**POWER PURCHASE AGREEMENT**

THIS AGREEMENT is dated 202[ ]

**PART A - KEY TERMS**

|  |  |
| --- | --- |
| **Purchaser:** | [ ]  |
| **Generator:** | PEC RENEWABLES LIMITED a community benefit society registered with no. 32286 R whose registered office is at C/o Low Carbon Team, Plymouth City Council, Ballard House, West Hoe Road, Plymouth PL1 3BJ |
| **Term:** | [ ] years starting on and including the date of this agreement subject to the terms of this agreement |
| **Agreement:** | Part A - Key Terms, Part B - Supply Terms, Part C - General Terms, the Schedules [and the Plan] shall form the agreement by the parties |
| **Electricity Supply:** | In accordance with the provisions of this agreement, the Generator shall use reasonable endeavours to supply electricity generated by the Equipment to the Purchaser and the Purchaser shall take delivery of and purchase such electricity |
| **Building:** | The building known as [ ] [shown edged blue on the Plan] [forming part of the land registered under title number [ ].  |
| **Maximum Capacity:** | [ ] kilowatts |
| **Minimum Supply Threshold:** | [ ] kilowatt hours |
| **Base Unit Price:** | [ ] per kilowatt hour  |
| **Purchase Price:** | The Consumed Supply in the relevant Billing Period multiplied by the Current Unit Price |
| **Billing:** | **Billing Period:** | The quarterly period of three months ending (respectively) on:31 December;31 March;30 June; and30 Septemberor such other period reasonably specified by the Generator |
| **Payment Period:** | Within 28 days of receipt of Generator’s invoice |
| **Interest Rate:** | 4% above the Barclays Bank plc base rate  |

PART B – SUPPLY TERMS

# Electricity Supply

## The Generator shall supply electricity from the Equipment to the Purchaser at the electricity delivery point at the Building. The rate of electricity supply from the Generator to the Purchaser at any time shall be the lesser of:

## the Purchaser’s demand for active power;

## the active power generated by the Equipment (less active power consumed in the operation of the Equipment); and

## the Maximum Capacity.

## The Generator may at any time disconnect the electricity delivery point and/or suspend the supply of electricity to the Purchaser where:

## the condition or manner of operation of any Purchaser’s Apparatus:

## adversely affects the Equipment or causes the Generator to be in breach of any law or industry code; or

## poses a risk of damage or failure to the Equipment or a risk to health and safety; or

## it is necessary to do so for the purposes of maintenance, replacement, repair, upgrade or extension of the Equipment.

* 1. If the Generator disconnects the electricity delivery point and/or suspend the supply of electricity to the Purchaser pursuant to clause 1.2 due to the condition or manner of operation of the Purchaser's Apparatus, the Purchaser shall as soon as reasonably practicable at its own expense rectify the Purchaser's Apparatus and/or, as the case may be, the manner of its operation to the reasonable satisfaction of the Generator.

## The Purchaser acknowledges and agrees that the supply of electricity by the Equipment is dependent on various factors, including weather conditions. The Generator therefore gives no warranty as to the amount of electricity which will be generated by the Equipment, and the Generator shall be under no obligation to maintain or operate the Equipment so as to achieve any particular level of generation.

## To the extent that the Purchaser does not consume electricity generated by the Equipment the Generator shall be free to export to the Grid or sell any electricity generated by the Equipment as it sees fit and the Purchaser shall have no interest or claim on any income or profits that may accrue in respect of any such sales.

## Nothing in this agreement shall oblige the Generator to generate electricity or make a supply of electricity which does not fall within one of the applicable statutory exemptions (set out in Schedule 4 of the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001).

# Purchaser's Obligations

## The Purchaser shall purchase from the Generator all electricity generated by the Equipment during the term of this agreement at the Purchase Price subject to and in accordance with this agreement. The Purchaser represents and warrants to the Generator that, at the date of this agreement and for as long as this agreement is in force:

## it shall comply with the terms of this agreement and it shall not do or omit to do anything which results in the Generator breaching any agreement with any other entity;

## it shall operate the electricity delivery point and the Purchaser's Apparatus properly and maintain them in good working order and condition;

## it shall not make changes to the electricity delivery point or Purchaser’s Apparatus; and

## it shall not do anything affecting or potentially affecting the Equipment without the prior written consent of the Generator.

