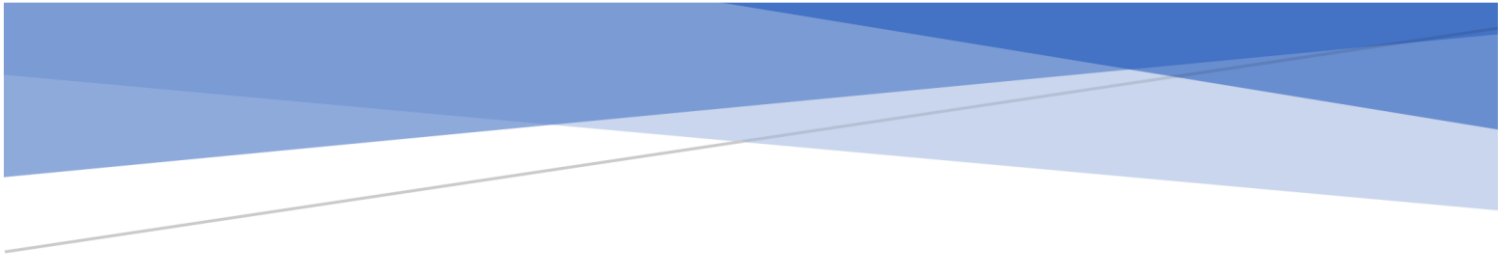

APPENDIX 4.4
UPDATED ENERGY STRATEGY REPORT

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HERBATA DATA CENTRE ENERGY STRATEGY REPORT

Brian O' Shea
brian@bosenergy.ie

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REPORT SUMMARY

This report addresses the following areas;

1. **Summary of Energy Market** including Government targets to 2030 and how Data Centres will support these targets and the key challenges across the energy sector which need to be resolved to help achieve binding targets
2. **Executive Summary** of the Herbata Data Centre development and its Energy Strategy including how its alignment in support of various Government and Regulatory Policies
3. **Large Energy User Policy** published in February 2025 and how Herbata project will be in compliance with this Policy
4. **Data Centres Solution to Renewables and Grid** – How these users are not just an electricity demand but are key enabler that will provide the critical generation support in providing both grid stability as well as enabling binding targets
5. **Corporate Power Purchase Agreements (CPPAs)** – (i) Explanation of what they are and how arranged (ii) why used and the EU legislation to provide “farm to fork” evidence of supply (iii) how CPPAs not only benefit the Producer and End user but also the benefit to overall national policy and (iv) how CPPAs are in compliance with Kildare County Council Policy
6. **Herbata Renewable Supply Strategy** - How 50% supply from renewable sources will be achieved including the mix of wind and solar to achieve this target, plus potential areas that will be explored
7. **Availability of Renewable Supply** - Key evidence that sufficient renewable projects exist and the CPPA volume target will be achieved
8. **Developing a 24/7 Renewable Supply** - Potential areas which will be explored in further seeking to development on the stated 50% target
9. **Biomethane Supply Strategy** – The Herbata strategy in procuring Biomethane supply and overall support of the development of the industry, subject to government policy in this area being progressed.

INTRODUCTION TO ENERGY MARKET

Ireland has set a legally binding target of a reduction in emissions of 51% by 2030 (compared to 2018 levels) and to help achieve these reductions the Irish Government have outlined in the Ireland Climate Action Plan of 2025 (CAP 25) a number of key targets for 2030 including:

- (1) Growing Renewable Electricity Share to 80%
- (2) New Flexible Gas installed of at least 2GW and
- (3) Demand Side Flexibility of 30%

The above stated CAP 25 targets will not be achieved solely through government support schemes, which themselves have limitations, but requires private enterprise support and the enterprises with the greatest invested interest in supporting these targets are the Large Energy Users including Data Centres, such as that proposed by Herbata.

The Government Statement on the Role of Data Centres in Ireland's Enterprise Strategy published in July 2022 set out the Government policy aims of enabling the "twin transitions" of digitalisation and decarbonisation of our economy and society, recognising the value of renewable energy and digital technologies to Ireland. The role of data centres in our economy is further highlighted in the recent published Programme for Government 2025¹, which outlines an ambition to facilitate data centre growth in the context of efficient grid usage and a reduction in carbon emissions, among other factors.

Data Centres are acutely aware of their energy needs and their responsibility in supporting governments to achieve the aforementioned key targets. Data Centres have become industry leaders in supporting renewable energy and grid flexibility requirements², promoting renewable generation through Corporate Power Purchase Agreements and providing multiple services to Grid operators through Demand side flexibility, both of these are helping to build the overall resilience required for a modern electrical network. Data Centres leadership is evidenced through the Climate Neutral Data Centre pact which is recognised within Kildare County Council Policy objective EC P18 (EC 060).

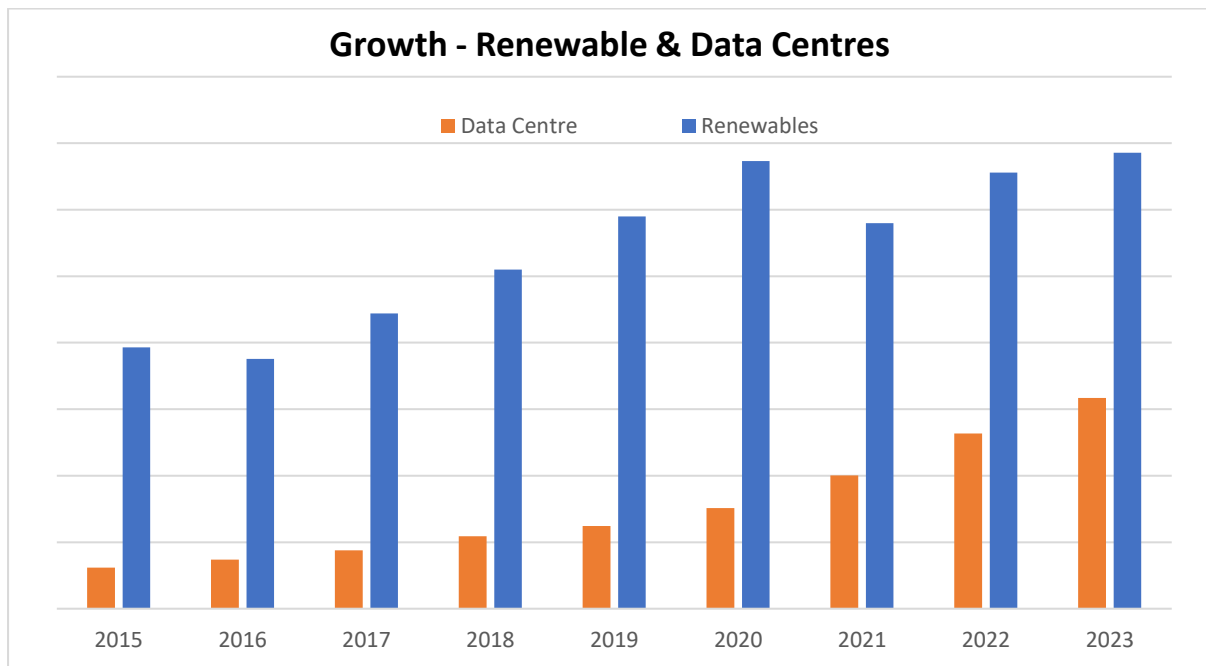
Electrical Networks, across Europe, are evolving very quickly and migrating away from centralised located large scale generation fleet to a more distributed and very flexible generation requirement, to support the more variable renewable generation but also the increasing decentralized demand requirements

Data Centres offer the critical flexibility needs through their onsite generation and must not be viewed in isolation as electricity consumer but must also be viewed as a key electricity generator in the grid's migration towards a more distributed network. It is only through having these types of highly flexible customers will it be possible to increase the quantity of renewable generation being integrated into the network.

While Data Centre electricity demand has increased 16% from 5% in 2015 to 21% in 2023 Data Centres have also directly contributed to the growth of renewable energy into the Grid in the form of Corporate Power Purchase Agreements with Ireland's renewable generation nearly doubling in that same time period growing from 23% of demand to 42% which shows renewable generation increasing at higher rate than the increase in Data Centre demand.

¹ <https://www.gov.ie/en/department-of-the-taoiseach/publications/programme-for-government-2025-securing-irelands-future/>

² Flexibility services include Frequency response (milliseconds), system inertia and multiple quick response products that support sudden changes in wind production essential to maintain supply to all end users.

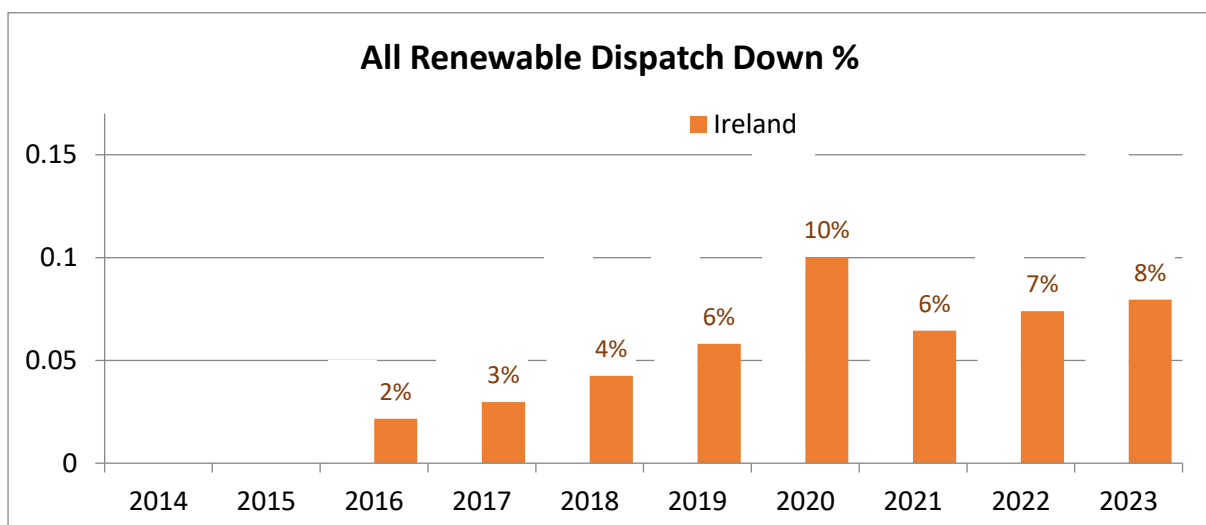


Source; Eirgrid System and Renewable Data System Report

However there has also been an increase in the level of constraints or turning off renewable generation by the Grid Operator (Eirgrid) due the inability to consume the renewable energy produced.

This inability is caused by absent of demand at off peak periods to which Large Energy Users could potentially facilitate.

It is also understood by Eirgrid that Data Centres growth is expected to reach 30% of national demand by 2030 but at same time renewable energy target is 80% by 2030 made up of c.9 GW from onshore wind, c.8 GW from solar, and at least c.5 GW from offshore wind energy by 2030



Source; Eirgrid System and Renewable Data System Report

To achieve these ambitious targets, it will not be possible without demand growth to consume renewable energy, while also developing a more flexible grid to support these assets and Data Centres are central to support this transition, by providing key flexibility from onsite back up generation as well as supporting renewable generations through continued contracting.

It has been noted in the Programme for Government 2025 the role Data Centres will be able to provide to help promote development of renewable energy through Corporate Power Purchases Agreements but also contribute to a more robust network through the provision of on-site back up generation or storage to which would be made available to Eirgrid during periods of need while Data Centres provide an important demand to enable higher consumption for every expanding renewable supply.

Without this demand growth the increasing constraining of renewable will continue to a point where the commercial viability of the renewable then becomes challenging given most offtake agreements only pay on volumes produced and delivered.

SUMMARY

Data Centres must be viewed as a key enabler in supporting both Government targets and Grid flexibility requirements while at the same time providing key employment

Data Centres are central to achieving both Government and Grid requirements by supporting renewable generation growth while at the same time supporting this transition through the provision of key flexibility through on-site generation

In summary Data Centre will provide key grid infrastructure support through

1. Contracting to purchase energy from renewable generators
2. Demand consumption which will provide the necessary stable demand to facilitate renewable generation particular off peak which is when constraints are at their highest
3. Provision critical generation to the Grid to support more robust grid resilience and at the same time facilitating the ever-increasing renewable supply fluctuations

EXECUTIVE SUMMARY

Herbata Energy Strategy will seek to procure a minimum of 50% of their electricity needs through renewable sources this will be through a mix of onsite and offsite energy. It is also Herbata stated intention to further explore how to improve upon this 50% level over the course of the project development.

This report outlines in more detail the methodology to which Herbata will achieve this 50% minimum but also outlines the potential areas which may further increase the minimum target.

In addition to sourcing renewable supply Herbata will also be providing Grid with essential services to increase the resilience of the grid not only in the local Kildare area but also the greater eastern region which will help assist with Offshore Wind integration into the Grid.

As per the Eirgrid "Solar and Wind Constraint Report" published 31 March 2025 it is likely that there could be more than 7GWh of renewable energy in the area of Kildare, Dublin and surrounds, caused by mismatches between supply and demand. Given renewables are only paid on what they inject into the grid this level of excesses creates an economic risk in the financing of these projects. Therefore, having critical 'anchor' baseload demand, such as the Herbata Data Centre provides an ability to consume these anticipated excesses and in turn provides critical support in the progressing of these projects which have now become a must if Ireland is to meet the binding obligation of 51%.

Herbata will also have the ability to operate in self-sufficient mode should there be a requirement by Grid to do so and are therefore not a burden on the grid but a key enabling customer to support overall grid objectives.

In preparation of this report and resulting Energy Strategy it has been done to ensure alignment with the following Policies and support of the following:

1. The latest Large Energy User (LEU) Policy issued in February by Commission for Regulation of Utilities
2. Overall Government Policy such as CAP 25
3. Kildare County Council Development Plan 2023 to 2029

The LEU Policy is specifically referenced as it is a CRU Policy specifically to address connection of Data Centre to the Grid while reference to Government and Kildare County Council Policy are contained within the various headings contained within.

This report considers and outline in more detail the following

1. Detailed explanation on Corporate Power Purchase Agreements (CPPAs) and the overall contribution Data Centres provide to Renewable Development, and alignment with Kildare County Council Development Plan
2. Data Centre as a key tool in support Grid challenges
3. Availability of Renewable Generation to contract with Herbata under CPPAs
4. Herbata Energy Strategy for the proposed Data Centre Project

LARGE ENERGY USER POLICY UPDATE 2025

The Commission for Regulation of Utilities (CRU) published their Large Energy Users connection policy proposed decision paper on the 15th February 2025 where it outlined their “minded to” decision on connection policy for large energy users such as Data Centres. The Policy was supportive of Data Centre connections with a few pre-conditions to be applied as outlined below.

The Policy proposed decisions are:

1. This policy applies to all data centres seeking to connect to the electricity network.
2. Data centres connecting to the electricity network will be required to provide ***Dispatchable (i.e. available when it is needed by the system) generation or storage onsite or nearby, which will participate in the electricity market.***
3. The ramping up of a new data centre’s demand will be linked to the delivery of the required generation capacity.
4. The System Operators should continue to consider the location of any data centre connection applications and associated generation capacity in respect of whether it is in a constrained or unconstrained region of the electricity network.
5. The System Operators will be required to publish regular information on existing and future grid network capacity to accommodate connections on the electricity network and to provide insight to new data centres and other developers.
6. Data centres will be required to self-report to the System Operator annually in relation to their use of renewable energy and their sites’ emissions. A summary of these reports will be published.

In compliance with point 2 and 3 above Herbata proposed to install a Combined Cycle Gas Turbine (CCGT) equivalent to at least 50% of its energy needs and will participate in the electricity market through Demand Side Management arrangements thereby being available to grid operator as and when required. The installation of the GGCT will be aligned to each Data Centre hall development.

In compliance with point 4 above the location selected is not in area of constraint with Planning permission being granted by An Bord Pleanála in March 2025 for grid upgrades work that will add a high-capacity 400 kV underground electricity connection between Dunstown substation in Kildare and Woodland substation in Meath.

In compliance with point 6 this will be undertaken as part of business as usual reporting requirements and the LEU Policy supports Corporate Power Purchase Agreements³ as a mechanism for Data Centres to procure their renewable energy requirements and the inclusion in the self-reporting requirements

³ LEU Policy - Renewable energy targets and emission requirements

DATA CENTRE SOLUTION TO RENEWABLE AND GRID CHALLENGES

Data Centres in addition to supporting development of additional indigenous Renewable Energy through CPPAs, they also support reduction of constraints through their baseload demand.

Renewable Generators face additional challenges through their ability to export their production to the Grid whereby the Grid operator will constrain off (Constraint) the generator during periods of low customer demand and high renewable production.

In the March 2025 published Eirgrid Constraint Analysis report which identified that for the eastern region including Kildare and Dublin, that subject to level of Offshore Wind constructed, there could potentially be between 7GWh and 10GWh of surplus energy in this region caused by mis matches between when renewable supply capable of being produced and demand during period such as nighttime and summer months.

Data Centres through their stable demand and the flexible nature of their demand through on site generation have the unique ability to provide Grid support to help mitigate these surplus events, by reducing onsite generation and increasing grid consumed energy during high renewable production periods. This also true during period of during periods of low renewable supply, this form of flexibility is becoming more crucial to support the management and stabilisation of the grid, as without this stable demand it would prove impossible to integrate the variable supply from renewable sources with variable demand and therefore it must be recognised the benefit Data Centres provide to overall grid stabilisations.

Given the level of investment and time required develop the necessary form of flexibility generation the CRU in recently published Large Energy User Connection Policy recognises that Data Centres play a critical role in providing the infrastructure now needed to support that transition.

Through the flexibility Herbata will offer in supporting grid stabilisation and by doing so supporting Government of CAP 25 Target in reducing overall carbon footprint for Ireland through Flexible Demand and within the east regions including Kildare through assisting grid increase renewable penetration.

Herbata proposes to have generation on site, while this asset will be located within the overall site it will, in line with the LEU Policy, be contracted with the Grid Operator through the Demand Side Management scheme, to provide key system support services as and when requested by the Grid Operator.

It will remain the responsibility of Herbata to maintain and operate the facility in compliance with Grid requirements ensuring the generation availability when required. The asset will have a very high level of flexibility such that it will have the ability to respond to Grid requests within minutes as opposed to current plant which requires a number of hours' notice.

The demand for supply flexibility is becoming an increasing requirement of Grid Operators with ESB Networks who currently seeking parties willing to offer such services for period of 15years.

SUMMARY

Herbata will not only be a Data Centre it will also be investing in key flexible generation and make this available to Grid to support a more robust local and national grid plus support the transition to an ever-increasing level renewable production.

CORPORATE POWER PURCHASE AGREEMENTS (CPPAs)

1. WHAT IS A CORPORATE POWER PURCHASE AGREEMENT (CPPA)?

A Corporate Power Purchase Agreement (CPPA) is a contract between a Renewable Generator and final electricity end user such as Data Centres, for the supply of their production from assets such as wind and solar to the customers site through the electricity network.

The end user enters an agreement to purchase the full production from the Renewable Generator, usually for a period up to 15 years, at a price level which provides the Renewable Generator with guaranteed price level which enables them to secure the necessary financing to construct and operate the asset.

The Renewable Generator production will be injected into the Grid, in compliance with Grid rules, and similarly end user's offtake per Grid requirements with this additional renewable generation contributing to the overall government energy targets without the need for any government support.

2. WHY CPPAs?

For Large Energy Users such as Data Centre, Pharmaceutical facilities and Technology sites, CPPAs represent the only true means of acquiring energy supply from renewable sources. The reason being that the most suitable location for wind is in the west of Ireland or midlands, in heightened and open plain areas contain the essential minimum wind speeds required which are less available eastern area of Ireland while for solar the south and southeast provide the best production yield. Given location is a strategic requirement then CPPAs provide a balanced arrangement with renewable generator delivering their production into the grid to be "transported" by the grid operator to be off taken by the contracting customer.

This CPPA arrangement for renewable supply via Grid is the only available option given that current Government and Eirgrid Policy does not support direct connection between renewable assets and consumer known as Private Wire, therefore CPPAs represent the only available option for customers to directly contract for renewable energy supply.

