

**e-ROC AUCTION AGENCY AGREEMENT**

**THIS AGREEMENT is made on:**  
 (to be completed by NFPAS)

**BETWEEN:**

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

**WHEREAS** the Principal has agreed to appoint NFPAS as its agent to invite bids, and to accept the highest bid, in relation to the Specified ROCs on the terms of the e-ROC Auction Code, the e-ROC Conditions of Sale and in accordance with the terms of the Agreement (set out in the next pages) and NFPAS has agreed to accept such appointment.

**PARTICULARS OF THE PRINCIPAL**

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

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

Address:.....

.....

Telephone number:.....

Facsimile number:.....

Attention:.....

E-mail address:.....

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

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Signed by:..... Signed by:.....

Print name:..... Print name:.....

For and on behalf of:.....

..... For and on behalf of **NFPAS LIMITED**

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**IT IS AGREED BY THE PRINCIPAL AND NFPAS** as follows:

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

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

**"Act"** means the Electricity Act 1989 or the NI Electricity Order as applicable;

**"Auction"** has the meaning given in the e-ROC Auction Code;

**"Auction Date"** means the date on which the Auction is held;

**"Auction Period"** means the time periods within which bids may be submitted in respect of the sale of any ROCs as specified by NFPAS on the Auction Site from time to time;

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

**"Authority"** means the Gas and Electricity Markets Authority established under the Utilities Act 2000 or the Northern Ireland Authority for Energy Regulation created under Article 3 of the NI Energy Order, as applicable, or any successor from time to time;

**"Banking Day"** means any day other than: (a) Saturday or Sunday; (b) Christmas Day or Good Friday; or (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom;

**"Barclays Bank Base Rate"** means interest at an annual rate equal to the base rate of Barclays Bank Plc published from time to time (or if that rate ceases to be published the Bank of England base rate);

**"Commencement Date"** means the date of this Agreement or such other date as may be agreed by the parties;

**"Contract Fee"** has the meaning given in Schedule 2;

**"Contract Year"** means each successive period commencing on 1 April and ending on 31 March in the next succeeding calendar year during the term of this Agreement, provided that the first Contract Year shall commence on the Commencement Date and the last Contract Year shall end on the Expiry Date or earlier termination of the contract term if occurring prior to 31 March in the current Contract Year;

**"e-ROC Auction Code"** means the code of that name as published by NFPAS from time to time, and as amended in respect of any Auction in accordance with Clause 4.6;

**"e-ROC Conditions of Sale"** means the terms and conditions for the sale of ROCs published by NFPAS from time to time, and as amended in respect of any Auction in accordance with Clause 4.6;

"**Expiry Date**" means the date of termination of this Agreement under Clause 10 or such other date as the parties may agree;

"**Force Majeure**" means, any circumstances beyond the reasonable control of the affected party including without prejudice to the generality of the foregoing any act of God, act or regulation of any governmental or supra-national authority, war or national emergency, terrorist act, accident, epidemic, fire, riot, strike, lock-out, or other form of industrial action provided always, that lack of funds or failure to pay shall not be interpreted as beyond the reasonable control of such party;

"**Liability Cap**" means, in respect of each Contract Year, the sum of £100,000;

"**Listing Fee**" has the meaning given in the Schedule 1;

"**Lot**" has the meaning given in the e-ROC Auction Code;

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

"**NI Department**" means the Department of Enterprise Trade and Investment in Northern Ireland or any successor from time to time;

"**NI Electricity Order**" means the Electricity (Northern Ireland) Order 1992;

"**NI Energy Order**" means the Energy (Northern Ireland) Order 2003;

"**Obligation period**" has the meaning given in the RO Order, the ROS Order or the RO(NI) Order, as applicable;

"**Reserve Price**" has the meaning given in the Schedule 1;

"**Revised Contract Fee**" has the meaning given in Clause 10.3;

"**ROC**" means a ROC as defined in the RO Order, a SROC as defined in the ROS Order or a NIROC as defined in the RO(NI) Order, issued by the Authority to the Principal or otherwise registered in the name of the Principal in the ROC Register;

"**ROC Register**" means the "Register" as defined in the RO Order, the ROS Order or the RO(NI) Order respectively maintained by or on behalf of the Authority for the purposes of the RO Order, the ROS Order or the RO(NI) Order;

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

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

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

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

"**Specified ROCs**" means the ROCs notified to NFPAS by the Principal from time to time to be made available for sale under this Agreement; and

"**Successful Bidder**" has the meaning given in the e-ROC Auction Code.

