in the Current SCDS is zero, then the percentage achievement for the comparable category of Expenditure in the CPS is 100%;
- ii. If the Expenditure shown in any Stage and location contained in the Current SCDS does not have the value zero (0) then the Percentage Achieved for each such relevant category will be calculated in accordance with the following formula:

$$\text{Percentage Achieved} = 100 \times (B/A)$$

where:

**A** is the applicable Expenditure shown on the Current SCDS

**B** is the equivalent applicable Expenditure shown on the accepted CPS

24.4.2 The Lowest Percentage Achievement ("**LPA**") shall be the lowest Percentage Achieved figure determined by the Landlord in accordance with clause 24.4.1, once all the Stages and location of Expenditure in the accepted CPS have been assessed against the equivalent Stage and location of Expenditure in the Current SCDS

24.4.3 The CPS Payment due by the Tenant, if any, shall be calculated as follows:

- i. LPA = 100% or more - CPS Payment is zero
- ii. LPA = 90% up to but not including 100% - CPS Payment is £50,000
- iii. LPA = 50% up to but not including 90% - CPS Payment is £100,000
- iv. LPA = 25% up to but not including 50% - CPS Payment is £250,000

24.4.5 The Parties confirm that the CPS Payment is reasonable and proportionate to protect the Landlord's legitimate commercial interest.

## 24.5 **Sharing of Information**

- 24.5.1 The Landlord may disclose any information and any SCDS Commitments and CPS Commitments with public bodies including the Scottish Government and relevant Enterprise Authorities as the Landlord considers appropriate.
- 24.5.2 The Landlord may publish SCDS Outlook information and information regarding Lowest Percentage Achievement as the Landlord considers appropriate.

## 25 **Notices**

### 25.1 **Notices**

Any notice or other communication made or to be made under this Agreement shall be given in writing and may be served personally, by facsimile, or by first class, certified or registered mail.

### 25.2 **Addresses**

The postal and e-mail addresses of each Party for the purpose of any notice or other communication made or to be made under this Agreement shall be:

#### **Landlord:**

Address:  
Senior Manager Energy and Infrastructure Team  
Quartermile Two  
2nd Floor  
2 Lister Square  
Edinburgh EH3 9GL

e-mail address: marine@crownestatescotland.com

#### **With copy to:**

Address:  
Commercial Manager  
Quartermile Two  
2nd Floor  
2 Lister Square  
Edinburgh EH3

e-mail address:

#### **Tenant:**

Address:

[     ]

Attention:

[     ]

or any substitute address as either Party may notify to the other Party by not less than five (5) Working Days notice.

### 25.3 **Delivery**

Any notice or other communication made or delivered by one Party to another under or in connection with this Agreement will only be effective, if by way of letter, when it has been left at the relevant address or five (5) Working Days after being deposited in the post postage prepaid in an envelope addressed to it at that address.

### 25.4 **Electronic communication**

25.4.1 Any notice or other communication to be made between the Parties under or in connection with this Agreement may be made by electronic mail or other electronic means, if the Parties:

- (a) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
- (b) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
- (c) notify each other of any change to their address or any other such information supplied by them.

25.4.2 Any electronic communication made between the Parties will be effective only when actually received in readable form.

### 25.5 **English language**

Any notice, document or other communication given under or in connection with this Agreement must be in the English language

## 26 **Direct Agreement**

26.1 The Landlord acknowledge that the Tenant may require funding from Funders to implement the Development 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 Landlord to cover (without limitation) the following principal matters:

- 26.1.1 an acknowledgement by the Landlord of any security taken by the Funders over the Tenant and its assets (including over a Lease);
- 26.1.2 an obligation to give notice to the Funders in the terms of clause 5.4 of a Lease; and
- 26.1.3 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;
- 26.1.4 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 a Lease; and
- 26.1.5 provisions regulating the application of insurance proceeds in the event that all or a part of the Works (as defined in a Lease) 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 will take account of the Landlord's reasonable representations) relating to the fundamental financial viability of the Development and fundamental ability of the Development 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 Works.