It is for this reasons that CPPA are the popular approach across Europe for end users seeking to source renewable energy supply. The evidence of supply from renewable sourcing is through Guarantees of Origin (GOs) which was developed by EU and is the required approach across all members states, In Ireland the certification of supply from renewable sources is governed by the Commission for Regulation of Utilities (CRU in accordance with this EU legislation and therefore a clear and transparent a "farm to fork" approach for electricity production is provided.

3. CPPAs Benefits towards Government Policy

While the Government does provide a support scheme and as it is considered state aid requiring EU approval, these approvals does impose limitations on both price and volume to which government will be entitled to offer. This is to ensure that the government does not (1) overpay for the energy and (2) create a market monopoly to which private sector is unable to compete against.

It is for this reason the scheme imposes a price cap above which projects are not considered, in addition there is also cap on the quantum of projects and volume to which the government are permitted to commit to per EU approval.

It is stated government policy to support and facilitate the development of the CPPA market, and this policy informs the level of support a government scheme is willing and permitted to offer.

However, the number of parties willing and able to enter a contract for 15year period CPPAs is very limited and given the scale of energy needs of many corporates versus the size of the renewable

generation projects, CPPAs are not a form of agreement the vast majority of customer in Ireland are capable of entering into, with the exception being the Data Centre sector and few other the large energy users types.

As a result of the limitations and restrictions in government support schemes many renewable generators seek CPPAs as an alternative contractual arrangement to provide the necessary support which enables them to achieve commercial operations of their projects and these CPPAs are not subsidised and without them many renewable assets would not be constructed and overall government renewable targets, as per CAP 25, will not be achieved.

As highlighted above CPPAs have contributed significantly to the growth of renewable generation in Ireland, with Data Centres. It has been estimated from various press releases that over 20 CPPAs have been completed to date with the majority of these with Data Centre.

4. Alignment with Kildare County Council (KCC) Development Plan 2023-2029

Kildare County Council in their support of Data Centre Developments in the Development Plan reference Policy EC P18 and RE P11 which seek to ensure Data Centres source energy needs of at least 30% renewable sources⁴. Herbata will be contracting with Renewable Sources through CPPAs targeting 50% or more applying a portfolio approach across wind and solar assets and in addition exploring how battery projects may compliment the portfolio to further improve the ratio of energy sources from renewable generation while at the same time providing needed support and resilience to the grid through support battery projects in key grid locations.

The Herbata energy strategy aligns with KCC key Policies and indeed seeks to go further than minimum requirement of 30% by targeting at least 50% target but continue to explore the possibility of higher.

SUMMARY

Herbata stated strategy will be to engage directly with Renewable Generators to purchase and secure their renewable production under a Corporate Power Purchase Agreement (CPPA).

These assets will be new assets that have not being constructed and not connected to the grid and therefore will be additional to the existing renewable production and provide further support to overall government national target.

Strategy will set a target of minimum 50% supply from renewable sources and exploring potential areas to which to increase from this minimum target.

⁴ Policy Objectives - EC 059, EC 061, RE072

HERBATA RENEWABLE ENERGY STRATEGY

Herbata will be targeting to achieve at least 50% of the demand needs through Renewable generation secured through CPPAs, but will in addition to this target, will seek to expand on this ambition and explore how to try achieve 24/7 renewable supply.

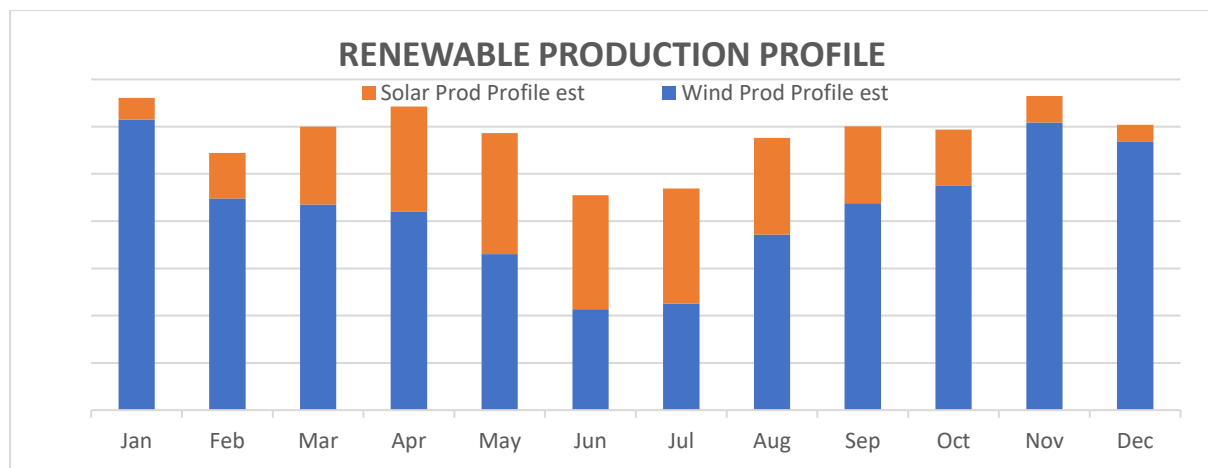
The Renewable Energy supply goal will seek to achieve this 50% target not only on annual basis but also each month with the plan to achieve this will be through appropriate mix of CPPA of both wind, solar and potentially battery assets.

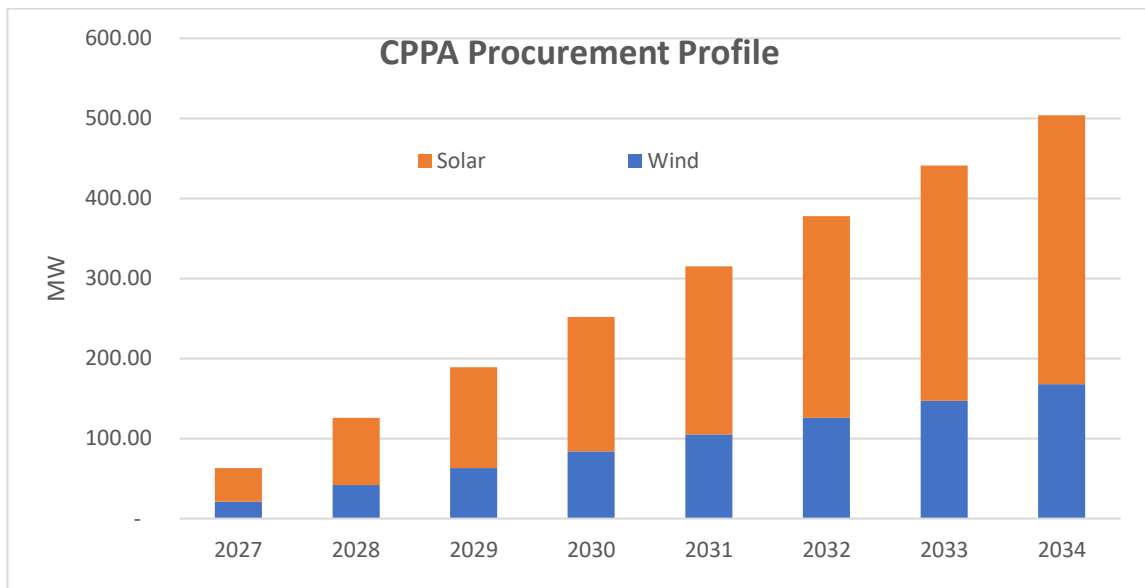
Based historic performance of wind and solar these 2 asset types complement each other throughout the year with wind production more dominate over the winter period while solar production is weighted over the summer period.

To best achieve the benefit of these production profiles across the year a ratio of 1MW of wind contracted to 2MW of solar will also be contracted to CPPAs to seek to maintain the 50% monthly renewable supply target.

Herbata will be seeking to contract 21MW of Wind and 42MW of Solar each year for 8 years. This totals only 168MW Wind and 336MW of Solar and given in excess of 6,000MW of assets with planning but not constructed this represents less than 10% of these projects and with more assets in the planning pipeline this target is very achievable.

The volume of available projects is forecasted to increase through both onshore and offshore developments. It is also the case that government support scheme will need further EU approval beyond what is currently approved and therefore CPPAs are a vital lifeline to ensure continuous growth in renewable generation.





SUMMARY

Herbata renewable contract strategy will be to enter CPPAs for 21MW of Wind and 42MW of Solar for each Data Centre hall. This combination should achieve both an annual and a monthly renewable supply of 50% or more of overall demand per hall.

RENEWABLE GENERATION AVAILABILITY

Since 2020 the Government has completed 4 Renewable Energy Support Schemes (RESS) to support Onshore Wind and Solar, a precondition of these auctions is that participating assets would have the necessary planning consents to construct, with these RESS scheme intended to provide the necessary financial support to enable projects to obtain the financing required to achieve commercial operations.

The results of the 4 RESS auction process has been over 5,200 MegaWatts [MW] across 212 projects being awarded contracts to access RESS support. However, given that these RESS schemes have limitations on both price, volume and the number of projects, with success in the auction was based on submitted Bid price with lowest price accept until volume cap reached.

However, as many of the final constructions and grid connections costs were not fully known at the time of bidding this has resulted in only 27 projects been built to date representing less than 20% of volume to which was awarded a RESS contract.

The primary cause of these projects not proceeding has been as a direct result of the inflationary factors on cost with increasing construction and grid connections cost coupled against a fixed non indexed Bid price, awarded in the RESS auction, with payment only on actual production injected into the grid so constraints are excluded.

The Bid price level for many assets is now below the level required to proceed with the project. RESS scheme contains a strict deadline date for these assets to have completed construction after which the RESS offer will expire. The Auction process provides full details for each project and the development entity awarded a contract.

RESS Auction Results	Awarded RESS	Built to date	Not Built
Onshore Wind [MW]	1,415.54	367.36	1,048.18
Solar [MW]	3,787.84	525.67	3,262.17
Total [MW]	5,203.38	893.03	4,310.35

In addition to the 5,200MW of successful projects in the RESS auction there were 2,044MW of capacity which was unsuccessful, with these projects having full and final planning consent before being permitted to partake in the auction.

Therefore, there is currently more than 6,000MW of projects with planning consent but have not proceeded to construction phase predominately due to price level in the government RESS process being below that now needed to support their financing and development.

Given the publication of all 5,200MW successful RESS projects and developers to which Herbata has full access to, it will have the ability to bilaterally agree through the CPPAs, arrangement to purchase the offtake from the generator at a price level to enable the asset to achieve financial support and proceed to construction to which without a CPPA these assets be constructed.

Herbata has engaged with various developers, who are supportive on entering a CPPA arrangement should planning be granted. These developers have a pipeline of projects progressing through the various stage's pf development and grid connection and have expressed a strong willingness to engage in CPPA arranges with Herbata, once certainty of demand is confirmed then legal engagement will commence to ensure CPPAs in place in advance of energy needs at the Data Centre.

SUMMARY

Herbata, per stated strategy has already held discussions with renewable developers who have both fully consented projects and pipeline at various stages of development and will be seeking commercially viable CPPA to support project financing arrangements to enable it to proceed to constructions. These developers have confirmed their openness to discussing CPPA with Herbata once final energy requirements are confirmed.

Herbata CPPA requirements will be run in parallel with its own construction program.

DEVELOPING A 24/7 RENEWABLE SUPPLY

Given the variable production nature of Wind and Solar a 24/7 renewable supply it is not physically possible to perfectly match demand, however with increasing renewable production properly supported by flexible generation including Battery this improves the ability to utilise renewable energy by storing excess production during periods of low demand and discharging this volume during higher demand period. To support this transition towards renewable generation, flexible generation to which Grid could call on at short notice is absolutely critical, this dispatchable generation ensure Grids ability to address these changes in production.

In line with CRU recommendation and “minded to” decision on LEC Connection policy, Herbata will be providing Grid with dispatchable generation support to ensure a more robust grid both locally and nationally with this form of generation further enables renewable growth.

Herbata will further seek to develop its renewable supply ambition and further increase towards 100% with 24/7 ambition. In trying to achieve this ultimate goal, Herbata will be exploring Battery projects to support grid and compliment production profile particularly the option to co-locate Battery with the contracted renewable generation will first to be pursued in consultation with the Grid operator as to most suitable locations. However, Battery technology is still limited to short term durations only and therefore provides only limited support to the grid versus gas fuelled assets.

Battery storage has the ability to store excess production and deliver to the Grid during periods of low production, which helps stabilise export from the site to the grid as well as aligning to demand periods.

Battery also has the ability to respond to within milliseconds with this speed of response and flexibility enabling the grid to better manage renewable generations productions variances caused by sudden changes in weather.

By collocating Battery with renewable generations, it provides the opportunity to better control production to the grid to times when demand. There does need to be a policy and regulatory update to recognise renewable energy stored in Battery and period

Herbata will support this approach through contractual arrangements to support the overall viability of these projects.

It is also the intention, through the use of external platforms, to monitor and verify renewable generation on an hourly basis. Herbata has reviewed one such platform re24.energy⁵ which provides hourly monitoring of renewable generation against end users consumption providing full traceability in efforts to achieve 24/7 renewable supply.

This hourly monitoring will, in time, allow improvements in the quantity of renewable generation supplied to site and as further policy in Ireland supports the development of Biomethane and Hydrogen, Herbata installed onsite generation will be capable of utilising either of these fuels which will further supporting the ambition move towards a sustainable 24/7 renewable supply.

SUMMARY

Herbata will be making significant investment in flexible generation to support Grid locally and nationally which offer a more resilient grid and at the same time support transition towards a higher renewable production.

⁵ <https://re24.energy/our-vision/>

Herbata plans to hourly monitor contracted renewable supply against own demand in doing so identifying potentials to progress towards a 24/7 supply. This will include exploring co-locating battery with renewable projects contracted

BIOMETHANE SUPPLY STRATEGY

The development of the Biomethane supply in Ireland is very limited at present due to a number of core factors

1. Absence of injection points into the Gas Network
2. Economic conditions to support commercial development of Anaerobic Digesters (ADs) which produce Biomethane

Anaerobic digestion is a process through which bacteria break down organic matter—such as animal manure, wastewater biosolids, and food wastes—in the absence of oxygen and provide a unique circular economy element taking farm and food waste removing them from landfill and converting to Biomethane and in turn replacing fossil fuel gas and therefore is a Renewable Gas. AD facilities also could produce fertilizers to return to the land reducing nitrates contained in commercial grade fertilizers.

As part of the Program for Government 2025 as published in January 2025 and Climate Action Plan has a clearly stated objective to provide incentives to ensure 5.7TWh or 10% of overall gas demand. The current volume of indigenous Biomethane supply is 1%.

There is, however over 20 projects with planning ready to construct once the above factors are addressed and at present the availability of volume is limited until government implement their stated Program for Government objectives for Biomethane sector.

Herbata will be seeking to secure 0.08TWh by 2030 or 1% of Government targets. The contracting mechanism will complete in a similar manner as with Power through a gas version of CPPA.

SUMMARY

Herbata will seek to secure 0.08TWh Biomethane being 1% of Government targeted volume by 2030 subject to the proper regulatory and policy development to support the Biomethane sector.

Contracting approach will follow that similar to CPPA arrangement amended for gas production.

APPENDIX 1 – CORPORATE POWER PURCHASE AGREEMENT TEMPLATE

Dated

20[xx]

[COUNTERPARTY]

and

[COUNTERPARTY]

POWER PURCHASE AGREEMENT

Wind - Participating Generator

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DRAFT

THIS AGREEMENT is made on the 20[xx]

BETWEEN:

- (1) **[COUNTERPARTY NAME]**, a *[limited liability company]* (incorporated in *[Ireland]* with registered number [xxxxxx] and having its registered office at *[registered address]* (the **Seller**); and
- (2) **[COUNTERPARTY NAME]**, a *[limited liability company]* (incorporated in *[Ireland]* with registered number [xxxxxx] and having its registered office at *[registered address]* (the **Buyer**),

each a **Party** and together the **Parties**.

RECITALS:

- (A) The Seller is a Licensed Generator and wishes to sell the Loss Adjusted Metered Quantity and Green Rights to the Buyer.
- (B) The Buyer is a licensed supplier of electricity and wishes to purchase the Loss Adjusted Metered Quantity and Green Rights from the Seller.
- (C) The Parties have agreed to enter into this Agreement to set out the terms upon which the Seller shall sell and the Buyer shall buy the Loss Adjusted Metered Quantity and Green Rights.
- (D) The Seller and the Buyer have agreed that the Seller shall act as (i) Trading Participant in the forwards, ex ante, day-ahead and intra-day markets and (ii) Intermediary in the Balancing Market, in each case, in respect of the Generating Units, in accordance with the terms and conditions of this Agreement.
- (E) The Parties have agreed that the Buyer shall carry out forecasting and balancing activities in respect of the Generating Units in accordance with the terms and conditions of this Agreement.

THE PARTIES AGREE as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1** In this Agreement, except where the context otherwise requires the following words and expressions shall have the meanings set opposite them:

Accession Fee has the meaning given to it in the Trading and Settlement Code;

Act means the Electricity Regulation Act 1999 (as amended);

Acquiring Entity has the meaning given to it in clause 25.4;

Affiliate means in relation to either Party, any holding company or subsidiary or any subsidiary of a holding company of the relevant Party, in each case within the meaning of section 7 and section 8 of the Companies Act 2014;

Agreement means this Power Purchase Agreement (including its Schedules);

Ancillary Service Agreement means any:

- (a) agreement or arrangement concerning Ancillary Services; or
- (b) any agreement or arrangement where the Buyer acts as a Balancing Service Provider (or equivalent service) for the Facility;

Ancillary Services has the meaning given to it in the Grid Code and shall include DS3 system services;

Authorisation to Construct means an authorisation to construct or reconstruct a generating station issued by the CRU pursuant to section 16 of the Act;

Availability Forecast has the meaning given to it in Schedule E;

Availability Variance has the meaning given to it in Schedule E;

Availability Variance Payment has the meaning given to it in Schedule E;

Balancing Activities means the forecasting and balancing activities to be carried out by the Buyer in accordance with clause 12.9;

Balancing Market has the meaning given to it in the Trading and Settlement Code;

Balancing Market Principles Code of Practice means the code of that name, published by the SEM Committee on 11 July 2017 under reference SEM-17-049;

Balancing Service means the entity responsible for carrying out to the Balancing Activities;

Bid Offer Data means both the Simple Bid Offer Data and Complex Bid Offer Data;

Billing Period means with respect to payment of the applicable Contract Price in accordance with clause 7.2, each Electricity Month during the Term and in the case of the month in which the Commencement Date falls, the period commencing at 23.00 hours on the Commencement Date and ending at 23.00 hours on the last day of the same month;

Business Day means any day other than a Saturday, a Sunday or a Public Holiday in Ireland;

Buyer's Use of System Charges means the duly approved tariffs set by the Transmission System Operator and/or Distribution System Operator (as applicable) (or any successor entity with respect to such tariffs) for the use of the Transmission System and/or the Distribution System (including network charges and system services charges) associated with serving demand customers and customers connected to the Transmission System or Distribution System;

CACM Regulation means European Commission Regulation 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management;

Calendar Month means the time period commencing at 00.00 hours local time on the first day of any specific month and ending at 00.00 hours local time on the last day of the same month;

Capacity means the Facility's ability to generate electricity and deliver it to the Connection Point (expressed in MW);

Capacity Market means the capacity market operating as part of I-SEM as more particularly described in the Capacity Market Code and the Trading and Settlement Code;

Capacity Market Code has the meaning given to it in the Transmission System Operator Licence;

Change of Control means where

- (a) any person;
- (b) group of persons, acting in concert; or

- (c) group of connected persons (as defined in section 10 of the TCA),

which does not at the date of this Agreement have or would not be held to have control for the time being (within the meaning of Section 432 of the TCA), gains direct or indirect Control of the Seller. For the purpose of this definition:

- (a) **Control** means

- (i) the power whether by way of ownership of shares, proxy, contract, agency or otherwise, to;
 - (A) cast, or control the casting of 50% or more of the maximum number of votes that might be cast at a general meeting of the Seller; or
 - (B) appoint or remove all, or majority, of the directors or other equivalent officers of the Seller; or
- (ii) the holding beneficially of 50% or more of the issued share capital of the Seller;

- (b) **acting in concert** means a group of persons who, pursuant to an agreement or understanding (whether formal or informal) actively co-operate in respect of the acquisition or assumption directly or indirectly of Control of the Seller;

Commencement Date means the later of:

- (a) the earlier of (i) the date of first export of electricity from the Facility to the Transmission System or Distribution System (as applicable); and (ii) the Commercial Operations Date; and
- (b) the date upon which each of the Conditions Precedent has been either satisfied, or waived by the Buyer in accordance with clause 2.1;

Commercial Operation has the meaning given to it in the Clause 2

Commercial Operations Date means the later of:

- (a) the date that the Facility achieves Commercial Operation, as evidenced by the provision from the Seller to the Buyer of copies of the following documents: (i) the certificate to be provided by the Seller to the Buyer within ten (10) Business Days after the Commercial Operation Date, the Generator shall furnish a director's certificate to the Buyer along with any other relevant information confirming and evidencing that Commercial Operation has been achieved and (ii) the director's declaration confirming that the Installed Capacity of the Facility is complete; and (iii) an 'Interim Operational Notification' from the TSO or evidence of payment of a 'third stage payment' to the DSO and
- (b) the date that the SCADA Equipment is installed, operational and available for the Buyer to monitor the Generating Units remotely;

Competent Authority means the Government of Ireland, the Department, the CRU, the Competition Authority, or any local, national or supra-national authority, department, minister, court, tribunal or public or statutory person being of a public nature of Ireland or of the European Union (including the European Commission, the European Parliament and the European Courts of First Instance and of Justice) and any international or supranational body, with power and competence to make binding decisions, awards, rulings, judgments or decisions and which has jurisdiction over the Parties or the subject matter of this Agreement;

Complex Bid Offer Data has the meaning given to it in the Trading and Settlement Code;

Conditions Precedent means the obligations set out at Schedule A;

Confidential Information has the meaning given to it in clause 24;

Connection Agreement means the agreement or agreements entered into or to be entered into from time to time between (i) the Seller; and (ii) the Transmission System Operator, or Distribution System Operator (as applicable) setting out the terms upon which the Facility may be connected to the Transmission System or the Distribution System (as the case may be);

Connection Point means the point of the connection of the Facility to the Transmission System or Distribution System as applicable;

Constraint Benefit means the net revenues or charges (across all I-SEM Markets) actually received or incurred by the Buyer in respect of the Facility being subject to Constraint, provided that it is agreed that the Seller is liable for the direct administrative costs in either scenario (which in the case of a Constraint Benefit being a net revenue shall be a deduction from such net revenue payable to the Seller and in the case of a Constraint Benefit being a net charge shall be an increase to such net charge payable by the Seller);

Constraint has the meaning given to the term "Operational Constraint" in the Trading and Settlement Code;

Contract Price means the Contract Price calculated in accordance with clause 6 and Schedule B;

CRU means the Commission for Regulation of Utilities (CRU) established pursuant to Section 8 of the Act or any successor entity with respect to those obligations as may be established from time to time;

Credit Support has the meaning given to it in clause 35.2;

Curtailment has the meaning given to the term "All Island Curtailment" in the Trading and Settlement Code, or, if an alternative meaning is given to the term 'curtailment' in any final decision that the SEM Committee issues following the "Implementation of Regulation 2019/943 in relation to Dispatch and Redispatch" consultation paper and the context so requires, it shall have that meaning;

Curtailment Benefit means any revenues or charges (including across all I-SEM Markets) actually received or incurred by the Buyer in respect of where the Facility being subject to Curtailment, and for which compensation is received by the Buyer pursuant to a measure established by the Regulatory Authorities as an outcome of the consultation exercise of which the consultation paper "Implementation of Regulation 2019/943 in relation to Dispatch and Redispatch" (published by the Regulatory Authorities, as the SEM Committee, on 27 April 2020 under reference SEM-20-028);

Curtailment Benefit (Generator) means any payment actually received directly by the Seller (or anyone on behalf of the Seller other than the Buyer) in respect of Curtailment;

Day Ahead Market or **DAM** means the day ahead market operating as part of I-SEM as more particularly described in the SEMOpX Rules (and any such other day ahead market in respect of the trading of electricity in a day ahead timeframe in which the Buyer trades the Loss Adjusted Available Quantity from time to time);

Day-ahead Trade Price has the meaning given to it in the Trading and Settlement Code;

Day-ahead Trade Quantity has the meaning given to it in the Trading and Settlement Code;

Decremental Price Quantity Pair has the meaning given to it in the Trading and Settlement Code;

Department means the Department of the Environment, Climate and Communications and any successor;

Determination means the determination of the Expert in accordance with clause 19;

Dispute Notice has the meaning given to it in clause 13.7.1;

Disputed Amount has the meaning given to it in clause 13.7;

Disputed Invoice Amount has the meaning given to it in clause 13.9;

Distribution System means the system consisting (wholly or mainly) of electrical lines, transformers and switchgear which is owned by the Distribution System Owner and operated by the Distribution System Operator and is used for the distribution of electricity;

Distribution System Operator means the person for the time being licensed to discharge the functions of the distribution system operator pursuant to a licence granted by the CRU pursuant to section 14(1)(g) of the Act;

Distribution System Owner means the person for the time being licensed to discharge the functions of the distribution system owner pursuant to a licence granted by the CRU pursuant to section 14(1)(k) of the Act;

DS3 means the DS3 (Developing a Safe Secure System) programme and any other successor, replacement or similar programme established by the Transmission System Operator, including (without limitation) any programme enacted by the Transmission System Operator pursuant to a measure established by the Regulatory Authorities as an outcome of the scoping exercise carried out by the SEM Committee of which the scoping paper "System Services Future Arrangements Scoping Paper" (published by the Regulatory Authorities, as the SEM Committee, on 8 July 2020 under reference SEM-20-044) formed part;

Due Date means in respect of an Invoice, the last day of the Calendar Month during which the Invoice is issued and where the last day of the Calendar Month falls on a day that is not a Business Day, shall instead be the next day which is a Business Day;

Early Termination Date has the meaning given to it in clause 14.1;

EirGrid means EirGrid plc acting its capacity as the holder of the Transmission System Operator Licence;

Electricity Day means the time period commencing at 23.00 hours local time on the day prior to the day and ending at 23.00 hours on the day (for example the 2nd March Electricity Day begins at 23.00 hours on 1st March and ending at 23.00 hours on 2nd March);

Electricity Month means the time period commencing at 23.00 hours local time on the day prior to the first day of any specific month and ending at 23.00 hours local time on the last day of that same month (for example the Electricity Month for June begins at 23.00 hours on 31 May and ends at 23.00 hours on 30 June);

ESB means the Electricity Supply Board of Ireland, a statutory corporation constituted under the Electricity (Supply) Act 1927, its successors and assigns, and reference to ESB in this Agreement shall, where the context so requires, be construed as a reference to the appropriate business unit within ESB or the appropriate entity, whether or not within the ESB group of companies, carrying out functions of ESB;

EURIBOR as determined on the Settlement Day on which a sum becomes payable, means the percentage rate per annum for deposits in Euro for a six (6) month period which appears on Dow Jones (formerly Telerate) (or any successor service) page 248 (or any relevant successor page) as of 11.00 am (Brussels time) on such Settlement Day. Where either Party becomes aware that such quotation shall no longer be available it shall notify the other as soon as reasonably practicable and the Parties shall negotiate in good faith with a view to agreeing a replacement to EURIBOR that will maintain the commercial balance of this Agreement (subject to obtaining any necessary consents from the Lender). Where such quotation is not available and the Parties have not yet agreed a replacement to EURIBOR, then for the purpose of this Agreement until a replacement is agreed, EURIBOR will be the rate per annum for deposits in Euro determined to be equal to the arithmetic mean (rounded upwards to four (4) decimal places) of the rates at which each of at least three (3) banks who generally provided quotes on Dow Jones (formerly Telerate) page 248 when quotations were last available thereon was offering to prime banks in the European interbank market deposits in Euro for a six (6) month specified period at or about 11.00 am on such Settlement Day;

Euro or € means the single currency of participating Member States of the European Union;

Ex-Ante Markets means the Day Ahead Market and the Intraday Market (auctions and the continuous market);

Exchange means any electronically cleared market operated by a NEMO offering electricity trading on day-ahead and/or intraday timeframes for the delivery of electricity in Ireland and Northern Ireland, including SEMOpx as set out in the SEMOpx Rules;

Exchange Member means a person or persons admitted as a member of an Exchange, including in accordance with Chapter C of the SEMOpx Rules;

Expert means the person who is appointed in accordance with clause 19;

Facility means the Generating Units owned and operated by the Seller, identified in Schedule C, together with all associated ancillary equipment, buildings and property at or adjacent to the Site, including the Seller's equipment installed on the Seller's side of the Connection Point;

Final Physical Notification has the meaning given to it in the Trading and Settlement Code;

Fixed Market Operator Generator Charge has the meaning given to it in the Trading and Settlement Code;

FM Termination Notice has the meaning given to it in clause 18.3;

Forecasting and Balancing Fee has the meaning given to it in Schedule B;

Form of Authority has the meaning given to it in the Trading and Settlement Code and is attached at Schedule F;

Generating Unit means, in respect of each metering point, the aggregate of the relevant wind electric generators installed at the Site and identified at Schedule C. The terms **Generating Unit** and **Unit** may be used interchangeably and shall have the same meaning;

Generator Unit has the meaning given to it in the Trading and Settlement Code;

Green Rights means all or any rights, instruments, certificates, Guarantees of Origin, grants of financial aid or relief from any governmental authority applicable for use by suppliers in Ireland (**Rights**) (other than the physical energy component comprised in the Loss-Adjusted Metered Quantity in connection with or otherwise associated with the generation of electrical output from the Facility or the renewable or

environmental characteristics or attributes of the Facility and which are granted to the Seller or the Buyer or any of their Affiliates and including (without limitation to the foregoing):

- (a) any Rights established as part of or associated with any green credit or green certificate regime or other scheme which exists at the Commencement Date or which is introduced during the Term by any national legislation or decision of a national regulatory body or EU regulation, directive or decision and which is designed to support renewable energy sources in electricity production or awarded retrospectively for the Term;
- (b) any Rights in respect of electrical output from a renewable source which may have an economic value or benefit to the Seller or the Buyer in an open market in respect of such Rights;
- (c) any credits for renewable energy that could or do qualify for application toward compliance with any local, State or international renewable energy portfolio, standard, mandate or objective; and
- (d) any certificates evidencing that electricity generated from a renewable source is exempt from any levy or tax on emissions from generating stations,

Grid Code means each of the grid code in relation to the Transmission System and the distribution code in relation to the Distribution System as applicable, (including (for the avoidance of doubt any codes in relation to wind generation), prepared and approved in accordance with Section 33 of the Act, as each may be amended, modified or replaced from time to time and where the context so requires, includes any derogation granted by the CRU or other Competent Authority from compliance with Grid Code and conditions to such derogation;

Guarantees of Origin or GOOs means any guarantee of origin issued in accordance with Article 15 of Directive 2009/28/EC, the European Union (Renewable Energy) Regulations 2014 (S.I. No. 483/2014) (as may be amended or replaced from time to time) or other certificate or similar document which provides evidence that electricity is generated from renewable sources;

Imbalance Settlement Period has the meaning given to it in the Trading and Settlement Code;

Imbalance Settlement Price has the meaning given to it in the Trading and Settlement Code;

Incremental Action has the meaning given to it in the Trading and Settlement Code;

Incremental Price Quantity Pair means the relevant part of the term “Incremental/Decremental Price Quantity Pair”, as defined in the Trading and Settlement Code;

Industry Agreements means:

- (a) any and all agreed procedures and standards specified by the CRU or other Competent Authority, which apply to electricity generators and/or suppliers;
- (b) any and all codes of practice and agreements regulating the generation, trading and supply of electricity in Ireland; and
- (c) any other code, agreement, licence or arrangement to which a Party is obliged by Industry Laws, any Required Authorisation, the Grid Code or the Connection Agreement, to be a party to or to comply with,

and includes, but is not limited to, the I-SEM Market Rules, the Grid Code, the Metering Code, the Meter Registration Agreement, any Use of System Agreement and any revenue protection code of practice;

Industry Laws means the Act (including all subordinate legislation and regulations made thereunder), any other law (including any law, statute, statutory instrument, regulation, directive, decision or direction of any Competent Authority) relevant to this Agreement or to either or both Parties' obligations under the Agreement and any other relevant legislation and any legally binding obligations imposed on a Party under the Required Authorisations, Industry Agreements or otherwise;

Integrated Single Electricity Market or I-SEM means the SEM as modified by the modifications designed by the CRU and the Northern Ireland Authority for Utility Regulation, as contemplated by the decision paper of the CRU and the Northern Ireland Authority for Utility Regulation (acting through the SEM Committee) entitled "Integrated Single Electricity Market (I-SEM) SEM Committee Decision on High Level Design" and bearing document reference SEM-14-085a and as described as the Single Electricity Market in section 2 of the Act (as amended);

Intermediary has the meaning given to it in the Trading and Settlement Code;

Intraday Market means the intraday market operating as part of I-SEM as more particularly described in the SEMOpX Rules (and as applicable any other intraday market in respect of the trading of electricity in an intraday timeframe in which the Buyer trades the Loss Adjusted Available Quantity);

Invoice means an invoice issued pursuant to clause 13;

I-SEM Market Rules means the Grid Code, Metering Code, NEMO Rules, SEMOpX Rules, Trading and Settlement Code, Connection Network Codes, Capacity Allocation and Congestion Management (CACM), and other relevant codes, guidelines and agreements (each as may be modified from time to time);

I-SEM Markets means for the purpose of this Agreement the Forwards Market, Day Ahead Market, Intraday Market and Balancing Market;

Lender means any lender(s) (or security agent on behalf of such lender(s)) providing financing to the Seller in connection with the Facility;

Licence means a licence under section 14 of the Act;

Licence to Generate means a licence issued by the CRU pursuant to section 14(1)(a) of the Act;

Licensed Generator means a generator licensed pursuant to a Licence to Generate;

Long Stop Date has the meaning given to it in clause 2;

Loss Adjusted Available Quantity means the Loss Adjusted Metered Quantity that a Generating Unit could produce and deliver for consumption in the absence of any Constraint or Curtailment of the Generating Unit by EirGrid;

Loss Adjusted Metered Quantity has the meaning given to it in the Trading and Settlement Code;

Loss means a sum which reflects the cost to the Terminating Party if it were required to replace the transactions described in this Agreement for the period from the Early Termination Date to the date of the expiration of the Term of this Agreement, with a similar agreement to be entered into with an independent counterparty in the relevant market on substantially the same terms as this Agreement and that would have the effect of preserving for the Terminating Party the economic equivalent of the transactions described in this Agreement (provided this shall not require the Terminating Party to enter into any such agreement). If the Loss so calculated is a negative number it shall be deemed to be zero;

Market Operator has the meaning given to it in the Trading and Settlement Code;

Market Operator Licence means the licence granted to the single electricity market operator (being at the date hereof EirGrid in conjunction with the holder from time to time of the equivalent licence issue under the Electricity (Northern Ireland) Order 1992 (being at the date hereof SONI Limited)) by the Commission for Regulation of Utilities pursuant to section 14(1)(j) of the Act;

Material Breach means:

- (a) any breach of this Agreement which has a material adverse effect on the ability of the non-defaulting Party to enjoy the rights conferred on it by this Agreement or to perform its obligations under this Agreement (provided without limitation it is agreed that any breach by the Seller of clause 6 to 8 inclusive, 11.1, 11.2, 16.1, or Part 1 of Schedule E is automatically a "Material Breach");
- (b) any breach of any of the representations or warranties set out in clause 3 which has a material adverse effect on the ability of the non-defaulting Party to enjoy the rights conferred on it by this Agreement or to perform its obligations under this Agreement (subject to the non-defaulting Party having notified the other Party of such breach and allowing ten (10) Business Days for that Party to remedy such breach);
- (c) any breach of any Industry Agreement, Industry Law or Required Authorisation which has a material adverse effect on the ability of the non-defaulting Party to enjoy the rights conferred on it by this Agreement or to perform its obligations under this Agreement; or
- (d) failure to act in accordance with Prudent Operating Practice which has a material adverse effect on the ability of the non-defaulting Party to enjoy the rights conferred on it by this Agreement or to perform its obligations under this Agreement;

Material Reduction has the meaning given to it in clause 7.8;

Meter Data Provider or **Data Provider** has the meaning given to it in the Trading and Settlement Code;

Meter Registration Agreement means the agreement of that name prepared by the Distribution System Operator in accordance with its Distribution System Operator Licence and required to be entered into by licensed suppliers and licensed embedded generators;

Metered Quantity has the meaning given to it in the Trading and Settlement Code;

Metering Code has the meaning given to it in the Trading and Settlement Code;

Metering Connection Tests have the meaning given to them in clause 9.2;

Minister means the Minister of the Environment, Climate and Communications (including any successors);

Monitoring Equipment means any recording equipment which is required to enable the Buyer to obtain real time data from the Facility in relation to the Generating Unit's Metered Quantity;

MRSO or **Meter Registration System Operator** means the business unit of the Distribution System Operator which discharges the functions described in condition 8 of, and provides the services described in condition 9(1)(d) of, the Distribution System Operator Licence;

MWh means Megawatt Hour;

Negative Price Event means the occurrence of a Trading Period or Trading Periods in which the Day Ahead Market price is less than zero;

Negative Price Event Curtailment Policy means the operational arrangements relating to the management of Negative Price Events, set out at clause 12.11;

NEMO has the meaning given to "nominated electricity market operator" in European Commission Regulation (EU) 2015/1222 establishing a guideline on capacity allocation and congestion management and includes SEMOpX;

NEMO Rules means any set of rules pursuant to which any party agrees to perform tasks of a NEMO in Ireland and to which participants in the Single Electricity Market are required to accede in order to trade in such of the I-SEM Markets as are operated by that NEMO, including the SEMOpX Rules;

Non-Performing Party has the meaning given to it in clause 18.1;

Offer Data has the meaning given to it in the Trading and Settlement Code;

Offer Strategy has the meaning given to it in clause 12.9.3;

Parties means the Buyer and the Seller;

Party Liable has the meaning given to it in clause 17.1;

Party means either the Buyer or the Seller;

Planned Outage means the scheduled removal of all or a portion of a Generating Unit's production capability from service, such removal being co-ordinated in advance with the Distribution System Operator or Transmission System Operator (as applicable) with a mutually agreed start date and duration; and required for inspection, preventive, corrective or routine maintenance or for safety reasons;

PPA Direct Agreement means a document so named that may be entered into by the Buyer, the Seller and a Lender in, or substantially in, the agreed form attached at Schedule D;

Prudent Operating Practice means, with regard to the design, construction, operation and/or maintenance of the Facility and/or performance of or compliance with any provision of this Agreement requiring "Prudent Operating Practice", those standards, practices, methods and procedures (conforming to safety and legal requirements) which are attained by exercising that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances;

Public Holiday means any day, other than a Saturday or Sunday, on which banks in Dublin are not open for business;

Rated Generating Capacity means the installed generating Capacity of the Generating Units as more fully described at Schedule C;

Rating Agency means Fitch Ratings Ltd., Standard & Poor's (S&P) or Moody's Investor Services;

Reasonable Endeavours means the taking of all reasonable steps in accordance with Prudent Operating Practice which a conscientious person would take to comply with its obligations under this Agreement;

Regulatory Authorities means the Northern Ireland Authority for Utility Regulation and the Commission for Regulation of Utilities (including each of their successors from time to time);

REMIT means Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency as same may be amended or replaced from time to time;

Required Authorisations has the meaning given to it in clause 3.1.4;

Revenue Commissioners means the Revenue Commissioners as contemplated in the TCA and any enactments in relation to VAT, stamp duties, capital acquisitions tax or any other taxes which may arise in Ireland and any successor entity or body;

SCADA Data means (i) the following available data listed in (a) to (d) below; and (ii) all other data and information as may be required by the Buyer and which the SCADA Equipment is capable of providing:

- (a) turbine availability (MW);
- (b) wind speed (in m/s);
- (c) wind direction;
- (d) icing;
- (e) relative humidity;
- (f) air pressure;
- (g) total direct current output from the Facility;
- (h) total alternating current output from the Facility;
- (i) ambient temperature; and
- (j) temperature of the Facility;

SCADA Equipment means the Supervisory Control and Data Acquisition system which allows the Seller and the Buyer to monitor the Generating Units remotely;

SCADA Malfunction means any failure to deliver SCADA Data (or any part of it) in accordance with this Agreement, except to the extent that this is caused by a failure or fault of any equipment provided, owned or procured by or on behalf of the Buyer, or any third party engaged by the Buyer to carry out the Balancing Activities or any part thereof;