## 1.2 Interpretation

In this Agreement:

- 1.2.1 references in the singular shall include references in the plural and vice versa, and words denoting natural persons shall include corporations and any other legal entity and vice versa;
- 1.2.2 references to the word "including" are to be construed without limitation;
- 1.2.3 references to any statute or statutory instrument or any section of, or schedule to, or other provisions of a statute or statutory instrument shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment thereof then in force and to all instruments, orders or regulations then in force and made under or deriving validity from such statute or provision (as the same may have been so modified, extended or re-enacted from time to time);
- 1.2.4 except to the extent that the context requires otherwise references to a particular Clause, Schedule or Appendix shall be references to that clause, or schedule in or appendix to this Agreement;
- 1.2.5 except to the extent that the context requires otherwise, any reference to "the Agreement" or "this Agreement" is a reference to it as amended, supplemented or novated from time to time and includes a reference to any document which amends, is supplemental to, novates or is entered into, made or given pursuant to or in accordance with any terms of it; and
- 1.2.6 the headings are inserted for convenience only and are to be ignored for the purposes of construction.

## 2. APPOINTMENT

The Principal appoints NFPAS as its sole and exclusive agent to sell the Specified ROCs on its behalf in accordance with the provisions of this Agreement, the e-ROC Conditions of Sale and the e-ROC Auction Code and NFPAS agrees to act in this capacity in accordance with the provisions of this Agreement, the e-ROC Conditions of Sale and the e-ROC Auction Code. For the avoidance of doubt, the Principal understands and agrees that NFPAS shall be offering and providing similar services to other persons.

## 3. TERM OF APPOINTMENT

The appointment of NFPAS as agent pursuant to this Agreement shall commence on the Commencement Date and shall continue until the Expiry Date.

## 4. OBLIGATIONS OF NFPAS

NFPAS hereby agrees with the Principal:

#### 4.1 **Sale of ROCs**

To carry out the function of agent for the Principal for the purpose of selling the Specified ROCs (and collecting payment therefor) on behalf of the Principal in accordance with the terms of this Agreement, the e-ROC Conditions of Sale and the e-ROC Auction Code.

#### 4.2 **Auction**

To invite bids for the sale of the Specified ROCs under the terms of the e-ROC Conditions of Sale by holding Auctions from time to time and in any event no later than four months from the date on which the Principal makes the Specified ROCs available for sale or failing which, if later, such date as may be agreed by the Principal, to notify the Principal of such Auctions by publishing the Auction Date on the Auction Site at least 15 Banking Days prior to the relevant Auction Date, to maintain an Auction Site and to operate the e-ROC Auction Code in respect of such Auctions.

#### 4.3 **Failure to hold Auction or Sale of ROCs**

If an Auction is not held in respect of the Specified ROCs or the Specified ROCs are not sold within the period referred to in Clause 4.2 then the Principal may withdraw those Specified ROCs made available and NFPAS:

4.3.1 shall immediately transfer back to the Principal, or such other party as the Principal may direct, any Specified ROCs held by NFPAS on behalf of the Principal; and

4.3.2 agrees that no Contract Fee or Listing Fee (if applicable) shall be payable in respect of such withdrawn Specified ROCs.

#### 4.4 **Description as Agent**

To make a statement on the Auction Site that NFPAS acts as agent for the Principal (together with any other principal to whom NFPAS may, in its sole discretion, provide similar services from time to time) and that it makes sales of the Specified ROCs on behalf of the Principal.

#### 4.5 **e-ROC Conditions of Sale**

To make any sale of the Specified ROCs pursuant to this Agreement as agent for the Principal and subject to the e-ROC Conditions of Sale and the e-ROC Auction Code.

#### 4.6 **Changes to the e-ROC Auction Code and the e-ROC Conditions of Sale**

That NFPAS may make changes, in its discretion, to the e-ROC Auction Code or the e-ROC Conditions of Sale in respect of future Auctions in respect of Specified ROCs which have not yet been made available to NFPAS for sale. Any such revisions to the e-ROC Auction Code or the e-ROC Conditions of Sale will be posted on the website of NFPAS. NFPAS shall notify the Principal of any change to either the e-ROC Auction Code or the e-ROC Conditions of Sale which is material to the Principal. NFPAS shall not make any material changes to the e-ROC Conditions of Sale or the e-ROC Auction Code in relation to a Specified ROC already made available to NFPAS for sale without the consent of the Principal, such consent not to be unreasonably withheld or delayed.

#### **4.7 Notification**

To notify the Principal within 3 Banking Days of the end of an Auction of the total number of Specified ROCs that have been sold to Successful Bidders on its behalf and the total amount payable by Successful Bidders to NFPAS in respect of the total amount of such Specified ROCs.

#### **4.8 Right to Rescind**

Not to exercise the right to rescind a sale under the ROC Auction Code without the consent of the Principal.

#### **4.9 Withdrawal**

To withdraw, postpone or cancel the sale of the Specified ROCs from the Auction upon request by the Principal, provided such request is received no less than 3 Banking Days before the start of the Auction and upon request by the Principal to withdraw, postpone or cancel the sale of the Specified ROCs at an Auction upon being notified by the Principal of an error in the information provided relating to such Specified ROCs, provided such notification is received prior to the commencement of the Auction. NFPAS reserves the right to refuse to auction Specified ROCs which are not transferred to NFPAS in accordance with Clause 6.1.1.