- 26.2 The Landlord further acknowledge that it 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.

## **27 Proper Law**

- 27.1 This Agreement shall be governed by and construed in accordance with the Laws of Scotland and the Development Site is to be regarded as if it were incorporated in the body of a region in Scotland.
- 27.2 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 Agreement 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.

## **28 Declaration of Non-Merger**

The Landlord's and the Tenant's obligations under this Agreement shall continue, notwithstanding the grant of the Lease insofar as they remain to be carried out.

## **29 Consent to Registration**

The Parties consent to registration of this Agreement for preservation and execution: IN WITNESS WHEREOF: these presents consisting of this and the [ ] preceding pages together with Schedule annexed are executed as follows:-

THEY ARE SUBSCRIBED in terms of an Act of Parliament

at .....on .....20[ ] by:-

.....Authorised Signatory

.....Full Name

an signatory authorised by the Crown Estate Scotland to act on their behalf,

in the presence of:

.....

Name of witness:

Address:

and

THEY ARE SUBSCRIBED for and on behalf of the said [ ]

at .....on .....20[ ] by:-

.....Director

.....Print name

and

.....Director

.....Print name

This is the Schedule referred to in the foregoing Agreement for Lease between Crown Estate Scotland and [ ] relative to [ ]

## **Schedule Part 1**

### **Development Site**



## Schedule Part 2

### Leases and Licences

#### Part 1

The following are licences and leases granted by the Landlord where the Landlord have given undertakings to obtain the consent of the licensee/tenant specified below or where agreement with an existing tenant or licensee (in a form reasonably acceptable to the Landlord (acting reasonably) is required to allow co-location of uses or rights (each such consent being a Necessary Consent for the purpose of this Agreement):

Date	Licensee/Tenant	Works

#### Part 2

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

Date	Tenant/Licensee	Works

#### Part 3

The following are works that 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 are aware and in respect of which consent from the owners and/or operators of such works may need to be obtained:

Date	Tenant/Licensee	Works

## **Schedule Part 3**

### **Form of Lease**

## Schedule Part 4

### Execution Project Programme

**Table 1 – Development not phased**

Intended Installed Capacity: [●]

<b>Key Events</b>	<b>Planned Dates</b>
<b>Milestone 1:</b> Scoping phase of pre-consent application work - scoping opinion requested from the Scottish Ministers	<i>[the date 3 years after the start of the Option Period]</i>
<b>Milestone 2:</b> application for Key Project Consents submitted	<i>[the date 6 years after the start of the Option Period]</i>

**Table 2 – phased Development**

Intended Installed Capacity of first Phase: [●] megawatts

<b>Key Events</b>	<b>Planned Dates</b>
<b>Milestone 1:</b> Scoping phase of pre-consent application work - scoping opinion requested from the Scottish Ministers	<i>[the date 3 years after the start of the Option Period]</i>
<b>Milestone 2:</b> application for Key Project Consents submitted	<i>[the date 6 years after the start of the Option Period]</i>

Intended Installed Capacity of second Phase: [●] megawatts

<b>Key Events</b>	<b>Planned Dates</b>
Activity 1: Scoping phase of pre-consent application work [for Phase 1] - scoping opinion issued by the Scottish Ministers	[date]
Activity 2: application for Key Project Consents submitted [for Phase 1]	[date]

[repeat according to the number of intended phases]

**[Phased - end]**

## Schedule Part 5

### Form of HSI Notification

#### Details of business or undertaking notifying the incident

Legal name of business:		
Name of site:		
Business address:		
Contact phone number:	Work hours:	Mobile:
Business email address:		

#### Incident details

##### Incident type

This is to notify of: ☐ Serious Incident ☐ Non-fatal RIDDOR Reportable Incident

Provide a brief explanation of the type of incident (i.e. fall from height, vessel collision):

--

##### Incident date, time and location

Date of incident: Location of incident:

Time of incident:

Description of the incident Please provide as much detail as possible

--

Do you propose to release a press/public statement in connection with the incident?