Seller's Day Ahead Forecast has the meaning given to it in clause 12.9.1;

Seller's Use of System Charges means the duly approved tariffs set by the Transmission System Operator and/or Distribution System Operator (or any successor entity with respect to such tariffs) for the use of the Transmission System and/or the Distribution System associated with export of electricity;

SEM Committee means the committee established by the CRU in accordance with Section 8A(1) of the Act in conjunction with the Northern Ireland Authority for Utility Regulation;

SEMOpX means EirGrid and SONI Limited (including each of their successors) in their respective roles as a NEMO designated by a Regulatory Authority in accordance with the CACM Regulation;

SEMOpX Rules means the rules, appendices and procedures prepared and submitted by SEMOpX in accordance with the terms of the SEMOpX regulatory licences and approved by the Regulatory Authorities (where applicable) pursuant to which SEMOpX carries out its duties and obligations and Exchange Members trade on the Exchange;

Settlement Day has the meaning given to it in the Trading and Settlement Code;

Settlement Rerun has the meaning given to it in the Trading and Settlement Code;

Simple Bid Offer Data has the meaning given to it in the Trading and Settlement Code;

Single Electricity Market or **SEM** has the meaning given to "Single Electricity Market" in the Act, as amended from time to time (including by section 8 of the Energy Act 2016 (which amended section 2 of the Act) on and from the commencement of that section);

Site means the location of the Facility as identified in Schedule C;

Statement of Account has the meaning given to in clause 13;

Strike Price means the offer price (expressed in €/MWh) in respect of the Facility, and which is set out in Schedule B;

Supply Licence means a licence to supply electricity to final customers issued by the CRU pursuant to section 14(1)(b) of the Act;

System Operator means the Transmission System Operator and/or the Distribution System Operator;

Tax Clearance Certificate means a clearance certificate issued by the Irish Revenue Commissioners or in the case of non-resident entities a statement from the Irish Revenue Commissioners confirming suitability to be awarded the relevant contract;

TCA means the Taxes Consolidation Act 1997;

Term means the period commencing on the Commencement Date and continuing until the earlier of:

- (a) [X]; and
- (b) the date, if any, of early termination in accordance with clause 14 or any other provision of this Agreement;

Terminating Party means a Party which has exercised its rights to terminate the Agreement in accordance with clause 14;

Termination Event has the meaning given to it in clause 14.1;

Termination Notice has the meaning given to it in clause 14.1;

Termination Payment has the meaning given to it in clause 14.4;

Termination Payment Date has the meaning given to it in clause 14.6;

Testing Charge has the meaning given to it in the Trading and Settlement Code;

Trade Restriction means any law, regulation, decree, ordinance or legally binding order, rule or requirement of the United Nations or under the laws of the European Union or any EU or EEA Member State, the United States of America, the United Kingdom, Switzerland, or any other jurisdiction in which either of the Parties is established, relating to trade sanctions, trade embargoes and other foreign trade controls, export controls, non-proliferation, anti-terrorism and similar laws;

Trading and Settlement Code has the meaning given to the term "Single Electricity Market Trading and Settlement Code" in the Market Operator Licence and includes any agreed procedures or codes of practice made thereunder or in connection therewith;

Trading Participant means the entity acting as a Trading Participant on an Exchange as approved by SEMOpx or the equivalent or similar participant in the Ex-Ante Markets on any Exchange;

Trading Period has the meaning given to it in the SEMOpx Rules (or any such other set of NEMO rules as may be agreed between the Parties to apply to the operation of this Agreement, provided always that such set of NEMO rules relate to a market in which the Buyer trades the Loss Adjusted Available Quantity from time to time);

Transmission System means a system which consists wholly or mainly of high voltage lines and electric plant and which is used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another or to or from any interconnector or to final customers, but shall not include any such lines which may from time to time, with the approval of the CRU, be specified as being part of the Distribution System;

Transmission System Operator Licence means the licence granted to the transmission system operator (being at the date hereof EirGrid in conjunction with the holder from time to time of the equivalent licence issue under the Electricity (Northern Ireland) Order 1992 (being at the date hereof SONI Limited)) by the CRU pursuant to section 14(1)(e) of the Act;

Transmission System Operator means the person for the time being licensed to discharge the functions of the Transmission System Operator pursuant to a licence granted by the CRU under section 14 (1)(e) of the Act;

Uninstructed Imbalance Charges has the meaning given to it in the Trading and Settlement Code;

Unplanned Outage means the unscheduled removal of all or a portion of a Generating Unit's production capability of at least one (1) MW from service;

Unsecured Bad Debt has the meaning given to it in the Trading and Settlement Code;

Use of System Agreement has the meaning given to it in the Trading and Settlement Code;

Use of System Charges means the duly approved tariffs set by the relevant System Operator (or any successor entity with respect to such tariffs) for the use of the Transmission System and/or the Distribution System; and

VAT means the value added tax chargeable under the provisions of the Irish Value Added Tax Consolidation Act 2010 or any substitute or replacement tax on the supply of goods or services.

1.2 In this Agreement, unless the context requires otherwise, any reference to:

1.2.1 the singular shall include the plural and vice versa;

1.2.2 any gender reference shall be deemed to include references to the masculine, feminine and neuter genders;

1.2.3 the word "including" and its variations shall be construed without limitation;

1.2.4 any reference to "writing" or "written" shall include all methods of reproducing words in a legible and non-transitory form;

1.2.5 any references to a "person" or "persons" shall include individuals, firms and corporations, joint ventures, trusts, unincorporated associations and organisations, partnerships and any other entity, in each case whether or not having a separate legal personality and any references to

persons (including a party) shall include their legal successors and permitted assignees and transferees;

- 1.2.6** any reference to legislation, regulations, directives, orders, instruments, codes, other enactments, Industry Agreements or Industry Laws shall include any amendments, modifications, extensions, replacements or re-enactments thereof then in force;
- 1.2.7** any reference to a statutory agency, body, corporation, entity, government departments, Minister, Minister of State, ministry or office shall include their legal predecessors, successors and permitted assignees;
- 1.2.8** unless otherwise specified or the context otherwise requires:
- (a) any reference in this Agreement to a **clause** is a reference to a clause contained in this Agreement;
 - (b) any reference to a **Schedule** is a reference to a Schedule to this Agreement;
 - (c) any reference to a **Section** is a reference to a Section in this Agreement; and
 - (d) any reference to an **Appendix** is a reference to an Appendix to this Agreement.
- 1.2.9** any reference to another agreement or document, or any deed or other instrument (including the Industry Agreements) shall be construed as a reference to that other agreement, or document, deed or other instrument as the same may have been, or may from time to time be, amended, varied, supplemented, substituted or novated;
- 1.2.10** any terms not defined in either this Agreement, the Grid Code, the Metering Code, the SEMOpX Rules, the NEMO Rules, the Capacity Market Code or the Trading and Settlement Code shall have the meaning commonly used in electric utility practice or the English language, as appropriate;
- 1.2.11** any reference to a month or year shall be construed as reference to a calendar month or year, as the case may be;
- 1.2.12** where reference is made to a monetary amount or sum, it is to an amount or sum denominated in Euro unless specified otherwise;
- 1.2.13** the table of contents and clause headings are inserted for ease of reference only and shall be ignored for the purpose of the construction of this Agreement;
- 1.2.14** all terms which have been defined in this Agreement shall have their initial letters in capital typescript whenever and wherever they appear in this Agreement;
- 1.2.15** in the event of inconsistency between the provisions of this Agreement and the Grid Code or the Metering Code or the I-SEM Market Rules (as the case may be), the provisions of the Grid Code or the Metering Code or the I-SEM Market Rules (as the case may be) shall prevail to the extent of such inconsistency unless the contrary intention is explicit; and
- 1.2.16** any reference to time shall be construed as local time.

2 CONDITIONS PRECEDENT

- 2.1** The provisions of this Agreement (except those in clauses 1, 2, 3, 4, 5, 10, 14, 17, 18, 20 to 29 (inclusive), 33, 34 and 35) shall have no effect until:

- 2.1.1** the Seller has delivered to the other the duly executed or duly certified copies (as required) of each of the documents required to be delivered by it in Schedule A (or that in accordance with clause 2.2, the Buyer has waived any such requirement and has notified the Seller of such waiver); and
- 2.1.2** the Seller has notified the Buyer that the Commencement Date has occurred and the Buyer has confirmed to the Seller that it is satisfied (acting reasonably) that the Commencement Date has occurred.
- 2.2** The Buyer shall be entitled in its absolute discretion to waive compliance with any of the Conditions Precedent set out at Schedule A.
- 2.3** The Seller shall use Reasonable Endeavours to ensure that the Conditions Precedent are satisfied as soon as reasonably practicable and, in any event, by no later than the Long Stop Date, being (i) [●] ; or (ii) in the event of a delay in grid connection build out, such later date for achieving Commercial Operation as may be notified to the Seller (or an Affiliate of the Seller).
- 2.4** The Seller shall notify the Buyer as soon as reasonably practicable and, in any event, within ten (10) Business Days of becoming aware that a Condition Precedent is unlikely to be satisfied prior to the Long Stop Date.
- 2.5** In the event that the Commencement Date has not occurred by the Long Stop Date (or such later date as the Buyer may agree in writing in its absolute discretion) in circumstances where the Seller has failed to comply with its obligations under clause 2.3 or clause 2.4 then a Termination Event shall be deemed to have occurred pursuant to clause 14.1. In the event that the Commencement Date has not occurred by the Long Stop Date (or such later date as the Buyer may agree in its absolute discretion) in circumstances where the Seller has complied with its obligations under clause 2.3 then each Party shall be released from its obligations under this Agreement without further action of the Parties and neither Party shall have any claim or liability to the other Party arising out of such termination other than in respect of any accrued rights or obligations as at the date of such termination.

3 REPRESENTATIONS AND WARRANTIES

- 3.1** Each Party (save where specified below) represents and warrants on its own behalf to the other Party that, at the Date of this Agreement and on each Settlement Day from the Date of this Agreement (which representations and warranties are deemed to be repeated by each Party on the Commencement Date):
- 3.1.1** **(Status)** It is duly organised and validly existing under the law of the jurisdiction of its organisation or incorporation (and, if relevant under those laws, in good standing);
- 3.1.2** **(Power)** It has the power (i) to execute this Agreement, the Form of Authority and any other documentation relating to this Agreement to which it is a party; (ii) to deliver this Agreement-, the Form of Authority, and any other documentation relating to this Agreement that it is required by this Agreement to deliver; and (iii) to perform its obligations under this Agreement-, the Form of Authority, and any other documentation relating to this Agreement that it is required to deliver, and that it has taken all necessary action to authorise that execution, delivery and performance;
- 3.1.3** **(No Violation or Conflict)** The execution, delivery and performance referred to in clause 3.1.2 do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgement of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- 3.1.4** **(Required Authorisations)** All licences, authorisations, permits, consents, contracts and other approvals (if any) that are required to enable the Party to fulfil any of its obligations under this

Agreement (including in the case of the Buyer its Supply Licence and in the case of the Seller its Authorisation to Construct and Licence to Generate) (**Required Authorisations**) have been obtained and such Required Authorisations are in full force and effect and all conditions of any Required Authorisations have been complied with by that Party;

3.1.5 (Obligations Binding) Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law);

3.1.6 (No Litigation) (in respect of the Seller only) no litigation, arbitration or administrative suit or proceeding (other than litigation, arbitration or administrative suit or proceeding which is frivolous or vexatious) at law or in equity or before any court, tribunal, governmental body, agency, official or arbitrator is pending or, so far as it is aware, threatened against it or any of its Affiliates which would, if adversely determined, result in a material adverse change in its financial condition or its ability to perform its obligations under this Agreement;

3.1.7 (No Litigation) (in respect of the Buyer only) no litigation, arbitration or administrative suit or proceeding (other than litigation, arbitration or administrative suit or proceeding which is frivolous or vexatious) at law or in equity or before any court, tribunal, governmental body, agency, official or arbitrator is pending or, so far as it is aware, threatened against it or any of its Affiliates which would, if adversely determined, result in a material adverse change in its ability to perform its obligations under this Agreement;

3.1.8 (No Reliance) It is not relying upon any representations of the other Party other than those expressly set out in this Agreement;

3.1.9 (Principal) It has negotiated, entered into and executed this Agreement as principal (and not as agent or in any other capacity, fiduciary or otherwise);

3.1.10 (Prudent Operating Practice) in relation to the Seller only, that the Facility has been constructed and operated to such standards as meet Prudent Operating Practice; and

3.2 Each Party shall, at all times during the Term, maintain in full force and effect all Required Authorisations which that Party is obligated to obtain.

4 DIRECT AGREEMENT

The Buyer shall, upon request from the Seller, use Reasonable Endeavours to enter into a PPA Direct Agreement in the form set out in Schedule D, or such other substantially similar form as may be agreed by the Buyer (acting reasonably).

5 TERM AND OPTION PERIOD

5.1 Subject to clauses 2.1, 14 and 28, this Agreement shall continue in full force and effect from the Commencement Date for the duration of the Term.

5.2 The Parties agree that no later than six (6) months prior to the expiry of the Term, the Buyer and Seller shall commence discussions with a view to negotiating, in good faith, a new agreement for the sale and purchase of the Loss Adjusted Actual Quantity beyond the Term.

5.3 The Seller shall not negotiate with other intending or potential purchasers of the Seller's Loss Adjusted Actual Quantity prior to commencement of negotiations with the Buyer under clause 5.2.

6 CONTRACT PRICE

- 6.1** Subject to clauses 29, the Contract Price during the Term shall be as set out in Schedule B.
- 6.2** The Seller expressly agrees and acknowledges that, in consideration of the receipt of payments under this Agreement the Seller shall have no entitlement to and the Buyer shall be entitled to receive all payments and benefits under the SEM Market Rules, of whatever kind, including in connection with the (i) Seller's Loss Adjusted Metered Quantity and (ii) participation and trading under the SEM Market Rules and (iii) other than as set out in Clause 6.2.1 below, any payments or charges in respect of constraints or curtailment, in each case for the duration of this Agreement.
- 6.2.1** In the event that in respect of any Trading Period in a Billing Period the Facility is constrained down or otherwise curtailed by the System Operator, and the Buyer receives a payment (whether from the Market Operator, System Operator or otherwise) in respect of such constraint or curtailment (the **Buyer Constraint Payment**), the Buyer shall pay to the Seller [xx] of the Constraint Volume Payment received (the **Seller Constraint Payment**).
- 6.3** Except as specifically set out in this Agreement, the Seller shall be liable to pay to the Buyer the Availability Variance Payment in each case in the circumstances provided under Schedule E.

7 AGREEMENT TO BUY AND SELL ELECTRICITY

- 7.1** During the Term the Seller shall deliver and sell to the Buyer and the Buyer shall accept and purchase from the Seller the Loss Adjusted Metered Quantity on the terms and subject to the conditions of this Agreement. This constitutes a grant by the Seller to the Buyer of the sole and exclusive rights to the Loss Adjusted Available Quantity for the duration of this Agreement.
- 7.2** The Buyer shall pay the applicable Contract Price to the Seller for each MWh of Loss Adjusted Metered Quantity purchased in accordance with this Agreement and for which the Buyer has been credited in the I-SEM Markets.
- 7.3** The Seller shall be responsible for the payment of all of the Seller's Use of System Charges and the Buyer shall be responsible for the payment of all of the Buyer's Use of System Charges.
- 7.4** The Parties agree that title and property to electricity delivered under this Agreement shall pass at the Connection Point.
- 7.5** The Seller shall not, without the prior written consent of the Buyer, participate in Capacity Market auctions.
- 7.6** Subject to clause 7.7, the Seller shall not, without the prior written consent of the Buyer (unless required by Industry Agreements or Industry Laws), enter into any Ancillary Services Agreement where such agreement is likely to result in the Material Reduction of the Loss Adjusted Available Quantity or Loss Adjusted Metered Quantity from the Facility. For the purposes of this clause 7.6, "**Material Reduction**" shall mean a reduction in excess of [●] per cent ([X]%) of the Loss Adjusted Available Quantity and/or Loss Adjusted Metered Quantity in any half-hour as a result of the provision of such Ancillary Services.
- 7.7** The Parties agree that should DS3 system services be amended from a set published tariff to a market-based procurement service requiring daily interaction with the relevant market, and the Seller is providing or intends to provide (or procure the provision from a third party of) such DS3 system services or act on behalf of the Facility (or procure a third party to act) as a Balancing Service Provider in respect of such DS3 system services, the Parties shall seek to negotiate and enter into an Ancillary Service Agreement on terms and conditions (including with regard to revenue and value sharing) no less favourable to the Seller than those available from a third party (subject to the Seller providing the Buyer with sufficient evidence of such terms and conditions). Notwithstanding any other obligation in this Agreement, it is recognised that any such Ancillary Service Agreements agreed between the Buyer and the Seller pursuant

to this clause 7.7 may include protocols which result in a Material Reduction in Loss Adjusted Available Quantity and/or Loss Adjusted Metered Quantity which otherwise would be prohibited by clause 7.6. Where the Parties do not agree to enter into such Ancillary Services Agreement referred to in this clause 7.7, this Agreement will remain in full force and effect and clause 7.6 will still apply.

8 GREEN RIGHTS

- 8.1** Other than as expressly stated elsewhere in this Agreement, the Parties agree that the Buyer shall be entitled to (xx%) of the financial return and benefits from the utilisation of all Green Rights. The Parties agree that they shall, acting in good faith, carry out all necessary acts and execute all necessary documents to give effect to this agreement and use Reasonable Endeavours to seek to maximise the financial return and benefits to the Parties from any such Green Rights.
- 8.2** Without prejudice to clause 8.1, the Seller agrees to deliver and/or transfer to the Buyer that percentage of each benefit applicable in accordance with clause 8.1 which is capable of transfer to the Buyer and which is received by or accrues to the Seller during the term of this Agreement.
- 8.3** Where such delivery or transfer is not possible, either in whole or in part, the Seller agrees to pay to the Buyer an amount equal to the value of the Green Rights as applicable in accordance with clause 8.1 and which have not been delivered to the Buyer, the Seller having complied with clause 8.4.1.
- 8.4** The Seller:
- 8.4.1** shall use all Reasonable Endeavours to procure that it is eligible for applicable Green Rights, if any, throughout the Term and to maximise the volume and value of such Green Rights; and
 - 8.4.2** undertakes, upon request, to co-operate with the Buyer and do such acts and things and execute such documents as the Buyer may request to support any claim that the Buyer may make that it is a supplier of green electricity.
- 8.5** The Seller and the Buyer shall keep complete and accurate records in relation to the Green Rights in accordance with clause 16 and shall have the right, from time to time and upon request, to examine such records.
- 8.6** Any dispute between the Parties in relation to this clause 8 including any dispute in relation to the value of the Green Rights shall be subject to the Expert determination procedure set out in clause 19.
- 8.7** Payment of all costs associated with the management and administration of Green Rights shall be the responsibility of the Buyer.
- 8.8** The Seller shall obtain and transfer to the Buyer, at no cost to the Buyer, all Guarantees of Origin in respect of the Loss Adjusted Metered Quantity which the Seller is entitled to obtain.

9 METERING AND SCADA

- 9.1** The Seller shall use Reasonable Endeavours to periodically test the metering equipment and check meter data and metering information received by it from the MRSO (or the relevant Meter Data Provider) or otherwise for errors. Any inaccuracy or meter failure that is discovered in the metering shall be notified to the **"Relevant Meter Operator"** (as defined in the Metering Code) and the provisions of the Metering Code (including in respect of data estimation and substitution rules and meter accuracy and error limits) will apply. If the meter inaccuracy or failure caused an underestimate of the Loss Adjusted Metered Quantity and the Loss Adjusted Availability Quantity credited to the Buyer under the Trading and Settlement Code in respect of the Loss Adjusted Metered Quantity has been increased by the Market Operator following receipt of revised information from the MRSO or Data Provider (following a Settlement Rerun or otherwise) then a balancing payment shall be made by the Buyer to the Seller calculated on the basis of the revised

data provided by the MRSO (or Data Provider) in accordance with the Metering Code and the additional Loss Adjusted Metered Quantity which would have been purchased under this Agreement. If the meter inaccuracy caused an overestimate of the Loss Adjusted Metered Quantity purchased under this Agreement and the Loss Adjusted Metered Quantity credited to the Buyer under the Trading and Settlement Code has been decreased by the Market Operator following receipt of revised information from the MRSO or Data Provider (following a Settlement Rerun or otherwise) then a balancing payment shall be made by the Seller to the Buyer calculated on the basis of the revised data provided by the MRSO (or Data Provider) in accordance with the Metering Code and the overpayment made for such Loss Adjusted Metered Quantity by the Buyer under this Agreement. Any such balancing payment shall be included (or set off from in the case of payments due to the Buyer) in the next Invoice issued pursuant to clause 13 following determination of the balancing payment in accordance with this clause 9.1.