#### **4.10 Revocation of ROCs**

To remit all sums received from the Principal pursuant to Clause 6.1.5 to the Successful Bidder within 5 Banking Days of receipt.

#### **4.11 Standard of Service**

To exercise all reasonable skill and care in the performance of its duties hereunder and to act faithfully on behalf of the Principal.

### **5. INDEMNITY**

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

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

#### **6.1 Agreements**

The Principal hereby agrees with NFPAS:

#### 6.1.1 **Availability of ROCs**

To transfer to NFPAS for sale under the Auction the Specified ROCs such that NFPAS receives the Specified ROCs in its ROC Register no later than 3 Banking Days prior to the Auction Date and in each case to identify to NFPAS:

- (A) the unique number given to each ROC by the Authority; and
- (B) any other information in respect of such ROCs as NFPAS, acting reasonably, may require to operate the Auction or otherwise to discharge its obligations under this Agreement,

on making the Specified ROC available for sale in accordance with the terms of this Agreement.

#### 6.1.2 **Correction of information**

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

#### 6.1.3 **Sale and Delivery of ROCs**

That NFPAS is authorised by the Principal to procure the sale of any Specified ROCs transferred to NFPAS pursuant to Clause 6.1.1 to the relevant Successful Bidder and to procure the transfer of such Specified ROCs to NFPAS and subsequently to the Successful Bidder and NFPAS shall be authorised on behalf of the Principal to act for it in respect of requests for amendments to be made to the ROC Register in respect of such Specified ROCs.

#### 6.1.4 **Information to the Authority**

To provide to the Authority all information (which shall be true and accurate) (i) where the Specified ROCs have not been issued by the Authority to the Principal at the Commencement Date, necessary for the issue of the Specified ROCs by the Authority to the Principal and, (ii) for the Specified ROCs to be transferred to NFPAS and by NFPAS to the Successful Bidder, including the completion and submission to the Authority of a "Transfer Request Form" in respect of each Specified ROC or such other form of notification as may be specified by the Authority from time to time.

#### 6.1.5 **Revocation of ROCs**

That if any ROCs sold by NFPAS pursuant to this Agreement are revoked by the Authority (whether before or after the expiry or termination of this Agreement) after the Successful Bidder has made payment in respect of the ROC and such payment has been remitted to the Principal pursuant to Clause 7.1.2 but prior to the specified day in respect of the obligation period to which the ROC relates, the Principal must pay to NFPAS (within 3 Banking Days of receipt on an invoice from NFPAS) such amount required to refund the Successful Bidder.

#### 6.1.6 **Access to Information**

That NFPAS shall have no obligation to disclose to the Principal any information concerning the Auction (including the number of or identity of bidders, the

price bid by a bidder or the price paid by a Successful Bidder for one or more ROCs) other than as required pursuant to Clause 4.7. and 7.1.4

**6.1.7 Intellectual Property**

That, and acknowledges that, all copyright, trade marks, and other intellectual property rights in and relating to the Auction, the Auction Site and the NFPAS ROC Auction Code are owned by NFPAS, Non-Fossil Purchasing Agency Limited or its or their third party licensors.

**6.1.8 Revocation Notice**

To notify NFPAS, or procure (insofar as it is possible, acting reasonably, to procure) that the Authority notifies NFPAS, as soon as reasonably practicable in the event that any ROC transferred to NFPAS for sale in the Auction is or will be revoked. For the avoidance of doubt, and notwithstanding any other provision of this Agreement, NFPAS shall have no obligation to sell a revoked ROC on behalf of the Principal.

**6.2 Acknowledgements**

The Principal hereby acknowledges that NFPAS will not be responsible for or liable for:

- 6.2.1 the validity, enforceability or effectiveness of the e-ROC Conditions of Sale;
- 6.2.2 the failure of any Successful Bidder duly and punctually to observe or perform any of its obligations under the e-ROC Conditions of Sale; or
- 6.2.3 the consequences of relying on any communication or document reasonably believed by NFPAS to be genuine and correct and in particular any such document provided by the Principal in respect of the information required under Clause 6.1.

**6.3 Warranty of title and registration**

The Principal warrants to NFPAS that to the best of its knowledge and belief:

- 6.3.1 it is the sole owner of the ROCs identified to NFPAS for sale in the Auction pursuant to Clause 6.1.1 and that it has an unrestricted right to transfer title to NFPAS and the Successful Bidder free from all third party rights or claims; and
- 6.3.2 the ROCs transferred to NFPAS for sale have been issued to the Principal by the Authority or have otherwise been properly registered in the name of the Principal in the ROC Register in accordance with the RO Order, the ROS Order or the RO(NI) Order and have not been revoked and as at the date of such transfer it knows of no reason by which such ROCs would be revoked in the future.