☐ Yes ☐ No

#### Notifier's details

<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Miss <input type="checkbox"/> Ms	First Name:	Last Name:
Position at workplace:	Contact phone number:	
Email:		
Is this the person that should be contacted for further information?		
<input type="checkbox"/> Yes <input type="checkbox"/> No If no, please provide the name and contact details of the appropriate person should further information be required		
<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Miss <input type="checkbox"/> Ms	First Name:	Last Name:
Position:	Contact phone number:	

## Schedule Part 6

### Initial SCDS

#### **(i) SCDS Commitments**

Stage	Location			
	Scottish Expenditure £	rUK Expenditure	EU Expenditure	Elsewhere Expenditure
Development Stage				
Manufacturing & Fabrication Stage				
Installation Stage				
Operations Stage				

#### **(ii) Explanatory narrative to SCDS Commitments**

*[narrative explaining the calculation of the SCDS Commitments]*

#### **(iii) SCDS Outlook**

*[to include (i) SCDS Commitments table plus (ii) the sections of the Explanatory narrative to SCDS Commitments the Tenant is willing to be made publicly available]*

**[Note: set out per Phase if applicable]**

**[Note: the SCDS Ambition table is to be provided as part of the Initial SCDS and any update to the SCDS but is not incorporated into this Schedule Part 6 of the Option Agreement]**

**Schedule Part 7**  
**Project Team Chart**

**Schedule Part 8**  
**Statement of Commitment**

Dear Sirs

**Scotwind Leasing**

**Statement of Commitments re: [ ] ("the Development")**

We,

[•] [name, company no. (if applicable) and registered office of organisation] refer to the abovementioned Development and now confirm the following to Crown Estate Scotland:

1. We are aware of, and are willing to participate in the Development which is the subject of this letter. A brief summary of our proposed involvement in the Development is [•];
2. Insofar as information provided in this letter relates to this organisation, we are aware that Crown Estate Scotland are acting in reliance on this information in assessing whether or not to consent to our proposed involvement and confirm that it is comprehensive, accurate and up to date; and
3. The acceptance of our involvement in this Development does not present a reputational risk to Crown Estate Scotland in that neither this company/organisation nor any office holder or person with powers of representation, decision or control within this company/organisation have been convicted of any of the types of unlawful conduct described in full in Appendix 1 to this letter. If at any time this company/organisation or any office holder or person with powers of representation, decision or control within this company/organisation is convicted of an offence under replacement/amendment legislation to that listed in Appendix 1, we understand that this requires to be disclosed to Crown Estate Scotland;

Yours faithfully,

Signed for and on behalf of [•] [name of company/organisation] by:

Please formally sign for and on behalf of your organisation here and provide full details of signature to confirm how your company/organisation is bound by this letter as shown at Appendix 2.

### **Template Letter Appendix 1 – Reputational confirmation**

- i) Conspiracy relating to participation in a criminal organisation or an offence relating to involvement in/directing serious organised crime (Criminal Justice and Licensing (Scotland) Act 2010);
- ii) Corruption (within the meaning of the Public Bodies Corrupt Practices Act 1889 or the Prevention of Corruption Act 1906)
- iii) Bribery or corruption (within the meaning of the Criminal Justice (Scotland) Act 2003)
- iv) Bribery (within the meaning of the Bribery Act 2010)
- v) Cheating the Revenue
- vi) Common law fraud
- vii) Common law theft/ fraud
- viii) Fraudulent trading (within the meaning of the Companies Acts 1985/ 2006)
- ix) Fraudulent evasion (within the meaning of the Customs and Excise Management Act 1979 or the VAT Act 1994)
- x) Offence re: taxation (Criminal Justice Act 1993)
- xi) Common law uttering (Scots law term for fraud)
- xii) Common law attempting to pervert the course of justice
- xiii) Offences under Counter-Terrorism Act 2008
- xiv) Money laundering (within the meaning of the Proceeds of Crime Act 2002)
- xv) Proceeds of criminal conduct (within the meaning of the Criminal Justice Act 1988)
- xvi) Human trafficking (Human Trafficking and Exploitation (Scotland) Act 2015)
- xvii) Proceeds of drug trafficking (Drug Trafficking Act 1994)
- xviii) Any other offence that is set out as an exclusion ground in the Directive 2014/24/EU of the European Parliament and of the Council on public procurement or any subsequent legislation which replaces that.