- 9.2** If any of the metering equipment tests provided for in this Agreement disclose that the error for such equipment exceeds the allowable error limits as defined in the Metering Code, and if the actual period during which inaccurate measurements were made cannot be ascertained, then, unless there is verifiable information available upon which a more accurate adjustment can be made, and subject to clauses 9.4 and 9.5, the period of inaccuracy shall be deemed to be the most recent half of the time interval since the last test on the equipment.
- 9.3** Where the last Metering Connection Test took place longer than two (2) years prior to the date in question, the period of inaccuracy shall be deemed to be the previous twelve (12) months.
- 9.4** The metered quantities delivered during any period of inaccuracy shall be determined by the MRSO (or the relevant Meter Data Provider) and adjustments, utilising the factor of inaccuracy found, shall be made to the records of output furnished since the commencement of the period of inaccuracy and the payments shall be amended accordingly.
- 9.5** Any correction in billing resulting from the correction of inaccuracies in meter readings (together with interest thereon) shall be calculated in accordance with clause 13 and included in the next Billing Period Invoice forwarded by the Seller after the inaccuracy is discovered. The payment or set off by the Buyer of the resulting under/overpayment amount, shall constitute a complete and final settlement of any claim arising between the Parties, whether under this Agreement or otherwise, as a result of the inaccuracy of the metering equipment.
- 9.6** In the event of the non-availability of metered data through failure of the metering equipment to register the amount of electricity for any reason, or loss or delay of any data required for the determination of payment, the Buyer and Seller agree to accept an estimate of the electricity provided, at all times subject, where applicable and relevant, to the MRSO's (or the relevant Meter Data Provider's) processes and approval. The Buyer shall estimate the electricity delivered to it by the Seller using data available from the relevant System Operator including estimates of the Loss Adjusted Metered Quantity delivered during similar periods under substantially similar conditions, and Seller's metering data taking account of SCADA readings, if available, and the Buyer shall also use Reasonable Endeavours to contact the Meter Data Provider and correct any data in line with the processes contained within the Metering Code. The Buyer shall notify the Seller of the amount(s) of electricity, based on its good faith estimate, to be billed for the relevant Billing Period(s) provided that the Seller shall be entitled in good faith to contest the relevant estimate provided by the Buyer and in the event that a dispute arises between the Parties in connection with such estimate then such dispute shall be resolved pursuant to clause 19.
- 9.7** The Seller agrees to allow the Buyer (or any third party engaged by the Buyer for that purpose), at the Buyer's discretion, to audit (using SCADA Data) production by the Facility at reasonable intervals in order to verify the Loss Adjusted Metered Quantity and the Actual Generating Unit Availability (as defined in Schedule E). Where the audit reveals a material discrepancy or error in the Statements of Account or Invoices for the period in question the following shall apply:

- 9.7.1** if the discrepancy or error in the Statements of Account or Invoices caused an underpayment to be made to the Seller in any respect then a balancing payment shall be made by the Buyer to the Seller calculated on the basis of the result of the audit;
- 9.7.2** if the discrepancy or error in the Statements of Account or Invoices caused an overpayment to be made to the Seller then a balancing payment shall be made by the Seller to the Buyer calculated on the basis of the result of the audit.
- 9.7.3** Any balancing payment determined pursuant to this clause 9.7 shall be included (or set off from in the case of payments due to the Buyer) in the next Invoice issued pursuant to clause 13 following determination of the balancing payment in accordance with this clause 9.7.
- 9.8** The Seller undertakes to do all things as may be reasonably required by the Buyer to provide the Buyer, its contractors and service providers with:
- 9.8.1** safe access to the Facility to enable them to install, maintain or replace Monitoring Equipment as required (at the Buyer's sole cost); and
- 9.8.2** access to drawings and / or information relating to data interfaces as reasonably required.

10 GENERAL OBLIGATIONS

10.1 The Seller shall:

- 10.1.1** provide the Buyer as soon as is reasonably possible with information requested by the Buyer from time to time in respect of this Agreement;
- 10.1.2** obtain, maintain and comply with all necessary consents, authorisations and Required Authorisations and execute all necessary documents for the lawful performance of its obligations under this Agreement;
- 10.1.3** maintain and comply with its Licence to Generate and comply with applicable Industry Agreements and Industry Laws;
- 10.1.4** do all things required and promptly execute all documents necessary to enable the Buyer to maintain and comply with the terms of its registration as purchaser of the Seller's Loss Adjusted Availability Quantity.

10.2 The Buyer shall, from the date of registration of the Buyer as purchaser of the Seller's Loss Adjusted Metered Quantity until the expiry or termination of this Agreement, maintain and comply with its Licence and comply all applicable Industry Agreements and Industry Laws insofar as they relate to its obligations under this Agreement.

10.3 The Buyer shall furnish the Seller, upon reasonable notice, with copies of meter data information obtained by it from the MRSO in connection with the Seller's Loss Adjusted Metered Quantity.

10.4 The Seller shall promptly provide the Buyer with all such information as may be reasonably required by the Buyer to enable the Buyer to comply with its obligations under the I-SEM Market Rules.

11 MAINTENANCE

11.1 The Seller shall procure that the Facility is maintained in accordance with Prudent Operating Practice throughout the Term.

11.2 The Seller shall operate, maintain and repair the Facility in accordance with Prudent Operating Practice, including without limitation ensuring that third party contractual arrangements are in place to provide for such operation, maintenance and repair and to enable the Seller to comply with its obligations under clause 16.

11.3 Without prejudice to clause 16, in consideration for the payment of the Contract Price, the Seller shall use Reasonable Endeavours to consult with the Buyer with regard to the scheduling and duration of Planned Outages.

12 I-SEM INTERFACE

12.1 Subject to clause 12.14 below, the Buyer shall not register directly as a participant in the SEM Markets in respect of the Facility, provided that the Seller may make the relevant application for such registrations within the period of 60 days prior to expiry of the Term provided that such participation may not become effective until such time as the Term has expired and the Buyer has paid any amounts to the Seller which are payable in accordance with this Agreement (which for the avoidance of doubt shall include the Early Termination Payment) which are then outstanding once the Seller has set off any payment due from the Buyer to the Seller from any payment due from the Buyer to the Seller pursuant to this Agreement.

12.2 The Seller shall manage all communications with the Market Operator and if applicable NEMO in respect of the Facility.

12.3 Payment of all costs associated with the management of communications with the Market Operator and the registration of the Facility as a Generation Unit shall be the responsibility of the Seller.

12.4 The Seller agrees to allow the Buyer (or any third party engaged by the Buyer for that purpose), at the Buyer's discretion, to audit (using SCADA Data) production by the Facility at reasonable intervals in order to verify the Loss Adjusted Metered Quantity and the Actual Generator Unit Availability. Where the audit reveals a material discrepancy or error in the Statements of Account or Invoices for the period in question the following shall apply:

12.4.1 if the discrepancy or error in the Statements of Account or Invoices caused an underpayment to be made to the Seller in any respect then a balancing payment shall be made by the Buyer to the Seller calculated on the basis of the result of the audit;

12.4.2 if the discrepancy or error in the Statements of Account or Invoices caused an overpayment to be made to the Seller then a balancing payment shall be made by the Seller to the Buyer calculated on the basis of the result of the audit.

12.5 Any balancing payment determined pursuant to clause 12.4 shall be included (or set off from in the case of payments due to the Buyer) in the next Invoice issued pursuant to clause 13 following determination of the balancing payment in accordance with clause 12.4.

12.6 The Seller shall:

12.6.1 comply with its obligations under this Agreement, including in respect of Availability Forecasts;

12.6.2 do all things reasonably required by the Buyer to enable the Buyer to maintain registration of its Supplier Unit in the Ex-Ante Markets and Balancing Market in respect of the Loss Adjusted Metered Quantity of the Generator Units and to effectively participate in those markets, including but not limited to:

(a) providing the Buyer with accurate data and all other information by such times and in such form in each case as are reasonably required to enable the Buyer to comply with the SEM

Market Rules (including without limitation the information in Schedule E, as applicable), together with such other information reasonably requested by the Buyer from time to time;

(b) obtaining and maintaining all necessary consents and authorisations; and

(c) executing all documents reasonably necessary to achieve the purpose stated in clause 12.6.2;

12.6.3 provide the Buyer all data and information that the Seller is required to provide to the System Operator pursuant to the Grid Code at the same time as such information is provided to the System Operator; and

12.6.4 ensure its acts or omissions do not put the Buyer in breach of the SEMOpX Rules, Trading and Settlement Code, other SEM Market Rules, its Licence or any applicable Industry Agreements or Industry Laws.

12.7 Subject to compliance by the Seller with its obligations under this Agreement and in consideration of the Forecasting and Balancing Fee, the Seller shall perform the following balancing activities in relation to the Balancing Market in respect of the Generator Units (**Balancing Activities**):

12.7.1 the Seller shall forecast, on a day ahead basis for each Trading Period (Seller's Day Ahead Forecast) and on the basis of the Availability Forecasts provided by the Seller, the Loss Adjusted Metered Quantity of the Facility.

12.7.2 In the event of a market imbalance and the Seller has not traded all of the Loss Adjusted Metered Quantity in respect of the relevant Trading Period in the Day Ahead Market and the Intraday Market (as appropriate), clause 12.8 shall apply.

12.8 Subject to the payment by the Buyer of the Forecasting and Balancing Fee in accordance with Schedule E and any Availability Variance Payment (if applicable), any imbalance costs or receipts in the Balancing Market resulting from differences between the Seller's Day Ahead Forecast and the actual Loss Adjusted Metered Quantity in respect of any Imbalance Settlement Period shall be at the Seller's risk (or for the Seller's benefit as applicable).

12.9 Without prejudice to clause 14, the Seller may not terminate this Agreement due to any breach or other default by the Buyer in performing the Balancing Activities under this Agreement.

12.10 For the avoidance of doubt the Seller shall be entitled to engage a third party to carry out the Balancing Activities on its behalf provided that notwithstanding such engagement the Seller shall remain responsible to the Buyer in respect of the imbalance costs in accordance with this Agreement.

12.11 Negative Price Event Curtailment Policy

12.11.1 The Buyer shall notify the Seller as soon as is reasonably practicable in advance of the start of each Electricity Day, of any Negative Price Event arising during that Electricity Day and the Seller shall, subject to its obligations to (i) follow EirGrid dispatch; and (ii) maintain compliance with the Grid Code and Industry Agreements, reduce the Facility's Loss Adjusted Metered Quantity to zero for the duration of such Negative Price Event.

12.11.2 Where the Buyer fails to notify the Seller of a Negative Price Event in accordance with clause 12.11.1, the Contract Price for the affected Trading Periods or part thereof shall be as set out in Schedule B Part 2 (a), and the Seller shall nevertheless, subject to compliance with the Grid Code and Industry Agreements, use Reasonable Endeavours to reduce the Facility's Loss Adjusted Metered Quantity to zero for the duration of such Negative Price Event.

12.11.3 Where:

- (a) the Buyer has notified the Seller of a Negative Price Event in accordance with clause 12.11.1; and
- (b) EirGrid dispatch instructions require the Seller to produce no Loss Adjusted Metered Quantity during such Negative Price Event, but the Seller does not do so; and
- (c) the Grid Code and Industry Agreements permit the Seller to reduce the Facility's Loss Adjusted Available Quantity to zero for the duration of the Negative Price Event but the Seller does not do so,

the Contract Price for such affected Trading Periods or part thereof shall be as set out in Schedule B Part 2 (b).

12.11.4 Where the Buyer has notified the Seller of a Negative Price Event in accordance with clause 12.11.1, but the Facility has been dispatched by EirGrid to produce any Loss Adjusted Available Quantity, the Seller, unless permitted under the Grid Code and Industry Agreements to reduce the Facility's Loss Adjusted Metered Quantity to zero, shall comply with that EirGrid dispatch instruction and the Contract Price for such affected Trading Periods or part thereof shall be as set out in Schedule B Part 2.

12.12 The Buyer shall be entitled to deduct from any amounts payable to the Seller under this Agreement:

- 12.12.1** the Accession Fee and Participation Fee in respect of the registration of the Generator Unit (where payable);
- 12.12.2** the Fixed Market Operator Generator Charge and Testing Charge payable in respect of the Generator Unit (where payable);
- 12.12.3** Uninstructed Imbalance Charges levied in respect of the Facility (if any);
- 12.12.4** any Unsecured Bad Debt payable in respect of the Generator Unit (provided that the Buyer shall reimburse to the Seller any Unsecured Bad Debt so deducted that is subsequently received by the Buyer from the Market Operator, such reimbursement to be made by the Buyer no later than 10 days following the receipt by the Buyer);
- 12.12.5** any other charges applied by the Market Operator during the Term in respect of the Generator Unit (excluding any reliability option difference payment if dealing in the Capacity Market); and
- 12.12.6** any other amounts payable by the Seller to the Buyer under this Agreement.

12.13 The Buyer may, in its absolute discretion but subject to the remaining provisions of this clause, register the Facility as a Generator Unit (as that term is defined in the Trading and Settlement Code) in accordance with the Trading and Settlement Code. If the Buyer chooses to register the Facility as a Generator Unit, it shall notify the Seller (as **Market Registration Notice**):

- 12.13.1** the Seller shall (in each case at the Buyer's cost) assist the Buyer in registering the Generator Unit and do all things reasonably necessary for the Buyer to be and to continue to be registered as Intermediary if necessary during the Term of this Agreement and shall not cause the Buyer to be in breach of its obligations as an Intermediary in respect of the Facility under the Trading and Settlement Code;
- 12.13.2** the Seller shall not be required to pay any additional costs, fees, charges or expenses (including the costs of any additional overheads of the Buyer) whatsoever associated with the Facility

being registered as a Generator Unit and participating in the SEM Markets as a participating generator, and the Buyer agrees to pay all such costs;

12.13.3 in advance of the Buyer completing the registration of the Facility as a Generator Unit, the Parties shall agree amendments to this Agreement to the extent necessary to reflect the registration of the Facility as a Generator Unit and its participating in the SEM Markets and to ensure that this shall not materially affect the Parties' ability to perform their respective obligations under this Agreement. If the Parties have not agreed such amendments within 30 days of a Market Registration Notice, either Party shall be entitled to refer the matter to Expert determination pursuant to clause 19.

13 INVOICING & PAYMENT

13.1 The Buyer shall within five (5) Business Days following the end of each Billing Period, insofar as is within its control, obtain sufficient information from relevant bodies, including the MRSO and/or Market Operator as appropriate, to enable it to determine the Loss Adjusted Metered Quantity for that Billing Period.

13.2 The Buyer shall within five (5) Business Days from date of receipt of the relevant information referred to in clause 13.1, prepare and provide to the Seller a Statement of Account in respect of the Billing Period referred to in clause 13.1 setting out:

13.2.1 Loss Adjusted Availability Quantity (if applicable);

13.2.2 Loss Adjusted Metered Quantity;

13.2.3 the Green Rights payable by or to the Buyer in accordance with clause 8;

13.2.4 the Contract Price (including the Forecasting and Balancing Fee as applicable);

13.2.5 the amounts payable by the Buyer to the Seller under this Agreement in respect of Loss Adjusted Metered Quantity;

13.2.6 any balancing payment payable by or to the Buyer in accordance with clause 9;

13.2.7 the Availability Variance Payment (if applicable);

13.2.8 amounts referred to in clause 12.11;

13.2.9 the Curtailment Benefit Payment;

13.2.10 Curtailment Benefit (Generator) Payment (which the Buyer shall be entitled to deduct from the Contract Price);

13.2.11 the Constraint Benefit Payments;

13.2.12 any applicable VAT; and

13.2.13 any Uninstructed Imbalance Charges

(the **Statement of Account**).

In the event that the Buyer has not provided to the Seller a Statement of Account within ten (10) Business Days of the end of a Billing Period, the Seller shall be entitled to prepare a Statement of Account based on its own meter readings which shall be used as the basis for the Seller determining the Loss Adjusted Metered Quantity for that Billing Period and preparing an Invoice.

13.3 The Seller shall review the contents of the Statement of Account, and:

13.3.1 subject to clause 13.3.2, provided that there is no dispute or unresolved issue, within five (5) Business Days of receipt of the Statement of Account from the Buyer invoice the Buyer in respect of the payments identified in the Statement of Account. The Invoice shall set out the Loss Adjusted Metered Quantity for that Billing Period together with the cumulative Loss Adjusted Metered Quantity for the relevant year as well as the net payments due to the Buyer in accordance with clause 8 in respect of Green Rights. The Invoice shall be issued as soon as reasonably practicable after the last Settlement Day of each such Billing Period;

13.3.2 if the Statement of Account shows that the amounts due to the Buyer is greater than the amounts due from the Buyer, either:

- (a) the Buyer shall within five (5) Business Days of receipt by the Seller of the Statement of Account; or
- (b) the Seller shall within five (5) Business Days of the preparation by it of a Statement of Account, issued in accordance with the provisions of clause 13.2, as appropriate,

prepare an invoice addressed to the Seller for such net amount. The Invoice shall set out the Loss Adjusted Metered Quantity for that Billing Period together with the cumulative Loss Adjusted Metered Quantity for the relevant year of the Term as well as the net payments due to the Buyer in accordance with clause 8 in respect of Green Rights. The Invoice shall be issued as soon as reasonably practicable after the last Settlement Day of each such Billing Period; and

13.3.3 in the event that disputes or unresolved issues exist, shall promptly seek to resolve them with the Buyer in accordance with clause 13.7 and, whether such disputes or issues remain unresolved or not, shall prepare and forward to the Buyer an invoice in respect of the undisputed amounts.

13.4 Subject to clause 13.7 and 13.9, the Buyer (or the Seller in accordance with clause 8 and clause 13.3.2) shall be liable to pay the full amount invoiced together with, subject to clause 13.5, the VAT payable thereon, on or before the Due Date, save where the Invoice has not been issued within seven (7) Business Days of the last day of the Calendar Month immediately succeeding the Billing Period in respect of which the Invoice is issued, whereupon the Buyer (or the Seller in accordance with clause 8.3) shall be liable to pay the full amount within twenty (20) Business Days of receipt of Invoice.

13.5 An amount equal to VAT shall not be payable by the Buyer unless the Seller provides the Buyer with an appropriate VAT invoice in relation to that amount.

13.6 If the Seller does not receive payment in accordance with clause 13.4 then, subject to clauses 13.7 to 13.9, the Buyer (or the Seller in accordance with clause 8.3 and clause 13.3.2) shall be liable to pay interest on the amount outstanding at an annual rate of EURIBOR plus two hundred (200) basis points accruing on a daily basis from the Due Date up to but excluding the date on which payment is made.