## The Purchaser hereby grants to the Generator (and the Generator’s contractors and agents) any rights and licences reasonably necessary for the Generator to lay and fix to the Building and/or the Purchaser's Neighbouring Property the Equipment and any cables, conduits, equipment and metering that may be required, and shall procure any further permissions, licences, data/information or support reasonably necessary from time to time for the Generator to perform its obligations in this agreement.

# Metering

# The Generator shall install the Metering System (to the extent it is not already installed) and ensure that it is operated and maintained in accordance with good industry practice. The Purchaser shall procure that the Metering System is read on the last working day of each Billing Period and such meter reading is provided promptly to the Generator.

# If a party disputes the accuracy of the Metering System it may give notice in writing to the other whereupon either party shall be entitled to have the Metering System examined and tested by an expert agreed upon by the parties or, in default of agreement, appointed at the request of either party, by the President for the time being of the Institute of Electrical Engineers. The permitted margins of error for the Metering System shall be those specified in the Meters (Certification) Regulations 1998 as amended. The costs of the expert shall be met by the Generator unless the Purchaser has called for the relevant examination or test and the expert determines that the accuracy of the Metering System is within the aforementioned permitted margins of error, in which case such costs shall be payable by the Purchaser.

# Electricity Generated and Renewable Benefits

## All electricity produced by the Equipment and all rights to receive any SEG Payments and all Renewable Benefits in connection with the Equipment and/or the electricity supplied from them shall belong exclusively to the Generator absolutely, and the Purchaser hereby irrevocably and unconditionally assigns to the Generator:

## any Renewable Benefits arising;

## any right to receive the SEG Payments; and

## any right to receive all and any other incentive, income or benefit in connection with the Equipment or associated with the electricity generated by the Equipment;

## and shall enter into any deeds or documents necessary to give effect to this clause.

* 1. The Purchaser shall cooperate with the Generator and supply any information which the Generator reasonably requires in order for the Generator to benefit from the SEG Payments and any other Renewable Benefits.

## The Purchaser shall not do anything which adversely affects (or could adversely affect) the Renewable Benefits, including but not limited to the addition of further renewable energy-generating equipment or apparatus, without the prior written consent of the Generator.

# Charges and Payment

## The Purchaser shall pay the Generator the Purchase Price in respect of the electricity supplied under this agreement in each Billing Period and the total charge for each Billing Period shall be calculated as specified in the Key Terms.

## The Generator will issue an invoice for the electricity supplied to the Purchaser in each Billing Period within 14 days from the end of the Billing Period and the Purchaser shall pay the sums set out in each invoice within 28 days of receipt.

## Subject to clause 5.4 of Part B, if the total amount of electricity supplied by the Generator to the Purchaser under this Agreement in four Billing Periods in any calendar year is less than the Minimum Supply Threshold, the Purchaser shall pay the Minimum Supply Sum, which shall be calculated as follows:

## Minimum Supply Sum = (A x B) – (C x D)

## Where:

## A = Consumed Supply Shortfall

## B = Current Unit Price

## C = Export Supply

## D = Export Rate

## If this agreement starts or ends during the four Billing Periods in any calendar year the Minimum Supply Threshold for that calendar year] shall be a fair proportion of the Minimum Supply Threshold calculated pro rata to reflect the number of days in that calendar year in which this agreement continues.

## Where clause 5.3 of Part B applies, the Generator will issue an invoice for the Minimum Supply Sum to the Purchaser within 14 days from the end of the four Billing Periods in the relevant calendar year and the Purchaser shall pay the sum set out in the invoice within 28 days of receipt.

## The Purchaser shall not be required to pay a Minimum Supply Sum in respect of a Billing Period if the Purchaser is prevented or restricted from consuming the electricity generated by the Equipment during that Billing Period due to a failure or fault in the Equipment which has not arisen from the acts or omissions of the Purchaser and no remedy or alternative supply has been provided by the Generator for a significant period of time during that Billing Period. For the purposes of this clause, a "significant period of time" shall be determined at the absolute discretion of the Generator, taking into account the particular circumstances and whether, in its opinion, that length of time would reasonably have had a significant negative impact upon the annual Minimum Supply Threshold.