**7. FINANCIAL PROVISIONS**

**7.1 Obligations of NFPAS**

NFPAS hereby agrees with the Principal:

**7.1.1 Invoicing the Successful Bidder**

To send an invoice to the Successful Bidder for amounts payable under the e-ROC Conditions of Sale in respect of the Specified ROCs within 3 Banking Days of completion of the relevant Auction.

**7.1.2 Accounting for Sums Received**

To pay to the Principal within 5 Banking Days of receipt of the total sum received by NFPAS in respect of the sale of ROCs pursuant to this Agreement in respect of each Auction or, if later, within 5 Banking Days of receipt of an invoice (including a VAT invoice) from the Principal in respect of the same provided that NFPAS shall be entitled to and shall set off any amounts due to NFPAS from the Principal under Clause 7.2 or otherwise under this Agreement from such payment (and NFPAS shall render an invoice (including a VAT invoice) in respect of such set-off amount in accordance with Clause 7.1.3 accordingly).

**7.1.3 VAT**

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

**7.1.4 Failure of Successful Bidder to Pay or Disputes**

In the event that payment is not made by the Successful Bidder by the due date or there is a dispute:

- (A) To notify the Principal within 3 Banking Days of the due date of such non-payment or dispute and the identity of the Successful Bidder;
- (B) To consult with the Principal within 5 Banking Days of the due date of such non-payment or of the dispute as to the action to be taken to recover from the Successful Bidder the total amount due under the e-ROC Conditions of Sale in respect of the Specified ROCs;
- (C) To keep the Principal informed of any material steps taken by NFPAS to recover such payments or settle the dispute;
- (D) To provide to the Principal all information it reasonably requests in connection with any action taken by the Principal for breach of contract;
- (E) Not to exercise the right of rescission contained in Clause 11(B) of the e-ROC Conditions of Sale in respect of the Specified ROCs without the consent of the Principal, such consent not to be unreasonably withheld or delayed;
- (F) Not to exercise the right to offer the Lot to an unsuccessful bidder contained in Clause 11(C) of the e-ROC Conditions of Sale in respect of the Specified ROCs without the consent of the Principal; and
- (G) If the Specified ROCs have not been transferred to the Successful Bidder, to transfer back all the Specified ROCs to the Principal within fourteen

Banking Days of the date the payment was due to be made, such transfer to be made at the discretion of the Principal.

Any amount recovered by NFPAS (including any interest) less the reasonably incurred costs and expenses of NFPAS in connection with any such recovery or dispute to the extent that NFPAS has not recovered the same from the Successful Bidder or any other parties participating in an Auction shall be remitted to the Principal. The provisions of this Clause 7.1.4, the e-ROC Conditions of Sale and the e-ROC Auction Code are the full extent of NFPAS's obligations in relation to collecting sums due from the Successful Bidder unless otherwise agreed with the Principal.

#### 7.1.5 **Interest**

Any amount due and properly payable by NFPAS to the Principal pursuant to this Agreement and remaining unpaid at the expiry of the relevant period for payment shall bear interest thereafter, such interest to accrue from day to day and to be compounded with monthly rests at a rate equal to the Barclays Bank Base Rate from (but excluding) the date of expiry of any such period until (but excluding) the date upon which the amount due is actually received by the Principal whether before or after the date of any judgement.

#### 7.1.6 **Payment**

Payment of any amount due to the Principal under this Agreement shall be by direct bank transfer to such sterling denominated bank account as the Principal shall notify to NFPAS from time to time.

### 7.2 **Obligations of the Principal**

The Principal agrees:

#### 7.2.1 **Contract Fee and Listing Fee**

To pay the Contract Fee and Listing Fee (if applicable) together with any VAT within 5 Banking Days of receipt of an invoice unless such amount has been deducted or set off by NFPAS in accordance with Clause 7.2.3.

#### 7.2.2 **VAT**

To pay to NFPAS within 3 Banking Days of a written request (including a VAT invoice, where applicable) all amounts becoming due from time to time in respect of the sale of Specified ROCs on account of VAT (or any tax in substitution therefore) to the extent that such amounts have not been previously paid by the Principal to NFPAS or deducted by NFPAS from the monies held by it on behalf of the Principal and to deliver to NFPAS a VAT invoice in respect of any amount under this Agreement for which VAT is payable by NFPAS, including the amount notified by NFPAS to the Principal pursuant to Clause 4.7 or 7.1.2.

#### 7.2.3 **Set-Off**

To allow NFPAS to deduct or set-off any amount due to NFPAS under this Agreement against monies received by NFPAS in respect of the sale of ROCs.

#### 7.2.4 **Monies Received**

Nothing in this Agreement shall render NFPAS liable to account for monies due in respect of the sale of ROCs which have not actually been received by NFPAS unless NFPAS transferred some or all of the Specified ROCs without first receiving full payment for such Specified ROCs.