13.7 If the Seller, or in circumstances where the Seller has issued a Statement of Account in accordance with clause 13.2, the Buyer (for the purposes of this clause 13 the **Disputor**) disputes in good faith any sum shown in a Statement of Account (the difference between the respective calculations of such sum being the **Disputed Amount**):

13.7.1 the other Party (for the purposes of this clause 13 the **Dispute**) shall give notice to the Buyer of the amount in dispute and the reasons for the dispute (the **Dispute Notice**) within ten (10) Business Days of receipt of the Statement of Account;

- 13.7.2** the Parties shall use their Reasonable Endeavours to resolve the dispute within ten (10) Business Days of receipt by the Disputee of the Dispute Notice where such Dispute Notice refers to a Statement of Account.
- 13.8** If the dispute is not resolved within the time limit in clause 13.7.2:
- 13.8.1** the Buyer shall make payment of any undisputed amount invoiced in accordance with clause 13.3.3 by the Due Date in accordance with clause 13.4 and shall be entitled to withhold payment of the Disputed Amount; and
- 13.8.2** the Expert determination procedure in clause 19 shall apply, with regard to the Disputed Amount.
- 13.9** If the Disputor disputes in good faith any sum shown in an Invoice (the difference between the respective calculations of such sum being the **Disputed Invoice Amount**):
- 13.9.1** the Disputor shall give notice to the Disputee of the amount in dispute and the reasons for the dispute (the **Invoice Dispute Notice**) within ten (10) Business Days of receipt of the Invoice; and
- 13.9.2** the Parties shall use their Reasonable Endeavours to resolve the dispute within ten (10) Business Days of receipt by the Disputee of the Invoice Dispute Notice.
- 13.10** If the dispute is not resolved within the time limit in clause 13.9.2:
- 13.10.1** the Buyer shall make payment of any undisputed amount by the Due Date in accordance with clause 13.4 and shall be entitled to withhold payment of the Disputed Invoice Amount; and
- 13.10.2** the Expert determination procedure in clause 19 shall apply, with regard to the Disputed Invoice Amount.
- 13.11** If, following the resolution of a dispute or otherwise to correct any mistaken overpayment or underpayment made in good faith, one Party is required to pay an amount to the other Party, interest shall be payable on the overpayment or underpayment amount at the annual rate of:
- 13.11.1** in the case of payments which have been the subject of a bona fide dispute (which shall be determined by the Expert) EURIBOR plus fifty (50) basis points accruing on a daily basis; and
- 13.11.2** in the case of payments which the Expert determines have not been the subject of a bona fide dispute, EURIBOR plus two hundred (200) basis points, accruing daily.
- 13.12** The Seller will comply with all relevant obligations referred to in Section 1095 of the TCA (Tax clearance certificates in relation to public sector contracts) and if requested by the Buyer, provide an appropriate Tax Clearance Certificate referred to in that Section and will comply with all relevant obligations under the scheme referred to in that Section. In the event of any of the foregoing obligations not being complied with or actions not being undertaken or in the event of non-continuation of compliance by the Seller, the -Buyer may suspend or refuse to make payments under this Agreement until such date as the Seller demonstrates to the Buyer's satisfaction that the-Seller is fully in compliance with Section 1095 of the TCA.
- 13.13** Neither Party shall commence a dispute in respect of the contents of a Statement of Account or dispute the amount of an Invoice following a period of 24 months from the issue of such Statement of Account or Invoice, as appropriate.

14 DEFAULT AND TERMINATION

14.1 Either Party (the **Affected Party**) (save in the case of clauses 14.1.6 and 14.1.9 in which case only the Buyer may be an Affected Party) may by notice in writing (the **Termination Notice**) to the other Party (**Defaulting Party**) terminate this Agreement with effect from the Settlement Day which occurs five (5) days after the date of the Termination Notice (save for a Termination Notice served in respect of clause 14.1.3 or 14.1.4 which shall take effect immediately) (the **Early Termination Date**) on the occurrence of any of the following events:

- 14.1.1** the Defaulting Party fails to pay any amount (other than an amount disputed and withheld in accordance with clause 13.10 or clause 13.12) properly due for payment to the Affected Party under this Agreement and such default continues unremedied after the expiry of ten (10) Business Days after the date on which the Affected Party has notified the Defaulting Party of the default;
- 14.1.2** the Defaulting Party is in Material Breach (excluding a breach provided for under clause 14.1.1) and where the breach is capable of remedy the Affected Party has given notice to the Defaulting Party of the breach but the breach has not been remedied within ten (10) Business Days, or such longer period as would be required by a Reasonable Prudent Operator to remedy the breach as agreed between the Parties (acting reasonably and in good faith), of such notification;
- 14.1.3** the Defaulting Party:
 - (a) is unable to pay its debts within the meaning of section 570 of the Companies Act 2014 (and a Party shall not be deemed to be unable to pay its debts if any demand for payment is being contested in good faith by the Party concerned with recourse to all appropriate measures and procedures) or if it enters into any voluntary scheme, agreement or arrangement (other than for the purpose of solvent reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Affected Party);
 - (b) has a receiver or an examiner appointed over it or the whole or any material part of its assets or undertaking;
 - (c) passes any resolution for winding-up;
 - (d) becomes subject to an order by the High Court or other court of competent jurisdiction for winding-up;
- 14.1.4** anything analogous to, or having a substantially similar effect to, any of the events or any circumstances specified in clause 14.1.3 occurs in any jurisdiction in relation to a Party;
- 14.1.5** the Defaulting Party ceases to hold a Required Authorisation;
- 14.1.6** the Seller fails to comply with (i) clauses 11 and/or 16 and such default continues unremedied after the expiry of twenty (20) Business Days after the date on which the Buyer has notified the Seller of the default; or (ii) the appointment of the Buyer as Trading Participant, Intermediary or otherwise (or the Buyer's entitlement to continue trading as Trading Participant, Intermediary or otherwise) in respect of the Generating Unit is terminated as a result of the act or omission of the Seller;
- 14.1.7** revocation or termination of the Buyer's authorisation to participate in any of the Ex-Ante Markets or the Form of Authority to participate in the Balancing Market (where the revocation or termination occurs as a consequence of the act or omission of the Seller, the Seller shall be the

Defaulting Party and where the revocation or termination occurs as a consequence of the act or omission of the Buyer, the Buyer shall be the Defaulting Party);

14.1.8 in accordance with clause 25.4; or

14.1.9 in accordance with clause 29.3.

(each a **Termination Event**).

- 14.2** As soon as reasonably possible following the Early Termination Date, and in any event within ten (10) Business Days, the Buyer shall notify the MRSO or Market Operator and any other persons it deems relevant under clause 12.4 of the termination of the Agreement and (to the extent not done so prior to the Early Termination Date pursuant to clause 14.1) the Buyer and Seller shall do all such things as are necessary to procure the revocation of the Buyer's participation in the Ex-Ante Markets and Form of Authority to act as Intermediary in the Balancing Market (if applicable) in respect of the Facility and to procure the deregistration of the Generator Units from the I-SEM Markets.
- 14.3** The Parties agree and acknowledge that, during the period from the Early Termination Date until such time as the MRSO or Market Operator (as applicable) effects the de-registration of the Buyer as sole purchaser of the Loss Adjusted Metered Quantity and the revocation of the Form of Authority (if applicable) and the Buyer's participation in the Ex-Ante Markets in respect of the Facility and deregistration of the Generator Units has been procured, legal title to the Loss Adjusted Metered Quantity shall remain vested in the Buyer. Where (i) the Buyer is the Defaulting Party, the Buyer shall pay to the Seller an amount equal to the Contract Price; and (ii) the Seller is the Defaulting Party, the Buyer shall pay to the Seller xx percent (xx%) of the Imbalance Settlement Price which is or would have been received had the total Loss Adjusted Metered Quantity received by the Buyer in each relevant Imbalance Settlement Period been traded in the Balancing Market. The Parties acknowledge that the Buyer shall be entitled to set off from such payment any and all undisputed amounts due and owed by the Seller to the Buyer under this Agreement. Such payment shall be calculated in good faith and properly vouched by the Buyer and shall be paid in accordance with the provisions outlined in clause 13 above.
- 14.4** On, or as soon as reasonably practicable after, the Early Termination Date, the Terminating Party shall in good faith calculate the termination payment being the Loss for this Agreement (the **Termination Payment**).
- 14.5** The Terminating Party shall notify the Defaulting Party within twenty (20) Business Days of the Early Termination Date of the Termination Payment including detailed support for the Termination Payment calculation. If the Defaulting Party does not agree to the amount so notified within thirty (30) Business Days of receipt of such notice from the Terminating Party the calculation of the Termination Payment shall be referred to an Expert for determination pursuant to clause 19.
- 14.6** The Defaulting Party shall pay the Termination Payment to the Terminating Party within ten (10) Business Days of final determination of the Termination Payment pursuant to clause 14.5 (the **Termination Payment Date**). If the Termination Payment is not paid by the Termination Payment Date, the Defaulting Party shall be liable to pay interest on the amount outstanding at an annual rate of EURIBOR plus fifty (50) basis points accruing on a daily basis from the Termination Payment Date up to but excluding the date on which payment is made.
- 14.7** A Party shall not be required to enter into replacement agreement(s) in order to determine the Termination Payment.
- 14.8** The Terminating Party shall procure that all reasonable steps are taken to avoid or mitigate its Loss including by using its Reasonable Endeavours to establish replacement, or to liquidate related, trading

arrangements. In respect of all claims for Loss, the Terminating Party shall submit appropriate data along with its calculation of the Loss.

14.9 The Parties agree that the Termination Events and any express rights of termination contained elsewhere in this Agreement set out the sole and exclusive termination rights of the Parties in respect of this Agreement. Each Party hereby waives any voluntary or unilateral rights of termination of this Agreement which may be implied or imposed into this Agreement in its favour by law or by the decision of any Competent Authority, (including such rights as are implied or imposed in connection with any dispute under this Agreement). The Parties agree that the Termination Payment is in full and final satisfaction of all claims and liabilities under or in connection with this Agreement in respect of the matters giving rise to the Termination Event.

14.10 The Parties agree that clauses 14.4 to 14.8 (inclusive) shall not apply where this Agreement is terminated by either Party pursuant to clauses 25.4, 29.3.

15 INSURANCE

15.1 Without prejudice to the Seller's general obligations to insure against those risks required by law, or any Industry Agreements or other contractual arrangements entered into by the Seller, the Seller will take out and maintain adequate insurance in respect of the construction and operation of the Facility in accordance with Prudent Operating Practice and in any event as a minimum the insurance requirements shall be as set out in Schedule G.

15.2 The Seller shall supply to the Buyer copies of the insurance certificates or detailed cover notes it has effected pursuant to clause 15.1 and produce documentary evidence of its (or their) renewal where requested to do so by the Buyer.

15.3 The Seller shall not do or suffer to be done anything which may render the policies effected by clause 15.1 void.

16 OPERATION OF THE FACILITY, RECORD KEEPING AND INSPECTION, AVAILABILITY FORECASTING

16.1 The Seller shall be entitled to generate electrical energy at the Facility to be delivered to the Buyer in accordance with this Agreement.

16.2 Both the Buyer and the Seller shall keep complete and accurate records and all other data required by each of them for the purpose of proper administration of the Agreement, including such records as may be required by a Competent Authority.

16.3 The Buyer shall have the right, from time to time, upon request and the giving of reasonable notice and during normal business hours to examine the performance records, including records relating to the availability of the Facility, and all other records kept by the Seller relating to transactions under and the administration of this Agreement at any time during the period the records are maintained.

16.4 Subject to the applicable law, all records or data kept by either Party pursuant to this clause 16 shall be maintained for a minimum of six (6) years after the creation of the records or data and for any additional length of time required by a Competent Authority, provided, however, that either Party shall not dispose of or destroy any such records or data even after the six (6) year minimum maintenance period without thirty (30) days prior written notice to the other, during which period either Party shall be permitted to peruse and replicate any or all such records or data as it may, at its discretion, require.

16.5 The Seller shall advise the Buyer and the Buyer shall advise the Seller immediately of any notification of non-compliance with any licence, approval or permission which it receives from a Competent Authority in connection with the Facility or the electrical output from the Facility.

- 16.6** Provided and for so long as the Seller complies with clause 1 of Part 1 of Schedule E and the Buyer has access to the Facility's SCADA enabling the Buyer to directly access Facility availability, then the provisions of Part 2 of Schedule E of this Agreement shall be disapplied by the Buyer. Otherwise, and without prejudice to the foregoing provisions of this Agreement, the provisions of Part 2 of Schedule E (Availability Forecasting) shall apply. Where applicable, and subject always to clause 11.2, the Seller agrees and undertakes that it shall comply with the Availability Forecasting process as outlined in Part 2 of Schedule E.

17 LIABILITY

- 17.1** Nothing in this Agreement excludes or limits the liability of either Party (the **Party Liable**) for (i) wilful or repudiatory breach; (ii) wilful default; (iii) fraud; (iv) death or personal injury; and (v) subject to clause 17.2 below, damage to property resulting from the negligence of the Party Liable or any of its officers, employees or agents. The Party Liable shall indemnify and keep indemnified the other Party, its officers, employees or agents from and against all loss or liability which the other party may suffer or incur by reason of any claim on account of death or personal injury or subject to clause 17.2 below, damage to property resulting from the negligence of the Party Liable or any of its officers, employees or agents.

- 17.2** None of the Buyer, its officers, employees or agents shall, in any circumstances (other than in respect of wilful damage), be liable for any damage to property or injury to persons arising either from the construction or the operation of the Facility. The Buyer, its officers, employees or agents shall be permitted access to the Site during normal business hours at any time during the Term of this Agreement, upon request and the giving of reasonable notice and provided that they are accompanied by a representative of the Seller.

- 17.3** Subject to clause 17.1, clause 17.4, clause 17.6 and clause 17.7 and save:

17.3.1 in the case of wilful default, wilful or repudiatory breach or fraud;

17.3.2 to the extent such losses are components of the calculation of Loss in respect of the Termination Payment; and

17.3.3 in respect of any late payment interest payable under this Agreement,

neither Party, nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to the other Party for any loss of revenue, loss of profit, loss of contract, loss of goodwill or indirect or consequential loss.

- 17.4** Subject to clause 17.1, the maximum aggregate liability of either Party in contract, tort or otherwise in connection with this Agreement (including in respect of Termination Payments) shall not at any time exceed [€[•] ([•] euro)]. For the avoidance of doubt, payments pursuant to clause 13 and any claims which have been met by the proceeds of any of the insurances required to be taken out pursuant to this Agreement or otherwise, shall not be taken into account for the purposes of calculating the maximum liability of either Party in contract, tort or otherwise in connection with this Agreement.

- 17.5** Each Party acknowledges and agrees that the other Party holds the benefits of clauses 17.1, 17.2, 17.3, 17.4 and 17.7 for itself and as trustee and agent for its officers, employees and agents.

- 17.6** Nothing in clauses 17.1 to 17.5 inclusive shall prevent or restrict either Party from enforcing any obligations (including suing for a debt) owed to it under or pursuant to this Agreement.

- 17.7** Each Party acknowledges and agrees that clauses 17.1 to 17.6 inclusive are fair and reasonable having regard to the circumstances as at the date of execution of this Agreement.

- 17.8** Each Party shall use Reasonable Endeavours to mitigate any loss which it may suffer and for which the other Party may be liable under this Agreement.

18 FORCE MAJEURE

18.1 Force Majeure means in relation to any event or circumstance (or number of events or circumstances or combination thereof) which (i) is beyond the reasonable control of a Party (the **Non-Performing Party**); (ii) which could not have been avoided by the Non-Performing Party through the use of Prudent Operating Practice by the Non-Performing Party; and (iii) which results in or causes the failure of the Non-Performing Party to perform any of its obligations under this Agreement, including:

18.1.1 acts of terrorism;

18.1.2 war (whether declared or undeclared), threat of war, act of public enemy, blockade, revolution, riot, insurrection, public demonstration, civil commotion, invasion or armed conflict;

18.1.3 sabotage or acts of vandalism, criminal damage;

18.1.4 extreme weather, environmental conditions (in excess of the specific protection or tolerance limits of the components of the Facility which are affected by the extreme weather or environmental conditions) including lightning, earthquake, flood, wind, drought, storm, landslip, accumulation of snow or ice, natural disasters and phenomena including meteorites, the occurrence of pressure waves caused by aircraft or other aerial devices travelling at supersonic speeds, impact by aircraft, volcanic eruption, explosion including: nuclear explosion, radioactive or chemical contamination or ionising radiation, infectious disease, epidemic or pandemic (provided that an infectious disease, epidemic or pandemic shall only be deemed to have occurred where it is designated as such by either the Health Services Executive of Ireland (or its successor) or the World Health Organisation);

18.1.5 intervention (other than an intervention which is directed solely at either the Buyer or the Seller) by a Competent Authority which prevents the Seller from selling and the Buyer from buying the Loss Adjusted Metered Quantity in either case in circumstances other than those which would constitute a Termination Event; or

18.1.6 either Party or an Affiliate of such Party is affected by a Trade Restriction, such that the other Party is (or in the case of an Affiliate, the other Party would be if this Agreement was with such Affiliate) fully or partially unable to perform or procure the performance of any obligation otherwise required by this Agreement,

provided that Force Majeure shall not include:

(a) lack of funds and/or the inability of a Party to pay;

(b) any of the events or circumstances referred to in clauses 29;

(c) lack of wind or the inability of the Seller to generate electricity (including as a result of mechanical or electrical breakdown) or the inability of the Buyer to sell electricity to end users other than due to the occurrence of any of the events set out in clauses 18.1.1 to 18.1.5 (inclusive) above; or

(d) failure of sub-contractors of the Seller to perform their contractual obligations in relation to the Facility.

18.2 Except as otherwise provided in this Agreement, and subject to compliance by the Non-Performing Party with the requirements of clauses 18.2.1, 18.2.2, 18.2.4, 18.2.5 and 18.2.6, where a Non-Performing Party is rendered wholly or partially unable to perform all or any of its obligations under this Agreement by reason of Force Majeure, this Agreement shall remain in effect but the Non-Performing Party's relevant obligations and the corresponding obligations of the other Party owed to the Non-Performing Party under this

Agreement to the extent those obligations are affected by the Force Majeure shall be suspended provided that such suspension shall be of no greater scope and no longer duration than is required by the Force Majeure.

Further:

- 18.2.1** as soon as reasonably practicable following the occurrence of the circumstances giving rise to the Force Majeure, the Non-Performing Party shall notify the other Party of the circumstances of the Force Majeure, identifying the nature of the Force Majeure, its expected duration, and the particular obligations thereby affected and furnish reports at such intervals as the other Party may reasonably request, with respect thereto during the period during which the Force Majeure continues;
 - 18.2.2** the Non-Performing Party shall use all reasonable efforts to remedy this inability to perform and to resume full performance of its obligations under this Agreement;
 - 18.2.3** no obligations of either Party that arose before the Force Majeure and which can reasonably be expected to be performed are excused as a result of a Force Majeure;
 - 18.2.4** forthwith after the occurrence of the Force Majeure, each Party shall use all Reasonable Endeavours to consult with the other as to how best to give effect to their obligations under this Agreement so far as is reasonably practicable during the period of Force Majeure;
 - 18.2.5** the Non-Performing Party on being able to resume full performance of its obligations under this Agreement, shall provide the other Party with written notice to that effect, without delay; and
 - 18.2.6** insofar as possible the Non-Performing Party shall seek to mitigate the consequences of the Force Majeure.
- 18.3** Except as specifically provided in clause 18.4, in the event that any Force Majeure continues for more than twelve (12) calendar months the other Party to this Agreement may by notice in writing to the other Non-Performing Party (**FM Termination Notice**) terminate this Agreement with effect from the Settlement Day which occurs thirty (30) days after the date in the FM Termination Notice or such other date as the Parties may agree.
- 18.4** Where a Trade Restriction comes into effect and which directly impacts the operation of this Agreement, the Parties agree that such Trade Restriction shall be deemed an event of Force Majeure affecting the Non-Performing Party and the other Party may, at its discretion suspend this Agreement by giving the Non-Performing Party fourteen (14) days' written notice, where possible, or otherwise by giving notice of its intention to suspend as soon as the suspending party becomes aware of such Trade Restriction, such suspension to take effect from the date of the notification or the effective date of the Trade Restriction.
- 18.5** The Parties agree that the Long Stop Date may be extended only in accordance with clause 2.3 and that any such extension shall not constitute an event of Force Majeure for the purposes of this clause 18.

19 EXPERT DETERMINATION

- 19.1** This clause applies to all disputes which are expressly referable to an Expert by the terms of this Agreement but not to any other disputes.
- 19.2** If a dispute arises between the Parties which is expressly referable to an Expert under the terms of this Agreement, it shall, if possible be settled amicably by negotiation between the Buyer and the Seller.