## **Template Letter Appendix 2 – Information about signature of the letter**

We confirm:

- 1) The full names of the parties who signed for and on behalf of our company/organisation, including witnesses;
- 2) What position the signatories hold and how they are entitled to bind the company/organisation;
- 3) The address of signatories, including witnesses (business address is sufficient);
- 4) The town and country where they signed; and
- 5) The date(s) when they signed

Full name of signatory:

Role of signatory: e.g. Director/Company Secretary, witness

Address of signatory:

Location of signature:

Date of signature:

## Schedule Part 9

### Disposal Premium

#### 1 Definitions and interpretation

In this Schedule Part 9 (*Disposal Premium*), words and expressions defined elsewhere in this Agreement and not otherwise defined in this the Schedule Part 9 (*Disposal Premium*) shall have the same meaning as elsewhere in this Agreement, and the following terms shall, unless the context otherwise requires, have the following meanings:

**Applicable Percentage** means the figure (expressed as a percentage), being 100% at the date of this Agreement and reducing on a straight line daily basis to 75% during the Disposal Period, calculated in accordance with the following formula (and as illustrated in the worked example in paragraph 4.4 below):

$$\text{Applicable Percentage} = 100 - ((A/B) \times 25)$$

Where

**A** is the number of days from (and including) the first day of the Disposal Period to (and including) the Disposal Date

**B** is the total number of days in the Disposal Period (which will be 1095, unless there is a leap year within the Disposal Period, in which case it will be 1096);

**Arm's Length Basis** means a bargain at arm's length with a person, company or entity in the open market and not being an Affiliate, under which the price or other consideration will be the price or other consideration obtainable in the open market;

**Development Actions** means all actions that would be taken by a Reasonable and Prudent Developer to carry out the Development including complying with the obligations under this Agreement

**Development Costs** means the aggregate of all costs incurred by the Tenant (but excluding any costs accrued, due or payable that have not actually been paid) in respect of the Development Actions up to Disposal Date, but excluding any Disposal Costs, and in calculating the Development Costs the following shall apply:

- (a) any such costs shall include costs reasonably and properly incurred in engaging a third party contractor or consultant or any Affiliate to carry out (as the case may be) the Development Actions
- (b) no item of expenditure counted under one head of Development Costs shall be counted under another head to avoid any double counting nor shall they be counted more than once in the event of more than one Disposal;
- (c) value added tax on any item of Development Costs shall only be treated as part of the Development Costs to the extent that the Tenant is unable to recover it as a credit through its own value added tax treatment of such costs;
- (d) any item of cost or fee incurred by the Tenant in respect of goods or services supplied by an Affiliate shall not exceed the proper costs in the open market for providing such similar goods or services;
- (e) any interest, damages, settlement, proviso in lieu of damages or professional fees, disbursements and value added tax incurred by the Tenant as a result of any act or

default of any of them in breach of any contractual matter or obligation is to be excluded from the Development Costs; and

- (f) any amount incurred by the Tenant for any claim for loss and/or expense in remedying any breach or failure to perform arising under the terms of this Agreement, or under any other contract in relation to the carrying out and completion of the Development, shall be excluded from the Development Costs;