## All sums payable under this agreement are exclusive of any VAT that may be chargeable. The Purchaser shall pay VAT in respect of all taxable supplies made to it in connection with this agreement within 28 days of receipt of an appropriate VAT invoice for the amount.

## The Generator shall be entitled, where necessary, to submit to the Purchaser an invoice for the supply of electricity based on estimated consumption data. The Generator shall effect any necessary reconciliation of charges based on such estimated data in the first subsequent invoice for which up-to-date Metering System readings are available.

* 1. If a meter reading has been inaccurate or the translation of meter readings into charges has been incorrect then the amount of money due by way of correction from or to the Generator shall be paid within 30 days of the date of determination of the correct amount.
	2. If either party fails to make a payment when due in accordance with this it shall pay interest on the sum due at the Interest Rate, calculated and compounded on a monthly basis from the date on which payment was due until the date the payment is received.

**PART C – GENERAL TERMS**

# Termination

## The Generator may terminate this agreement and/or the terms and conditions of Part B of this agreement on giving 1 month’s written notice if:

## the Purchaser fails to fulfil any of its payment obligations under this agreement or commits a material breach of its obligations which is not promptly remedied by the Purchaser following written notice by the Generator;

## the Purchaser suspends or threatens to suspend trading or payments of its debts, or is unable to pay its debts as they fall due, or is deemed unable to pay its debts or a receiver, administrator or liquidator is appointed in respect of the Purchaser;

## at any time during the agreement, any representations, warranties and undertakings given by the Purchaser cease to be true and accurate and are not promptly rectified following written notice by the Generator;

## any lease granted to the Generator in connection with the Equipment is terminated; or

## the Equipment ceases to be economically viable to operate; or

## If the Generator terminates the terms and conditions of Part B of this agreement the Generator may (but shall not be obliged to) disconnect the Equipment from the electricity delivery point and remove the Metering System and Equipment.

## Any termination of the agreement shall be without prejudice to any right or remedy of either party in respect of any antecedent breach of the covenants or conditions in this agreement.

## **Generator's Dealings**

## The Generator may assign, transfer and/or charge this agreement to any Funder or Group Company.

## The Generator may require (and the Purchaser hereby accepts) that the Purchaser will enter into a Direct Agreement with any Funder on reasonable terms.

## **Purchaser's Dealings**

## The Purchaser shall not gift, sell, transfer, convey or let the Building or the Purchaser's Neighbouring Property to any entity which is not a party to this agreement without the consent of the Generator.

## If the Purchaser proposes to dispose of any interest in the Building or the Purchaser's Neighbouring Property or any part of them it shall give the Generator at least 28 days written notice of its intention to do so and before completion of such disposal the Purchaser shall procure that the person who acquires such interest will on the date of completion of such disposal (unless the Generator confirms in writing this is in not required):

## enter into a deed in favour of the Generator in which it covenants to observe and perform the obligations on the part of the Purchaser and conditions in this agreement; and

## grant in favour of the Generator and the Generator's funder the Direct Agreement (if any) without any additional payments being made.

## If the Purchaser breaches clauses 3.1 or 3.2 of Part C of this agreement, it shall indemnify the Generator against all losses, costs, damages, claims, demands and liabilities suffered or incurred by the Generator arising directly or indirectly from such breach.

## The Purchaser shall observe and perform the regulations set out in Schedule 2.

## **Rates and Taxes**

## The Generator shall pay all rates, taxes and outgoings payable in respect of the Equipment, other than:

## any taxes due in connection with any dealing with or disposition of the reversion to this agreement; or

## any taxes, other than VAT, payable by reason of the receipt of any sums due under this agreement.

## **Limits on Liability**

## Nothing in this agreement shall limit or exclude a parties’ liability for death or personal injury resulting from a party’s negligence, fraud or fraudulent misrepresentation or anything for which the parties cannot legally limit or exclude or attempt to limit or exclude their liability.

## Subject to clause 5.1 of Part C of this agreement, the Generator’s total aggregate liability to the Purchaser for any damages, costs, claims or expenses arising out of the performance (or non-performance) by the Generator, its employees, agents, consultants or subcontractors of its obligations under this agreement (whether by virtue of negligence, breach of statutory duty or otherwise) shall be limited to £5,000,000.