- 19.3** If any such dispute is not so settled in accordance with the relevant timescales set out in the applicable clause (where there is no such timescale provided it shall be within thirty (30) days of the dispute being notified to the other party), then either party has the right to refer the matter to an Expert.
- 19.4** The Expert shall be appointed by the Parties, or in default of agreement upon such appointment within seven (7) days of a Party deciding to refer the matter to an Expert. The Expert shall be appointed by the governing body or representative institution for the discipline to which the dispute relates as agreed by the Parties, provided that if the Parties are unable to agree the discipline to which the dispute relates, the President of the Incorporated Law Society of Ireland shall nominate the governing body or representative institution to appoint the Expert. The Expert shall act as an expert and not as an arbitrator and the Arbitration Act 2010 shall not apply. In default of agreement as to the primary nature of the dispute the Expert shall be appointed by the President of the Incorporated Law Society of Ireland.
- 19.5** The Expert shall make his decision only in relation to matters expressly referable to an Expert by the terms of this Agreement and shall have no discretion to come to any decision on any other matter except with the prior agreement of both Parties. The Expert shall give his reasoned decisions in writing. Subject always to clause 19.4 above, in the absence of manifest error, the decision of the Expert shall be final, valid and binding upon the Parties.
- 19.6** The Expert may appoint advisers having appropriate qualifications and experience whose services are desirable to assist him in considering the matter in dispute. The costs of the Expert shall be borne equally by the Parties. The costs of any advisers shall be borne as determined by the Expert. The Parties shall give the Expert all the information and assistance that he may reasonably require. Subject always to clause 19.4 above, the Expert shall be requested to use all Reasonable Endeavours to reach his decision within thirty (30) days of the matter being referred to him.

20 ENTIRE AGREEMENT

This Agreement contains and expressly refers to the entire agreement between the Parties with respect to its subject matter and expressly excludes any warranty, condition or other undertaking implied at law or by custom or howsoever otherwise and supersedes all previous agreements and understandings between the Parties (other than as provided for in this Agreement) with respect to its subject matter and each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking by the other Party not fully reflected in this Agreement.

21 WAIVER

No delay, omission or forbearance by a Party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair or be construed as a waiver of such right, power, privilege or remedy or be construed as a waiver thereof. Without prejudice to clause 14.1.9 and clause 14.9, any single or partial exercise of any such right, power, privilege or remedy shall not preclude any further exercise thereof or other right, power, privilege or remedy.

22 VARIATION

Without prejudice to clauses 14.15 and 29.3, and subject to the PPA Direct Agreement, no variation or amendment to this Agreement shall be of any effect unless it is expressly contemplated by this Agreement or is agreed in writing, signed by or on behalf of each Party.

23 NOTICES

- 23.1** All notices and other communications to be given under or in connection with this Agreement shall (except where expressly provided otherwise) be in writing or by electronic mail. Where notices or other communications are given in writing (other than by email), they shall either be delivered by hand or sent by registered post. Delivery by courier is regarded as delivery by hand.

- 23.2** All communications must be sent to the e-mail address or address of the relevant Party (or to such other email address or other address as may be notified by that Party from time to time). Each communication must be marked for the attention of the relevant person.

SELLER

Address: [TBC]

E-mail: [TBC]

For the attention of: [TBC]

Copy to: [TBC]

BUYER

Address: [TBC]

E-mail: [TBC]

For the attention of: [TBC]

Copy to: [TBC]

- 23.3** Subject to clause 23.4, a communication is deemed to have been received:

- 23.3.1** if sent by electronic mail, at commencement of normal business hours on the next Business Day;
- 23.3.2** if delivered by hand, at the time of delivery; and
- 23.3.3** if sent by registered post, at the expiration of two (2) Business Days after the time of posting.

- 23.4** If a communication would otherwise be deemed to have been received outside of normal business hours (being 9.30am to 5.30pm on a Business Day) under this clause 23, it is deemed to have been received at commencement of normal business hours on the next Business Day.

24 CONFIDENTIALITY

- 24.1** Each Party shall treat any and all information and data disclosed to it by the other Party in connection with this Agreement in any form whatsoever, and this Agreement itself, (the **Confidential Information**) as confidential and proprietary, shall preserve the secrecy of the Confidential Information and shall not use the Confidential Information for any purpose other than solely in connection with this Agreement.

- 24.2** For the purposes of this clause 24, the term Confidential Information shall not include information which:

- 24.2.1** at the time of disclosure or at any time thereafter is in, or becomes part of, the public domain other than through a breach of the provisions of this clause 24;
- 24.2.2** the Party receiving the information can prove that the information was already known to it or was independently acquired or developed by it without being in breach of its obligations under this clause 24;
- 24.2.3** became available to the Party receiving the information from another source in a non-confidential manner otherwise than in breach of an obligation of confidentiality; or

- 24.2.4** is published by or the publication of which is required by a Competent Authority.
- 24.3** Notwithstanding the provisions of clause 24.1, Confidential Information may be disclosed by a Party:
- 24.3.1** to the shareholders, owners, directors, officers, employees, agents, consultants, contractors, advisers, investors, insurers or lenders of such Party or its Affiliates who need to know the Confidential Information for this Agreement for purposes connected with this Agreement or the Facility provided that: (i) the recipient agrees to keep the Confidential Information confidential on terms no less onerous than contained in this clause 24; and (ii) the disclosing party shall be responsible for ensuring that the recipient observes and complies with such obligation to keep the Confidential Information confidential and shall accordingly be responsible for any failure of the recipient to do so;
 - 24.3.2** as may be ordered or required by any applicable law or a Competent Authority;
 - 24.3.3** as may be required by the regulations of any recognised stock exchange upon which the share capital of the Party (or any parent undertaking of the Party) is or is proposed to be from time to time listed or dealt in, and the Party making the disclosure shall, if reasonably practicable prior to making the disclosure, and in any event as soon as reasonably practicable thereafter, supply the other Party with a copy of such disclosure or statement and details of the persons to whom the Confidential Information is to be, or has been, disclosed. Where a copy of such disclosure or statement has been supplied prior to making the disclosure, the other Party may give comments on that disclosure or statement to the Party proposing to make it. The Party proposing to make the disclosure shall, if reasonably practicable in the time available, consult with the other Party as to any such comments and consider whether the disclosure is to be amended to take into account the comments;
 - 24.3.4** as may be required to comply with the requirements of the I-SEM Market Rules or this Agreement;
 - 24.3.5** by either Party as may be necessary to comply with any obligation under any licence under a Required Authorisation;
 - 24.3.6** as may be required by a Court, arbitrator or administrative tribunal or an expert in the course of proceedings before it to which the disclosing Party is a party; or
 - 24.3.7** as may be agreed in writing by the Parties prior to disclosure by the Party disclosing such Confidential Information.
- 24.4** All information supplied by or on behalf of a Party to this Agreement shall remain the sole and exclusive property of such Party and this Agreement shall not operate to transfer ownership or any interest whatsoever therein, and the other Party to this Agreement shall, if requested by the Party disclosing the information following termination of this Agreement, promptly return to such Party all documents and any copies, extracts, notes or similar materials based in whole on such information.
- 24.5** The provisions of this clause 24 shall survive the termination of this Agreement for a period of two (2) years.
- 24.6** The Parties to this Agreement shall, insofar as is reasonably practicable, ensure that any copies of the Confidential Information, whether in hard copy or computerised form, will clearly identify them as confidential.
- 24.7** Subject to clause 24.3, no public announcement or statement regarding the signature, performance or termination of, or otherwise in relation to, this Agreement shall be issued or made by a Party to this

Agreement unless the other Party to this Agreement shall have first approved the announcement (such approval not to be unreasonably withheld or delayed).

25 ASSIGNMENT, NOVATION, AND CHANGE OF CONTROL

25.1 Save for:

- 25.1.1** an assignment by way of security by the Seller in favour of a Lender;
- 25.1.2** an assignment or novation in accordance with clauses 25.2 and 25.3; or
- 25.1.3** the subcontracting of any obligations in accordance with clause 25.5,

a Party may not assign, novate or otherwise transfer the benefit (or, where applicable, the burden) of this Agreement or sub-contract any of its obligations hereunder without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).

25.2 Subject to clause 25.3, the Buyer shall, subject as hereinafter provided, in all circumstances be entitled to assign, novate or otherwise transfer any of its rights and obligations under this Agreement to its successor in title or to any Affiliate of the Buyer, provided that if the Affiliate or successor in title does not have Sufficient Financial Strength at the time of such assignment, novation or transfer, the Buyer shall (or shall procure that an Affiliate with Sufficient Financial Strength) guarantee the performance of such obligations (such guarantee to be in a form satisfactory to the Parties and the proposed guarantor, each acting reasonably) and that if required, the assignee or novatee shall enter into a direct agreement with the Lender in respect of the Facility, in the form attached at Schedule D.

In this clause 25.2:

"Sufficient Financial Strength" means that an Affiliate has:

- 25.2.1** a rating of BBB- (or equivalent or greater) as rated by a Rating Agency and if more than one Rating Agency has rated any proposed assignee then the lowest rating shall be applicable as the rating benchmark for the assessment of financial strength of a proposed assignee;
- 25.2.2** provided a guarantee or letter of credit in respect of the Buyer's obligations under this Agreement from a bank or other financial institution authorised to issue such security in Ireland and which has a rating of BBB- (or equivalent or greater) as rated by a Rating Agency and if more than one Rating Agency has rated such bank or financial institution then the lowest rating shall be applicable as the rating benchmark for the assessment of financial strength of such bank or financial institution;
- 25.2.3** provided some other form of financial security agreed by the Parties;
- 25.2.4** has met any other requirement as to sufficient financial strength agreed by the Parties for the purposes of this clause 25.2.

25.3 The Buyer shall in all circumstances be entitled to assign, novate or otherwise transfer any of its rights and obligations under this Agreement (including, for the avoidance of doubt, an assignment or novation to an Affiliate of the Buyer) which is required, necessitated or mandated by any Competent Authority (including where the assignment, novation or transfer is required, necessitated, mandated or effected by the introduction of any law or other legislative, governmental or administrative enactment or direction).

25.4 The Seller shall immediately notify the Buyer of any proposed Change of Control of the Seller specifying, so far as it is reasonably able, the date of such proposed Change of Control, and the identity of the person or persons acquiring control. Immediately upon the occurrence of the Change of Control and in any event

within 2 Business Days after such Change of Control, the Seller will be required to give the Buyer a final notification in respect of the event and provide the Buyer with all reasonable details required to enable the Buyer to perform the assessment referred to in clause 25.5 (the **Final Change of Control Notification**).

25.5 The Buyer shall be entitled within a period commencing ten (10) days and terminating six (6) months after receipt by the Buyer of the Final Change of Control Notification in accordance with and complying with clause 25.4, to give notice to the Seller to terminate this Agreement in circumstances where the Buyer is satisfied, acting reasonably, that the person or persons acquiring control (together with the companies in its group) either:

25.5.1 does not have adequate technical, financial or managerial strength to fulfil their obligations under this Agreement; or

25.5.2 is subject to a Trade Restriction;

and the provisions of clause 14 shall apply.

25.6 Either Party may subcontract any or all of its obligations under this Agreement. Where either Party appoints a sub-contractor to carry out certain obligations under this Agreement, such appointment shall not relieve that Party of any liability or obligation under this Agreement and the relevant Party shall at all times remain fully responsible for the performance of the its obligations in accordance with this Agreement, notwithstanding any default or failure to perform by a sub-contractor it has appointed.

26 COSTS

Each Party shall bear its own costs and expenses incurred in connection with the negotiation, preparation and entering into of this Agreement.

27 SEVERANCE

Each of the provisions of this Agreement is severable. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity or enforceability in that jurisdiction of the remaining provisions of this Agreement shall remain in full force and effect and shall continue to bind the Parties and, at the written request of the either Party, the Parties shall, in good faith, seek to agree the amendments (if any) to this Agreement necessary or appropriate to take account of such provision having become illegal, invalid or unenforceable, so that this Agreement may continue in force so far as is possible with the same commercial outcome for each Party.

28 SURVIVAL

28.1 The expiry or termination of this Agreement does not affect any rights or obligations which may have accrued prior to such expiry or termination and does not affect continuing obligations of each of the Parties under this Agreement which are expressed to continue after such expiry or termination.

28.2 Each of clauses 1, 6.7, 13, 14.2 to 14.16, 17, 19, 20, 21, 23, 24, 25, 27, this clause 28, clauses 32, 34 and 35 shall survive termination of this Agreement.

29 CHANGE IN CIRCUMSTANCES

29.1 The Parties acknowledge and agree the desirability of achieving and maintaining consistency and the absence of conflict between the provisions of this Agreement, the I-SEM Market Rules and each of the Industry Laws and Industry Agreements in order to allow the Seller to sell and the Buyer to buy the Loss Adjusted Metered Quantity at the Contract Price and to allow the Seller to transfer and the Buyer to accept the Green Rights in accordance with clause 8 of this Agreement.

29.2 Either Party may propose amendments to this Agreement to the extent necessary to ensure that any change to, or the coming into force of, any Industry Law or Industry Agreement after the date hereof, including amendments to, or replacement of, the I-SEM Market Rules (**Change in Circumstances**), shall not materially affect that Party's ability to perform any of its obligations under this Agreement and that the Parties retain equivalent economic benefits under this Agreement as before such Change in Circumstances. Any such proposal shall be in writing and shall specify:

29.2.1 the Industry Law or Industry Agreement concerned;

29.2.2 where relevant the nature of the change to such Industry Law or Industry Agreement relied on by that Party;

29.2.3 the proposed amendments to this Agreement; and

29.2.4 the reasons why it considers the proposed amendments to be within the scope of this clause 29.2.

29.3 Unless the other Party serves a counter-notice within thirty (30) days of receipt of such proposal, the proposed amendments to this Agreement shall take effect upon the expiry of that thirty (30) day period (subject to the Party issuing the proposal using Reasonable Endeavours to verify that such proposal has been received by the other Party). Where the other Party serves a counter-notice, both Parties shall negotiate in good faith the terms of any such variation, including escalating to senior representatives if required to attempt to reach resolution. If a variation to this Agreement has not been agreed and put into effect within thirty (30) days of the receipt by either Party of a proposal or a counter-notice, whichever is the later, either Party shall be entitled to refer the matter to Expert determination pursuant to clause 19. In the event that either Party is not satisfied with the determination of the Expert it may terminate this Agreement with a minimum of ● ● Business Days' written notice to the other Party.

29.4 For the avoidance of doubt, nothing in this Agreement shall oblige either Party to act at any time in a manner contrary to any existing, new or changed Industry Law or Industry Agreement.

30 NOT USED

31 NOT USED

32 SET-OFF

Either Party shall, with seven (7) days' notice, be entitled to set-off any amount due or owing to it from the other Party in respect of the Facility under this Agreement against any amount due or owing by it to the other Party.

33 COUNTERPARTS AND DIGITAL SIGNATURE

Signatures of the Parties affixed digitally or by hand, transmitted by facsimile or electronic email shall be deemed to be original signatures for all purposes. This Agreement may be executed in one or more counterparts each of which when executed and delivered shall constitute an original but all of which shall together constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by electronic mail any electronic means, or by combination of such means, shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes.

34 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of Ireland and the Courts of Ireland shall have exclusive jurisdiction in relation to any matter arising under or in respect of this Agreement.

EXECUTED as an agreement on 20[xx]

SIGNED for and on behalf of, []:

Signature: _____

Name: _____

Position: _____

SIGNED for and on behalf of, []:

Signature: _____

Name: _____

Position: _____

DRAFT

SCHEDULE A

CONDITIONS PRECEDENT

The Seller shall deliver to the Buyer duly executed originals or certified copies of each of the following documents:

- a) Connection Agreement for the Rated Generating Capacity as set out in Schedule C;
- b) Letter from the Seller (or its nominated legal advisers) confirming that it has secured all necessary land rights required in connection with the development, construction and operation of the Facility;
- c) Generation Licence issued by the CRU under section 14(1)(a) of the Act;
- d) Authorisation to Construct issued by the CRU under section 16(1) of the Act;
- e) Receipt of notification of final grant of planning permission in relation to the Facility;
- f) Confirmation of the date on which the Seller (or any Affiliates as the case may be) either (i) draws down project finance from the Lender; or (ii) arranges an equivalent balance sheet financing for the development, construction and/or operation of the Facility;
- g) Most recently filed audited company accounts of the Seller;
- h) Tax Clearance Certificate for the Seller;
- i) Evidence of insurance required to be taken out pursuant to clause 15.2;
- j) Evidence that the SCADA Equipment has been installed and is operational;
- k) the executed Trading Participant form; and
- l) the Form of Authority.

SCHEDULE B

PRICING

Strike Price: €[●]/MWh ([●] euro and [●] cent per mega watt hour).

The Contract Price referred to in clause 6.1 shall be as follows in Part 1, Part 2 or Part 3 of this Schedule B as applicable:

Part 1 (A) – Contract Price Pre-Commercial Operations Date

In the event the Commencement Date occurs prior to the Commercial Operations Date, the Contract Price for each MWh of Loss Adjusted Metered Quantity purchased by the Buyer for that period up to the Commercial Operations Date shall be the [Imbalance Settlement Price less €[●]/MWh] subject to Seller notifying Buyer that the Facility is available.

Part 1 (B) – Contract Price from Commercial Operations Date

Subject to the Buyer being entitled to Loss Adjusted Metered Quantity the Contract Price for each MWh of Loss Adjusted Metered Quantity purchased in accordance with this Agreement from the Commercial Operations Date shall be:

- 1 = the applicable Strike Price
 minus
- 2 = Forecasting and Balancing Fee of €[●]/MWh

Part 2 – Negative Price Event Self Curtailment Policy (clause 12.11)

- (a) When a Negative Price Event arises and clause 12.11.2 applies, the Contract Price for each of the affected Trading Periods shall be as per Part 1(B) of this Schedule B
- (b) When a Negative Price Event arises and clause 12.11.3, the Contract Price for each of the affected Trading Periods shall be equal to [€●] per MWh payment into the Community Benefit Fund.

Part 3 - Constraint Benefit

The following formula (or such other formula as maybe agreed between the parties from time to time and in line with the Clean Energy Package) shall apply in respect of Constraint Benefit:

SCHEDULE C

FACILITY IDENTIFICATION

Part A

Facility Name and Address: [TBC]

Address for correspondence: [TBC]

Rated Generating Capacity (MW): [TBC]

ESB Substation: [TBC]

EIC Code: [TBC]

Generator MPRN: [TBC]

Export Meter Point Reference Number: [TBC]

Serial Number(s) and Model Number(s) of Electrical Equipment (Control System, Transformer, Substation Circuit Breakers & Protection Panels):

Control System

Serial Number: [To be advised]

Model Number; [To be advised]

Transformer

Serial Number: [To be advised]

Model Number: [To be advised]

Substation Circuit Breakers & Protection Panels:

Serial Number: [To be advised]

Model Number; [To be advised]

SCHEDULE D

PPA DIRECT AGREEMENT

DRAFT

SCHEDULE E

SCADA AND AVAILABILITY FORECASTING

PART 1

3 SCADA EQUIPMENT AND SCADA DATA

- 3.1 The Seller shall ensure the SCADA Equipment is installed and fully maintained and operational at the Facility throughout the Term so that it is able to give the Buyer, and/or any third party engaged by the Buyer to perform the Balancing Activities, SCADA Data, or access to the SCADA Data as required. Without prejudice to the foregoing, the Seller shall procure that the SCADA Equipment is maintained and remains operational throughout the Term and that data in relation to Loss Adjusted Metered Quantity is transmittable to the Buyer no less frequently than on a quarter hourly basis throughout the Term provided that the Buyer has complied with any reasonable technical requirements of the Seller.
- 3.2 The Seller shall give the Buyer, and any third party notified by the Buyer to the Seller, access to SCADA Data no later than every 15 minutes, however the Seller agrees to use best endeavours to provide access to the SCADA Data by means of a data communications link which the Buyer has approved in writing. The Seller shall ensure that the SCADA Data is provided in the format the Buyer reasonably requires and via a secure connection to the Buyer's nominated destination. The Buyer shall give the Seller an IP address and/or login details to enable the Seller to enable it to provide the SCADA Data in accordance with this Agreement.
- 3.3 The Seller shall use Reasonable Endeavours to rectify any SCADA Malfunction as soon as possible.
- 3.4 In addition to its other obligations under this Schedule E the Seller shall use Reasonable Endeavours to give the Buyer any information it reasonably requires for the purpose of the Buyer effectively participating in the I-SEM Markets in respect of the Facility, including any technical report and meteorological data for the Facility, provided that, notwithstanding any other provision of this Agreement, the Seller shall have no liability for a delay or failure to provide such information.