**Disposal** means a Disposal of Shares or a Disposal of Option Rights, as applicable;

**Disposal Contract** means any contract, agreement, transaction, obligation, commitment, understanding or arrangement entered into by or on behalf of the Tenant and/or any Parent or other Affiliate, or by which the Tenant and/or any Parent or other Affiliate is, are or may become bound, whether or not in writing, and whether conditional or unconditional, in respect of a Disposal;

**Disposal Costs** means the reasonable fees properly incurred relating to third party professional advisers engaged in connection with any Disposal;

**Disposal Date** means, in respect of any Disposal, the date upon which the relevant Disposal Contract is entered into by the Tenant and/or any Parent or other Affiliate;

**Disposal Premium** means a payment to the Landlord representing a share of the Net Disposal Proceeds arising on any Disposal in the Disposal Period, calculated in accordance with this Schedule Part 9;

**Disposal of Shares** means, a sale, assignation, exchange or any other transfer or disposal of any interest (of whatever nature) in the Tenant or any Parent, or the creation of any new interest (whether by way of the issuance of new shares or otherwise) in the Tenant or any Parent, or entering into an agreement to do any of the foregoing, but shall not include (a) any intragroup reorganisation to which the Landlord has given its consent in accordance with Clause 16.6.2 or (b) any assignation or charge by way of security in favour of any bank or financial institution to whom any such interest has been charged, pledged or assigned by way of security in connection with any *bona fide* funding arrangements, whether as security trustee or agent for a group of banks or financial institutions or otherwise, or to any nominee or any transferee of such a bank or financial institution (a "**Secured Institution**") or (c) where it can be demonstrated by the Tenant to the Landlord's reasonable satisfaction that any such sale, assignation, exchange or any other transfer or disposal of any interest is for the *bona fide* purpose of financing the implementation of the Development;

**Disposal of Option Rights** means a sale, assignation, exchange or any other transfer or disposal (of whatever nature) of the Tenant's interest in this Agreement, but shall not include (i) any assignation or charge by way of security in favour of any Secured Institution to whom any such interest has been charged, pledged or assigned by way of security in connection with any *bona fide* funding arrangements or (ii) any assignation of the Tenant's interest in this Agreement to any Group Company under the same Control as the assignee or (iii) where it can be demonstrated by the Tenant to the Landlord's reasonable satisfaction that any such sale, assignation, exchange or any other transfer or disposal (of whatever nature) of the Tenant's interest in this Agreement is for the *bona fide* purpose of financing the implementation of the Development;

**Disposal Period** means, the period of 3 calendar years commencing on the date of this Agreement;

**Gross Disposal Proceeds** means:

- (g) in the case of a Disposal of Shares, the consideration for the Disposal of Shares (for the avoidance of doubt taking into account, where relevant, any cancellation or waiver of any intercompany loan owed by the Tenant or any Parent to any of its Affiliates) and which, in the case of the issuance of any new shares in the Tenant or any Parent, will be the

aggregate amount (including any premium) subscribed, or deemed to be subscribed, for, or credited as paid up in respect of, the shares in question; or

- (h) in the case of a Disposal of Option Rights, the consideration for the Disposal of the Option Rights together with the consideration for any disposal, transfer or participation in of assets or rights vested in or capable of being used and enjoyed by the Tenant

payable to, or receivable by, the Tenant or any of its Affiliates (or to any person or entity on their respective behalf), as the case may be, or deemed payable pursuant to this Schedule Part 9;

**Group Company** means any direct or indirect subsidiary or any direct or indirect holding company or any such subsidiary of any such holding company or any such holding company of such subsidiary, "subsidiary" and "holding company" having the meanings defined in Section 1159 of the Companies Act 2006 as amended;

**Net Disposal Proceeds** means the Gross Disposal Proceeds less the Disposal Costs; and

**Surveyor** means a person appointed in accordance with Paragraph 7 of this Schedule Part 9

## 2 Good Faith Obligation

The Parties separately undertake to each other to co-operate in good faith to ensure that each Party shall do and/or arrange for the doing of each necessary act or thing as may be reasonably requested by the other Party to implement properly the terms of this Schedule Part 9 (*Disposal Premium*) and the Parties agree and accept that it is the Parties' settled intention that, on any Disposal, the Tenant (or any Affiliate) will achieve (or, as the case may be, procure the achievement of) the maximum consideration possible for such Disposal in the open market on an Arm's Length Basis.