#### 7.2.5 **Payment**

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

#### 7.2.6 **Repayments**

To pay to NFPAS within 10 Banking Days of demand such amount required by NFPAS in order that NFPAS may return to a Successful Bidder monies paid by the Successful Bidder to NFPAS that are determined or agreed between NFPAS and the Successful Bidder, acting reasonably, not to have been properly due from the Successful Bidder.

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

To pay an amount representing the reasonable costs and expenses of NFPAS in respect of action taken by NFPAS acting reasonably under Clause 7.1.4 unless such amount has been deducted or set off by NFPAS in accordance with such clause provided that:

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

## **8. LIABILITY**

### **8.1 Exclusion of Liability**

Neither NFPAS nor its officers, agents, and sub-contractors will be liable for any loss of profit or goodwill or for indirect or consequential loss (including any loss arising out of any liability of the Principal to any other person) resulting from negligence or any other tort or any breach of contract on the part of NFPAS or any of its officers, employees, agents or sub-contractors arising out of any act, event or circumstance or series of acts, events or circumstances relating to this Agreement or otherwise in the course of selling

the Specified ROCs and all conditions, warranties or other terms whatsoever inconsistent with the provisions of this sub-clause are hereby expressly excluded.

## 8.2 **Limitation of Liability**

Subject to Clauses 8.3, 8.4 and 8.5, the aggregate liability of NFPAS, its officers, employees and agents and sub-contractors to the Principal arising out of any act, omission, event or circumstance or series of acts, omissions, events or circumstances relating to this Agreement, the sale of the Specified ROCs or with respect to any other matters contemplated herein shall in no circumstances, in respect of any Contract Year, exceed the Liability Cap.

Subject to Clauses 8.3, 8.4 and 8.5, the aggregate liability of the Principal, its officers, employees and agents and sub-contractors to NFPAS arising out of any act, omission, event or circumstance or series of acts, omissions, events or circumstances relating to this Agreement, the sale of the Specified ROCs or with respect to any other matters contemplated herein shall in no circumstances, in respect of any Contract Year, exceed the Liability Cap.

## 8.3 **No claims against employees**

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

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

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

## 8.5 **Exclusion Prohibited by Law and in relation to Specified ROCs**

Nothing in this Agreement is intended to limit or exclude any liability on the part of:

8.5.1 NFPAS where and to the extent that applicable law prohibits such exclusion or limitation; and

8.5.2 NFPAS in relation to amounts due to the Principal under Clause 7.1.2.

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

The Principal acknowledges and agrees that NFPAS holds the benefit of Clauses 8.1 to 8.5 for itself and as trustee and agent for and on behalf of and for the benefit of its officers, employees, agents and sub-contractors.

## 9. **FORCE MAJEURE**

### 9.1 **Suspension for Force Majeure**

If either party (the "**Affected Party**") is materially prevented, hindered or delayed from performing any of its obligations under this Agreement by reason of an event of Force Majeure, such obligations of the Affected Party and any corresponding or related

obligations of the other party shall remain in effect but shall be suspended without liability for a period equal to the duration of the event of Force Majeure provided that:

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

## 9.2 Notification

Immediately after the end of the event of Force Majeure the Affected Party shall notify the other party in writing that the event of Force Majeure has ended and shall resume performance of its obligations under this Agreement. For the avoidance of doubt, neither party shall be released from any of its obligations under this Agreement as a result of an event of Force Majeure, and this Agreement shall, subject to Clause 3, 10 and 11, remain in effect for the duration of an event of Force Majeure.

## 10. TERMINATION

### 10.1 Rights of Termination

Either Party may terminate this Agreement upon:

- 10.1.1 the occurrence of an Event of Default in respect of the other Party;
- 10.1.2 giving not less than twelve months' notice to the other Party; or
- 10.1.3 upon this Agreement being suspended by reason of Clause 9.1 for a continuous period of not less than 30 Banking Days.

### 10.2 Event of Default

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

- 10.2.1 if the defaulting party defaults in the performance of any of its material obligations under the Agreement and in the case of a default which is, in the opinion of the non-defaulting party (acting reasonably), capable of remedy such default continues unremedied at the expiry of 30 days following the date on which the non-defaulting party shall have given notice thereof to the defaulting party; or
- 10.2.2 on the defaulting party failing to pay (other than by inadvertent error in funds transmission which is discovered by the defaulting party, notified to the non-defaulting party and corrected within 4 Banking Days of such notification) any amount due from it pursuant to the terms of the Agreement and such default is unremedied at the expiry of the period 7 Banking Days immediately following

receipt by the defaulting party of written notice from the non-defaulting party of such non-payment; or

10.2.3 on the occurrence of any of the following in respect of the defaulting party:

- (A) passing a resolution for the defaulting party's winding-up (other than for the purpose of and followed by a solvent reconstruction or amalgamation) or summoning a meeting to pass any such resolution; or
- (B) the defaulting party having a petition for a winding-up order presented against it and such petition is not dismissed within 30 days; or
- (C) any step is taken to appoint an administrator in relation to the defaulting party and such step is not dismissed within 30 days; or
- (D) a receiver, administrative receiver, receiver and manager or similar officer being appointed by any person of all or any part of the defaulting party's property, assets or undertaking; or
- (E) the defaulting party making a proposal for a voluntary arrangement as defined in section 1 of the Insolvency Act 1986; or
- (F) the defaulting party entering into any other arrangement with its creditors or any of them; or
- (G) the defaulting party being unable to pay its debts for the purposes of section 123 of the Insolvency Act 1986 or any distress, execution or other process being levied upon the whole or a substantial part of the defaulting party's assets; or
- (H) a material proposal or imminent threat to do any of the above acts or things being made; or an event analogous to the aforesaid occurring in whatever jurisdiction,

except that the Event of Default shall not be deemed to have occurred if within 7 days of a request by the non-defaulting party the defaulting party provides to the non-defaulting party a guarantee of performance of the obligations of the defaulting party under the Agreement in such form and amount as the non-defaulting party (acting reasonably) may require.

### 10.3 Termination for Change in Law

If as a result of any change of law after the date of this Agreement NFPAS will suffer or incur additional costs or expenses in respect of the performance of this Agreement, or the performance of this Agreement will otherwise be rendered materially different than as the date of this Agreement, NFPAS may notify the Principal of a proposed revision to the Contract Fee (the "**Revised Contract Fee**") and shall provide details of such additional costs or expenses, or the materially different performance (as appropriate) and any steps taken by NFPAS to mitigate any such additional costs and expenses. The Principal shall notify NFPAS within 10 Banking Days of such notification whether or not it agrees to the Revised Contract Fee. If the Principal agrees to the Revised Contract Fee, the Revised Contract Fee shall replace the Contract Fee from the date that the relevant change takes effect (or such other date agreed between the parties), applying pro-rata

to the remaining part of the current Contract Year (if appropriate). If the Principal does not agree to such Revised Contract Fee this Agreement will continue unamended in relation to the same and either party may terminate this Agreement on giving the other party 28 days' notice.

#### **10.4 Survival of Rights on Termination**

Termination of the Agreement shall be without prejudice to any accrued rights or obligations of the parties up to the date of termination and the provisions of Clause 11 shall remain in full force and effect notwithstanding termination.

#### **10.5 Specified ROCs on Termination**

If the termination of this Agreement has effect during an Auction Period the sale of Specified ROCs in respect of such Auction shall proceed in accordance with the terms of this Agreement. Subject to the terms of this Agreement, NFPAS agrees on termination to transfer back to the Principal or such other party as the Principal may direct any Specified ROCs held by NFPAS which have not been sold pursuant to this Agreement.

### **11. CONFIDENTIALITY AND ANNOUNCEMENTS**

#### **11.1 General Restriction**

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

#### **11.2 Exceptions**

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

- 11.2.1 which now or hereafter comes into the public domain otherwise than as a result of a breach of an undertaking of confidentiality or which is obtainable with no more than reasonable diligence from sources other than the parties hereto;
- 11.2.2 which is required by law to be disclosed to any person who is authorised by law to receive the same under the RO Order, the ROS Order or the RO(NI) Order);
- 11.2.3 which is required to be disclosed by the regulations of any recognised exchange upon which the share capital of the party making the disclosure is or is proposed to be from time to time listed or dealt in;
- 11.2.4 to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing party is a party;

- 11.2.5 to the Authority and otherwise in accordance with the provisions of the RO Order, the ROS Order or the RO(NI) Order, or pursuant to any licence of the party concerned held under Section 6 of the Act or Article 10 of the NI Electricity Order;
- 11.2.6 to any consultants, banks or advisers to the disclosing party;
- 11.2.7 from any party to any instrument or agency of Government or the European Union having jurisdiction in respect of inter-state commerce, competition or energy;
- 11.2.8 to the Authority, the Secretary of State or the Scottish Ministers or the NI Department under the Act and their respective agents to enable the Authority, the Secretary of State or the Scottish Ministers or the NI Department under the Act to monitor developments concerning the generation of electricity from non-fossil fuel sources;
- 11.2.9 by NFPAS to any person as to the total number of ROCs (or ROCs of a particular type) that have been sold to Successful Bidders in any Auction and the total amount payable by Successful Bidders to NFPAS in respect of such ROCs or details of any ROC that has been revoked; and
- 11.2.10 by NFPAS to its sub-contractors to the extent required to enable such sub-contractor to carry out NFPAS' obligations under this Agreement provided that such sub-contractor shall be made aware by NFPAS of its obligations under this Agreement and shall be required by NFPAS to observe the same restrictions on the use of the confidential information as are contained in this Clause 11.