4 PLANNED OUTAGES AND UNPLANNED OUTAGES

- 4.1 Without prejudice to and in addition to the other provisions of this Schedule E, the Seller shall provide the Buyer with a minimum of twenty (20) days' prior notice (in accordance with clause 23) on the timing and duration of the Planned Outages of the Facility before scheduling those Planned Outages. The Seller shall notify the Buyer of any proposed changes (including any postponement or cancellation) to any Planned Outage, which has already been notified to the Buyer, no later than 16.00 hours /4pm on the Business Day which is two (2) Business Days before the scheduled date of commencement of the Planned Outage. Any failure to provide such notice of any proposed changes to any Planned Outage in accordance with this clause 2 shall result in such Planned Outage (in its totality) being deemed to be an Unplanned Outage. Without prejudice to the foregoing, any outage notified less than twenty (20) days in advance shall not constitute a Planned Outage and shall be deemed an Unplanned Outage for the purpose of clause 2.2 below.
- 4.2 In the event the Buyer does not have access to SCADA, the Seller shall provide the Buyer with as much advance notice of any Unplanned Outage (and the capacity affected) occurring during the Term as is reasonably practicable in the circumstances and shall in the event of an Unplanned Outage:
- 4.2.1 notify the Buyer of the Unplanned Outage as soon as reasonably practicable and in any event within six (6) Business Hours (being within 8am to 6pm, every day) after becoming aware of such Unplanned Outage commencing and again within four (4) Business Hours after becoming aware of the end of the Unplanned Outage. Such notification can be by written, oral or electronic

means, provided that any oral communication is confirmed in writing and dispatched to the Buyer as soon as practicable after the oral communication takes place;

4.2.2 keep the Buyer updated as to the likely duration of the Unplanned Outage;

4.2.3 rectify the circumstances causing the Unplanned Outage as soon as reasonably possible.

5 OTHER INFORMATION OBLIGATIONS

5.1 The Seller shall provide to the Buyer any information the Seller is required to provide to EirGrid particular to the MW forecasts and MW availability declarations as set out in the Grid Code.

5.2 Without prejudice to the other provisions of this Schedule E, the Seller shall promptly provide the Buyer with any other information (including without limitation any provision of ancillary services, DS3 system services or other system services) which will impact or might reasonably be expected to impact the Capacity, availability or Loss Adjusted Metered Quantity from the Facility.

PART 2

AVAILABILITY FORECASTING

In this Schedule E Part 2:

Actual Generating Unit Availability means the final actual technical availability of each Generating Unit to generate electricity by reference to the Rated Generating Capacity of each Generating Unit for each half hour during the relevant period.

Availability Forecast means a forecast as to the technical availability (net of any Planned Outages or Unplanned Outages) of each Generating Unit to generate electricity by reference to Rated Generating Capacity of each Generating Unit and being a Monthly Availability Forecast or a Daily Availability Forecast (as applicable) and in each case in the format agreed in writing by the Buyer and the Seller on or prior to the date of this Agreement (as such format may be amended from time to time by written agreement of the Buyer and Seller).

1 AVAILABILITY FORECASTS AND ACTUAL AVAILABILITY

The Seller shall provide to the Buyer, at no cost to the Buyer:

- 1.1 no earlier than the fifth (5th) Business Day in any calendar month and no later than the start of the second (2nd) Business Day prior to the commencement of the next Electricity Month during the Term, a detailed Availability Forecast for each Electricity Day in such forthcoming Electricity Month (**Monthly Availability Forecast**);
- 1.2 no later than twelve (12) hours before the deadline for submission of trades to the Day Ahead Market (such deadline for submission of trades being 11:00 hours/ 11am before the commencement of each Electricity Day) (unless otherwise agreed in writing between the Parties) a revised Availability Forecast for the relevant Electricity Day to the extent that the Availability Forecast for that Electricity Day has changed from the Monthly Availability Forecast (**Daily Availability Forecast**); and
- 1.3 upon request by the Buyer, details of the Actual Generating Unit Availability for each one (1) hour trading period for the last Electricity Month (in the format agreed in writing by the Buyer and the Seller on or prior to the date of this Agreement as such format may be amended from time to time by written agreement of the Buyer and Seller).

2 FAILURE TO PROVIDE AVAILABILITY FORECASTS

In the event that:

- 2.1 the Seller does not comply with clause 1.1 above, then the Buyer shall use the Rated Generating Capacity of the Facility as identified in Schedule C (Facility Identification) for the purpose of participation in the I-SEM Markets;
- 2.2 the Seller does not comply with clause 1.2 above, then the Buyer shall use the Monthly Availability Forecast for the relevant Electricity Day (or where clause 2.1 above applies the relevant Rated Generating Capacity) for the purpose of participation in the I-SEM Markets; or
- 2.3 the Seller fails to comply with the Buyer's request in clause 1.3 above within three (3) Business Days of such request, then the Buyer shall use zero as the Actual Generating Unit Availability for the purposes of clause 5 and 6 of this Schedule.

3 PRUDENT OPERATING PRACTICE

The Seller shall ensure that each Availability Forecast is provided to the best of its knowledge and belief acting in accordance with Prudent Operating Practice and having due regard to scheduled and unscheduled outages and any other factors the Seller considers relevant.

4 DELIVERY OF AVAILABILITY FORECASTS

- 4.1 The Seller shall ensure all Availability Forecasts are sent by email to [] or such other email address or interface as may be notified by the Buyer to the Seller from time to time in writing.
- 4.2 The Seller, if requested by the Buyer, shall provide the Buyer with Actual Generating Unit Availability for the time period so requested by the Buyer to enable the Buyer to calculate the Availability Variance, if any.

5 AVAILABILITY VARIANCE

- 5.1 Where the Actual Generating Unit Availability differs from the Availability Forecast provided (or deemed in accordance with clause 2 of Part 2 of this Schedule) this difference shall be known as "**Availability Variance**" and the Buyer will be entitled to calculate the Availability Variance Payment amount in accordance with the formula in clause 6 below and the Seller shall be liable to pay to the Buyer (or the Buyer shall be liable to pay the Seller) such Availability Variance Payment (Availability Variance Payment) which shall be included in the Statement of Account. For the avoidance of doubt, the Availability Variance (if any) shall be calculated for each Electricity Month.

6 AVAILABILITY VARIANCE CALCULATION

The total Availability Variance Payment for each Electricity Month shall be calculated as the aggregate of all (positive and negative) Availability Variance Payments for all Imbalance Settlement Periods in an Electricity Month.

Availability Variance Payment = Deemed Variance (MWh) * Price Delta (€/MWh)

(a) Deemed Variance (%) = {1-[Actual Generating Unit Availability / Availability Forecast]}

(b) Deemed Variance (MWh) = Deemed Variance (%) * Loss Adjusted Metered Quantity (loss adjusted) (MWh)

(c) Price Delta (€/MWh) = Day Ahead Price – Balancing Price

(d) Day Ahead Price means the Day Ahead Auction price as determined by a Day-ahead Auction (as each of those terms is defined in the Trading and Settlement Code).

(e) Balancing Price has the meaning given to the term "Imbalance Settlement Price" in the Trading and Settlement Code.

Where Availability Variance Payment is positive, then Seller will pay the Buyer and where Availability Variance Payment is negative Buyer will pay Seller.

Where Availability Forecast is zero and Actual Generating Unit Availability is greater than zero, then Deemed Variance (%) will be one hundred per cent (100%).

Where Actual Generating Unit Availability is zero and Availability Forecast is greater than zero then Deemed Variance (%) will be one hundred per cent (100%).

7 AVAILABILITY FORECAST ERROR FIXED FEE OPTION

- 7.1 Subject always to clauses 7.4 and 7.5 below, the Seller shall have the option by giving a minimum of sixty (60) days prior written notice to the Buyer, to opt to pay a fixed fee (the **Availability Forecast Error Fixed Fee**) to fully mitigate any liability to pay an Availability Variance Payment during that period (**Availability Forecast Error Fixed Fee Option**).
- 7.2 Where the Availability Forecast Error Fixed Fee Option is exercised in respect of the first Year during which the Commencement Date has occurred (the **Initial Period**), the Availability Forecast Error Fixed Fee shall be [€●] per MWh x the Loss Adjusted Metered Quantity during that period. The Availability Forecast Error Fixed Fee shall be payable in respect of each Billing Period and shall be included in the Statement of Account and Invoice for each Billing Period.
- 7.3 Following the expiry of the Initial Period, the Availability Forecast Error Fixed Fee shall be agreed in good faith between the Parties (and each Party acting reasonably, having regard to the Availability Forecast Error Fixed Fee that applied during the Initial Period in terms of seeking to maintain commercial balance in terms of the rights, liabilities and obligations of the Parties in relation thereto) within thirty (30) days following the date on which the Seller exercises an Availability Forecast Error Fixed Fee Option. In the absence of agreement within thirty (30) days of the Seller's Availability Forecast Error Fixed Fee Option notification, the Seller shall be deemed to have withdrawn the notification.
- 7.4 Where the Seller has exercised the Availability Forecast Error Fixed Fee Option, the Seller shall not be liable to pay any Availability Variance Payment during the period for which the Availability Forecast Error Fixed Fee Option has been exercised. If the availability is less than xx% during such period, the Buyer shall be entitled to be paid the difference between (i) the Availability Forecast Error Fixed Fee for that period and (ii) the total Availability Variance Payment that the Buyer would have been entitled to be paid, had the Seller not exercised the Availability Forecast Error Fixed Fee Option (where (ii) is greater than (i)).

SCHEDULE F

FORM OF AUTHORITY FOR APPOINTMENT OF AN INTERMEDIARY

THIS FORM OF AUTHORITY dated the day of 20 is entered into as a deed between:

(I) [] ("Licensed Generator"), having its place of business at [] being a limited liability company registered under the laws of Ireland and whose company registration number is []

and

(II) [Insert name of proposed intermediary (if a company, please give full corporate name)] ("Intermediary") having its place of business at [Insert address of Intermediary] being a [registered company/ partnership/ sole trader etc.] registered under the laws of [insert country of registration if a company] and whose company registration number is [insert if a company].

In respect of

[Insert description of generator unit or units to which this Form of Authority applies] ("Units")

Whereas:

1. The Licensed Generator legally controls the Units and is the subject of [a [licence/authorisation/exemption] issued by the CRU to use the Units for the purpose of generation of electricity in Ireland] [and] [a [licence/authorisation/exemption] issued by the NIAUR to use the Units for the purpose of generation of electricity in Northern Ireland].
2. The Licensed Generator and the Intermediary are parties to a contract ("the Contract") which satisfies criteria for appointment of an Intermediary pursuant to Regulatory Authorities' Decision Paper SEM/17/025. The Licensed Generator wishes to appoint the Intermediary to act as the Participant in respect of the Units under (i) the Trading and Settlement Code; and (ii) the Capacity Market Code, and the Intermediary wishes to accept such appointment, in accordance with the following terms.
3. By letter dated [x] ("the Consent") addressed to the Licensed Generator and the Intermediary the Regulatory Authorities consent to the appointment by the Licensed Generator of the Intermediary to act as such.

Interpretation

- 1.1 In this Form of Authority, "Trading and Settlement Code" or "TSC" means the code of that name that governs the balancing market and settlement arrangements for the capacity market in Ireland and Northern Ireland, as modified, amended, varied or replaced from time to time.
- 1.2 In this Form of Authority, "Capacity Market Code" or "CMC" means the code of that name that governs the capacity market in Ireland and Northern Ireland, as modified, amended, varied or replaced from time to time.
- 1.3 Capitalised terms which are not defined in this Form of Authority shall have the meanings ascribed thereto in the Trading and Settlement Code.

2. Authorisation under the Trading and Settlement Code

- 2.1 The Licensed Generator hereby appoints and authorises the Intermediary to register the Units as Generator Units for the purposes of participation in the Balancing Market, and to participate in the Balancing Market in respect of the Units, under the Trading and Settlement Code, and the Intermediary accepts such appointment.
- 2.2 The Licensed Generator authorises the Intermediary, subject to the Intermediary becoming a Party to the Trading and Settlement Code and successfully registering the Units under the TSC, to undertake all of the obligations, covenants, undertakings, duties and liabilities of a Participant in respect of the Units under the TSC [for the duration of the Contract] [insert alternative period], and the Intermediary agrees to such.

The Licensed Generator authorises the Intermediary, subject to the Intermediary becoming a Party to the Trading and Settlement Code and successfully registering the Units under the TSC, to benefit from all of the rights of a Participant under the TSC, including the right to receive payments in respect of the Units under the TSC [for the duration of the Contract] [insert alternative period], and the Intermediary agrees to such.

EITHER:

3. [Full Authorisation under the Capacity Market Code]

- 3.1 The Licensed Generator hereby appoints and authorises the Intermediary to register or provisionally register the Units for the purposes of participation in the Capacity Market, and to participate in respect of the Units in the Capacity Market, under the Capacity Market Code, and the Intermediary accepts such appointment.
- 3.2 The Licensed Generator authorises the Intermediary, subject to (1) the Intermediary becoming a Party to the Capacity Market Code and (2)(i) successfully registering the Units under the TSC, or (2)(ii) registering or provisionally registering the Units under the CMC, to undertake all of the obligations, covenants, undertakings, duties and liabilities of a Participant in respect of the Units under the CMC [for the duration of the Contract] [insert alternative period], and the Intermediary agrees to such.
- 3.3 The Licensed Generator authorises the Intermediary, subject to (1) the Intermediary becoming a Party to the Capacity Market Code and (2)(i) successfully registering the Units under the TSC, or (2)(ii) registering or provisionally registering the Units under the CMC, to benefit from all of the rights of a Participant in respect of the Units under the CMC (including the right to participate in Capacity Auctions) [for the duration of the Contract] [insert alternative period], and the Intermediary agrees to such.]

OR:

3. [Restricted Authorisation under the Capacity Market Code]

The Licensed Generator hereby appoints and authorises the Intermediary to register the Units for the purposes of the Capacity Market Code, but does not authorise the Intermediary to participate in Capacity Auctions or Secondary Trade Auctions under the CMC in respect of the Units.]

4 Other matters

- 4.1 This Form of Authority, and any disputes arising under, out of, or in relation to, this Form of Authority shall be interpreted, construed and governed in accordance with the laws of Northern Ireland.
- 4.2 The parties hereby submit to the jurisdiction of the Courts of Ireland and the Courts of Northern Ireland (and no other court) for all disputes arising out of, under or in relation to this Form of Authority.
- 4.3 The Market Operator under the TSC and the System Operators under the CMC are entitled to rely on this Form of Authority.

- 4.4 The Registered Generator may revoke this Form of Authority by giving [20] Working Days notice in writing.
- 4.5 Where the Regulatory Authorities consider that the basis on which the Regulatory Authorities gave the Consent no longer applies, they may revoke the Consent and this Form of Authority by giving 20 Working Days notice in writing to the Registered Generator and the Intermediary. If the Regulatory Authorities revoke this Form of Authority, the Intermediary shall promptly notify the Market Operator under the TSC and, if applicable, the System Operators under the CMC.

[To be executed as a Deed and (where appropriate to the legal form of the Licensed Generator) under seal]

DRAFT

SCHEDULE G

MINIMUM INSURANCE REQUIREMENTS

Public/Products Liability

Cover:	Legal liability of the insured for damage to property of third parties or bodily injury to third parties arising out of the ownership, operation and maintenance of the Facility or breach of this Agreement.
Sum insured:	Minimum of €6.5m any one occurrence unlimited in any period of insurance.
Maximum Permitted Deductible:	Any applicable deductible should not exceed €25,000 per claim or series of claims arising from a single occurrence.
Additional Interests:	Indemnity to Buyer under the Power Purchase Agreement, to include a 30 day notice of cancellation to Buyer.
Jurisdiction:	To include Republic of Ireland.

Employers Liability

Cover:	Legal liability of the insured for bodily injury or disease to any employee of the insured.
Sum insured:	Minimum €12,700,000
Maximum Permitted Deductible:	Any applicable deductible should not exceed €25,000 per claim or series of claims arising from a single occurrence.
Additional Interests:	Indemnity to Buyer under the Power Purchase Agreement, to include a 30 day notice of cancellation to Buyer.
Jurisdiction:	To include Republic of Ireland.

Property Insurance

Cover:	Insurance to cover loss to the property arising from Accidental Loss or Damage to the property other than by an excluded clause (the permitted excluded clauses being those which are standard in the wind generation market in Ireland at the time), for such amounts, as are reasonable and prudent for a Facility of this type in the Republic of Ireland and are available on commercially reasonable terms.
Items to be Insured:	Turbines, Transformers, switchgear, cabling etc
Sum Insured:	As a minimum equivalent to 100% of the full replacement value as new of the insured items at the time of the loss.
Maximum Permitted Deductible:	Any applicable deductible should not exceed €50,000 per claim.
Additional Interests:	Indemnity to Buyer under the Power Purchase Agreement, to include a 30 day notice of cancellation to Buyer. For avoidance of doubt it is agreed that Buyer is not included in any policy claim settlement arrangements.

Jurisdiction: To include Republic of Ireland.

Such insurances as required pursuant to law, legal requirements, Industry Laws or any Industry Agreement.

DRAFT



**APPENDIX 2 –CORPORATE POWER PURCHASE AGREEMENT LETTER FROM CEO ART
GENERATION LTD AND CEO AMARENCO IRELAND**



Mr. Ian Howard,
Herbata Limited,
4C Sycamore House,
Millennium Park,
Naas,
Co. Kildare

Date: 28th May 2025

Subject to Contract/Contract Denied: Corporate Power Purchase Agreement (CPPA)

Dear Ian,

ART Generation (“ART”) is an independent Irish energy development company established by myself in 2002.

To date, ART has successfully developed over 200MW of operational onshore wind projects across Cork, Donegal, Kilkenny, and Tipperary, retaining ownership stakes in many of these assets.

In addition, ART is advancing a development pipeline of over 250MW of onshore wind projects at various stages, including two joint ventures with FuturEnergy Ireland: the 120MW Castlebanny Wind Farm in County Kilkenny (www.castlebannywindfarm.ie) and the 50MW+ Ballyfasy Wind Farm, also in County Kilkenny (www.ballyfasywindfarm.ie). ART is also co-developing the Ballynalacken Wind Project in partnership with Ecopower (www.ballynalackenwindfarm.com).

In the battery storage space, ART has secured full planning consent for a 200MW/4-hour duration project in County Kilkenny and has other projects at different stages of development.

ART is always open to exploring long-term energy supply relationships with end users, such as the proposed Herbata Data Centre project. Should your project receive unappealable planning approval, we would welcome the opportunity to discuss the potential for a Corporate Power Purchase Agreement (CPPA) involving energy from our portfolio of renewable projects.

Please don't hesitate to get in touch if you have any questions.

Yours sincerely,

Richard Walshe
CEO ART Generation Ltd

Mr. Ian Howard
Herbata Limited
4C Sycamore House,
Millennium Park,
Naas,
Co. Kildare
W91 T6WE

Date; 30 April 2025

Re: Corporate Power Purchase Agreement (CPPA)

Dear Ian

Amarenco Solar Ireland Limited (ASIL) is strategically positioned in three main units of business in order to ensure what we consider the three main vectors in the area of sustainable renewable energy, being Solar production, Agrivoltaic and Energy Storage. The group operates across Europe with key areas of focus on Ireland, France, Iberia and Austrian markets.

ASL has to date developed in excess of 500MW of solar projects across the focus areas and developed over 100MW of Battery projects and continues to grow in all regions.

In Ireland ASL has a pipeline in excess of 300MW of solar projects all located within the Munster region and at different stages of development from operational, in construction and development assets.

ASL has, in Ireland, entered into a number of Corporate Power Purchase Agreements (CPPAs) with various Pharmaceutical operators for our operational assets, without which these projects would not have proceeded given the limitations imposed under government scheme.

ASL is actively seeking further CPPAs for our pipeline of projects and more than willing to engage with Herbata about the potential for CPPA for the Data Centre project in Kildare currently progressing through the planning stage.

The current ASL project pipeline in Munster varies in scale with three projects of 24MWp going into construction during 2025, a further 80MWp being progressed during 2026 and 2027 and 100MWp project scheduled for construction commencement in 2028/29 period.

ASL will commence seeking CPPAs during 2025 for the 2026 and 2027 construction projects and 2026 for the 2028/29 projects.

We welcome opening discussion at earliest opportunity as should a CPPA be completed early this would allow us to bring forward our construction program from those outlined above.

I trust the above clarifies our position and look forward to engaging with Herbata to progress CPPA discussions.

Yours sincerely

A handwritten signature in black ink, reading 'Declan Cullinane'.

Declan Cullinane
CEO Amarenco Ireland