## 3 Disposal Premium Entitlement

The Tenant shall pay to the Landlord, on the date or dates specified in Paragraph 6 below, the Disposal Premium on any Disposal, calculated in accordance with Paragraphs 4 and 5 below. Such Disposal Premium shall only be payable where the relevant calculation gives rise to a positive figure. The Landlord shall never be required to contribute to a negative amount.

## 4 Disposal

- 4.1 If, in the Disposal Period, there is a Disposal, a Disposal Premium shall (subject to Paragraph 4.2 below) be payable by the Tenant calculated in accordance with the following formula:

Disposal Premium = ((Net Disposal Proceeds – Option Fee) - (110% x Development Costs)) x Applicable Percentage

- 4.2 Where any Disposal of Shares is of a proportion of the shares of the Tenant the same proportion shall be applied to the Development Costs to be used in any calculation of the Disposal Premium due (for example if only 25% of the shares in the Tenant are being sold the sum to be used for the Development Costs in 4.1 shall be 25% of the total Development Costs at the Disposal Date).

- 4.3 To the extent that any Disposal Premium has been paid by the Tenant in accordance with Paragraph 4.1, no further Disposal Premium will be payable in respect of the assets or shares the subject of the Disposal

- 4.4 Worked example:

Disposal occurs on day 219

A = 219

B = 1095

Step 1:  $(219 \div 1095) = 0.20$

Step 2:  $0.20 \times 25 = 5$

Step 3:  $100 - 5 = 95$

Applicable Percentage = 95%.

## **5 Notice of Disposal, Market Value, Non-cash and Deferred Payments**

- 5.1 The Tenant will notify the Landlord within five (5) Business Days of a Disposal Contract being entered into, such notice to be accompanied by a full copy of the relevant Disposal Contract (or a memorandum of its terms if there is no written Disposal Contract) and to specify:
- i. the nature of the Disposal;
  - ii. the identity of the other party (or parties) to the Disposal;
  - iii. the interest or interests which are the subject of the Disposal;
  - iv. the consideration for the Disposal, including any deferred or contingent consideration and the basis upon which any such deferred or contingent consideration will become payable;
  - v. the proposed date for completion of the Disposal;
  - vi. the amount of the Development Costs;
  - vii. the amount of the Disposal Costs; and
  - viii. any other information relevant for the purposes of enabling the Landlord to determine whether a Disposal Premium is payable and/or the amount of such Disposal Premium.
- 5.2 Where the Disposal is not a Disposal for (or entirely for) cash consideration (but instead for (or partly for) some other form of consideration) or not on an Arm's Length Basis, then the Landlord shall be entitled to elect that, in calculating the Net Disposal Proceeds (for the purposes of the formula above), the Gross Disposal Proceeds shall be substituted by the full open market value of either, (1) in the case of a Disposal of Shares, the interest in the Tenant or any Parent, or, (2) in the case of a Disposal of Option Rights, the interest in this Agreement, that is the subject of the Disposal, less (in either case) the Disposal Costs.
- 5.3 Subject to Paragraph 6.2 below, where the Disposal is (in whole or in part) for deferred or contingent consideration, then the Landlord shall be entitled to elect that, in calculating the Net Disposal Proceeds (for the purposes of the formula above), the Gross Disposal Proceeds shall be deemed to be (or include) the 'net present value' of the deferred or contingent consideration calculated at such discount rate as the Landlord may reasonably determine, less the Disposal Costs.
- 5.4 The 'full open market value' for the purposes of Paragraph 5.2 above and the 'net present value' for the purposes of Paragraph 5.3 above, shall be such amount as the Parties may agree or, if the Parties fail to agree such amount within ten (10) Business Days of the Disposal, such amount as may be determined by a Surveyor pursuant to Paragraph 7 of this Schedule Part 9 (*Disposal Premium*).