### 11.3 **Disclosure to Third Parties**

Before any party hereto discloses any information in any of the circumstances described in Clause 11.2.6 (other than to legal advisers), it shall

- 11.3.1 notify the other party of its intention to make such disclosure; and
- 11.3.2 procure the execution and delivery to that party of an undertaking executed by the person to whom the disclosure is proposed to be made being in the same terms mutatis mutandis as the undertakings contained in this Clause, but excluding Clause 11.2.6.

### 11.4 **Announcements**

- 11.4.1 Subject to Clause 11.4.2, neither party shall issue public announcements regarding this Agreement without first having obtained prior approval of a copy of the announcement from the other party (such approval not to be unreasonably withheld or delayed).
- 11.4.2 The restrictions imposed by Clause 11.4.1 shall not apply to the disclosure of any information which is required to be disclosed by the regulations of any recognised exchange upon which the share capital of the party making the disclosure is or is proposed to be from time to time listed or dealt in.

## **12. MISCELLANEOUS**

### **12.1 Dispute Resolution**

This Agreement shall be governed by and construed in accordance with English law and each party agrees that the Courts of England shall have exclusive jurisdiction to settle any disputes which arise out of or in connection with this Agreement and both parties waive any objection to proceedings being brought in the English courts on the ground of venue or on the grounds that the proceedings have been brought in an inconvenient forum.

### **12.2 Entire Agreement**

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

### **12.3 No other Representation**

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

### **12.4 Notices**

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

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

(A) in the case of delivery by hand, when delivered; or

- (B) in the case of first class prepaid post, on the second day following the day of posting or (if sent overseas by airmail, as appropriate,) on the fifth day following the day of posting; or
- (C) in the case of facsimile, on acknowledgement of the addressee's facsimile receiving equipment (where such acknowledgement occurs before 1700 hours on the day of acknowledgement) and in any other case on the day following the day of acknowledgement; or
- (D) in the case of notice given by electronic mail, when the communication is first stored in the recipient's electronic mail box. The place of receipt of e-mail will be deemed to be the postal address nominated by the recipient for the service of notices.

12.4.3 The particulars for notices of communications to be given to the Principal, until otherwise notified, are set out in the first page of this Agreement and the particulars for notices of communications to NFPAS, until otherwise notified, are:

Address:	4 <sup>th</sup> Floor Higham House Higham Place New Bridge Street West Newcastle-upon-Tyne NE1 8AN
Telephone Number:	0191-245 7330
Facsimile Number:	0191-245 7331
Attention:	Commercial Director
Email address:	e-roc@nfpas.co.uk

## 12.5 Counterparts

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

## 12.6 Waiver

No delay by or omission of any party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or future exercise thereof or the exercise of any other right, power, privilege or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

## 12.7 Variation

No variation to this Agreement shall be effective unless made in writing and signed by or on behalf of the Principal and NFPAS.

## 12.8 **Assignment and Transfer**

Subject to Clause 12.9, neither party may transfer or assign any of its rights or obligations under this Agreement nor enter into any sub-contracted relationships with any person relating to the performance of its obligations under this Agreement or delegate the performance of any of its obligations under this Agreement without in any case the prior written consent of the other party, such consent not to be unreasonably withheld, with the exception that the Principal reserves the right to assign its rights or obligations under this Agreement by way of security to a bank or financial institution upon giving 14 days' notice to NFPAS.

## 12.9 **Agent**

The Principal agrees that NFPAS may appoint as its agent or contractor:

12.9.1 a member of the group of companies to which it belongs, including Non-Fossil Purchasing Agency Limited; or

12.9.2 subject to the Principal's prior written consent (such consent not to be unreasonably withheld or delayed), a third party,

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

## 13. **MISCELLANEOUS**

### 13.1 **Third Party Rights**

No term of this Agreement is enforceable under the Contract (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

### 13.2 **Relationship of the Parties**

Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of employer and employee between the parties hereto.

### 13.3 **Severance**

In the event that any provision of this Agreement (other than Clause 13.4) shall be void or unenforceable by reason of any provision of applicable law, it shall be deleted and the remaining provisions hereof shall continue in full force and effect and if necessary, be so amended as shall be necessary to give effect to the spirit of this Agreement so far as possible.

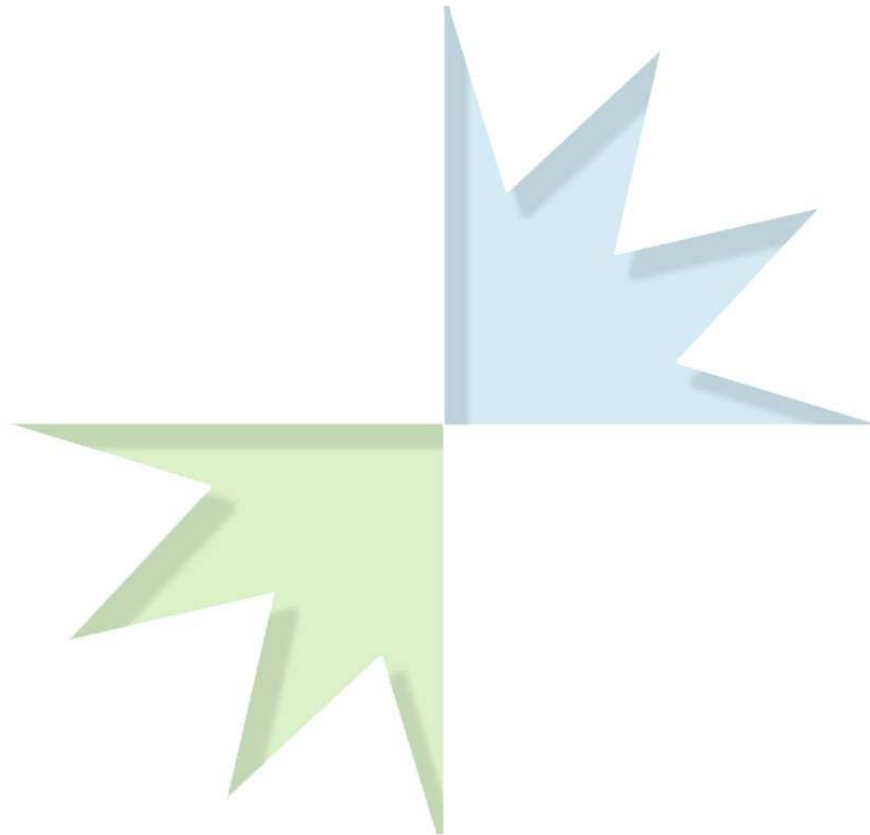
### 13.4 **Law**

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

**SCHEDULE 1:**  
**SPECIFIC PROVISIONS**

1. In the Agreement, the following terms shall have the following meanings:
  - 1.1 **"Listing Fee"** means the price notified by NFPAS pursuant to paragraph 2.3 of this Schedule being the price which NFPAS considers reasonable in consideration for NFPAS offering for sale the Specified ROCs at an Auction at the Principal's proposed Reserve Price; and
  - 1.2 **"Reserve Price"** means the price notified by the Principal pursuant to paragraph 2.2 of this Schedule as the minimum at which Specified ROCs will be sold at an Auction.
2. **Reserve Price**
  - 2.1 The provisions of Clause 6 of this Agreement notwithstanding, this paragraph 2 shall be applicable to the sale of Specified ROCs in respect of which the Principal wishes to specify a Reserve Price.
  - 2.2 If the Principal intends to specify a Reserve Price in relation to the sale of Specified ROCs, it shall notify NFPAS by email not less than 6 Banking Days before the Auction Date specifying:
    - 2.2.1 the quantity of Specified ROCs;
    - 2.2.2 the type of Specified ROCs; and
    - 2.2.3 the proposed Reserve Price.
  - 2.3 NFPAS shall have the right to reject a proposed Reserve Price by notifying the Principal not less than 4 Banking Days before the Auction Date at which time NFPAS shall state the Listing Fee it would require the Principal to pay as consideration for NFPAS offering to sell the Specified ROCs at the proposed Reserve Price.
  - 2.4 If NFPAS rejects the proposed Reserve Price pursuant to paragraph 2.3 of this Schedule, it shall have no obligation to offer for sale the Specified ROCs unless the Principal, by written notice to NFPAS given by way of email no less than 3 Banking Days before the Auction Date,
    - 2.4.1 revises the Reserve Price to a level acceptable to NFPAS;
    - 2.4.2 withdraws the requirement for a Reserve Price; or
    - 2.4.3 agrees to pay the Listing Fee.
  - 2.5 If the Principal does not revise the Reserve Price, agree to pay the Listing Fee or withdraw the requirement for a Reserve Price in accordance with paragraph 2.4 of this Schedule, NFPAS shall have no obligation to offer for sale the relevant Specified ROCs and the Principal may make other arrangements for the sale of the relevant Specified ROCs.

- 2.6 If NFPAS does not reject the proposed Reserve Price pursuant to paragraph 2.3 of this Schedule or if the Principal agrees to pay the Listing Fee pursuant to paragraph 2.4, the proposed Reserve Price will become binding for the relevant Auction of the Specified ROCs.



**SCHEDULE 2:**  
**CONTRACT FEE**

In the Agreement the following term shall have the following meaning:

**"Contract Fee"** means 50p for each Specified ROC made available for sale under this Agreement in respect of each Auction provided that the minimum amount of the Contract Fee in respect of each Auction shall be £50 (in each case exclusive of any VAT).