## **6 Payment**

- 6.1 Subject to Paragraph 6.2, a Disposal Premium shall be payable no later than five (5) Business Days after the date on which the Landlord notifies the Tenant in writing of the amount of Disposal Premium payable (save where the provisions of Paragraph 5.4 above apply when any

payment shall be made within five (5) Business Days of the amount being approved or determined by the Surveyor unless the Landlord agrees otherwise in writing).

- 6.2 Where the Disposal is (in whole or in part) for deferred or contingent consideration, then (without prejudice to its rights under Paragraph 5.3 above) the Landlord shall be entitled to elect that the calculation and payment of the Disposal Premium (or such part thereof that relates to the deferred or contingent consideration), shall be deferred until the deferred [or contingent] consideration has been ascertained and/or become payable. In the event that the Landlord so elects, the Tenant will notify the Landlord immediately upon the deferred or contingent consideration being ascertained and/or becoming payable and the Disposal Premium (or such part thereof that relates to the deferred or contingent consideration), shall be paid within five (5) Business Days of the date on which the Landlord notifies the Tenant in writing of the amount of Disposal Premium (or such part thereof that relates to the deferred or contingent consideration) payable (save where the provisions of Paragraph 5.4 above apply when any payment shall be made within five (5) Business Days of the amount being approved or determined by the Surveyor unless the Landlord agrees otherwise in writing).

## **7 Surveyor**

- 7.1 If a matter is to be referred to a Surveyor for determination in accordance with Paragraph 5.4 above, the Surveyor shall be appointed by agreement between the Parties or, if the Parties fail to agree upon that appointment within ten (10) Business Days, the Surveyor shall be such person as the President of the Royal Institution of Chartered Surveyors (or the next senior officer) may appoint, on the application of either Party.
- 7.2 Each of the Parties shall bear one half of the costs of the Surveyor unless the Surveyor determines otherwise.
- 7.3 The Surveyor shall act as an expert and not as an arbitrator and shall give his or her determination in writing.
- 7.4 The Parties shall use reasonable endeavours to ensure that the Surveyor makes his or her determination within twenty (20) Business Days of being appointed.
- 7.5 In the absence of fraud or manifest error, the determination of the Surveyor shall be final, conclusive and binding on the Parties.

## **8 Audit**

- 8.1 At any time at which a Disposal Premium is to be or has been calculated, the Landlord shall have the right, on written notice to the Tenant, to have an independent third party auditor audit the relevant accounts and records of the Tenant (and those of any Parent or other Affiliate) for the purposes of verifying the validity of claimed Gross Disposal Proceeds, Development Costs and Disposal Costs. The Tenant shall procure that any Parent or other Affiliate shall make its accounts and records available to the Landlord for this purpose.
- 8.2 Any such audit shall be at the Landlord's cost, unless the audit shows errors or inaccuracies in amounts represented as Gross Disposal Proceeds, Development Costs or Disposal Costs, in which case the Tenant shall pay to the Landlord the costs of the audit on an indemnity basis.
- 8.4 If the audit shows errors or inaccuracies in amounts represented as Gross Disposal Proceeds, Development Costs or Disposal Costs, and these reveal that there has been an underpayment of any sort to the Landlord, then the Tenant shall promptly pay such underpayment to the Landlord together with interest at 3% above the base rate of the Royal Bank of Scotland plc from the date such payment should have been made.
- 8.5 Within 10 Working Days of the expiry of the Disposal Period or at any time on request from the Landlord, an appropriate officer of the Tenant will provide the Landlord with written certification that either there have been no Disposals during the Disposal Period (or any part thereof) or, if

there have been, the details of the Disposal including those to be contained in a notice under Paragraph 5.1 above.