## Subject to anything for which the parties cannot legally limit or exclude, neither party shall under any circumstances be held responsible or liable to the other party for any:

## loss of profits;

## loss of business or opportunity;

## loss or corruption of data;

## depletion of goodwill or loss of reputation; or

## any special, indirect or consequential losses, costs, damages, charges or expenses.

## If the Generator is prevented from performing its obligations under this agreement by reason of Force Majeure the Generator shall not be in breach of such obligations for so long as such reasons shall subsist.

## **Miscellaneous**

## This agreement constitutes the entire agreement of the parties relating to the transaction contemplated by this agreement and supersedes any previous agreement between the parties relating to the transaction, except to the extent this agreement is a renewal of any previous agreement and except for any lease granted to the Purchaser in connection with the Equipment.

## Except where this agreement specifically states that a notice need not be in writing any notice given pursuant to this agreement shall be in writing. Section 196 of the Law of Property Act 1925 shall otherwise apply to notices given under this agreement.

## A person who is not a party to this agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

* 1. If any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.
	2. Nothing in this agreement is intended to, or shall operate to, create a partnership between the parties.

## **Interpretation**

## The definitions and rules of interpretation set out in clauses 7.1 to 7.6 (inclusive) of Part C of this agreement apply to this agreement.

1. **Consumed Supply:** the total amount of electricity supplied by the Generator to the Purchaser from the Equipment under this agreement in the four Billing Periods in the relevant calendar year.

## **Consumed Supply Shortfall:** the amount by which the Consumed Supply is less than the Minimum Supply Threshold (in kilowatt hours).

1. **Current Unit Price:** the higher of the Base Unit Price and the Indexed Price.
2. **Direct Agreement:** a direct agreement between the Purchaser, the Generator and any Funder (in the form reasonably required by the Funder) which may include inter alia:
3. (a) a right for the Funder to step-in within a reasonable specified period to ensure that the obligations of the Generator are complied with and/or the right for the Funder to procure an assignment or other transfer of the Generator's rights under this agreement;
4. (b) an acknowledgement by the Purchaser of any charge or other security (in respect of this agreement) granted by the Generator to the Funder;
5. (c) an obligation on the Purchaser to give notice to the Funder in terms of this agreement; and
6. (d) an obligation on the Purchaser not to take any action to wind up, appoint an administrator or sanction a voluntary arrangement (or similar) in relation to the Generator without giving a reasonable prescribed period of notice to the Funder.
7. **Equipment:** the solar photovoltaic equipment listed in Schedule 1 and any additional or replacement equipment which the Generator may from time to time install on the Building.
8. **Export Rate**: the payment rate per kilowatt hour received by the Generator for exporting electricity from the Equipment to the Grid in the four Billing Periods in the relevant calendar year (or if the there is more than one rate in the four Billing Periods in the relevant calendar year the average of the rates received each day in that calendar year).
9. **Export Supply:** the total amount of electricity exported by the Generator from the Equipment to the Grid in the four Billing Periods in the relevant calendar year (in kilowatt hours).
10. **Force Majeure**: any event or circumstance which is beyond the reasonable control of the Generator.
11. **Funder:** any bank, funder or financial institution providing finance to the Generator.
12. **Grid:** the system for transmission of electricity (both local and high voltage) in England and Wales as operated by persons licensed by Ofgem.
13. **Group Company:** a company which is a member of the group of companies within the meaning of section 42 of the LTA 1954.
14. **Indexed Price:**
15. (a)the sum calculated by the Index Formula; or

(b) if the RPI is no longer available for the calculation or there is any change to the methods or items used to compile it, a reasonable alternative sum specified by the Generator based on a reasonable alternative index.

1. **Index Formula: R** = **I** x **A/B** where:
2. **R** = the Current Unit Price payable on and from the relevant Index Review Date to the next Index Review Date
3. **I** = the Base Unit Price
4. **A** = the RPI for the date 2 months before the relevant Index Review Date
5. **B** = the RPI for the date 2 months before the date of this agreement
6. **Index Review Date:** each anniversary of the date of this agreement.
7. **Metering System**: the metering equipment and apparatus to be used to measure the amount of electricity (in kilowatt hours) supplied from the Equipment to the Purchaser (which may include the combination of a generation meter and an export meter, where the Consumed Supply may be determined by calculating the difference between the electricity recorded as generated by the Equipment and the electricity recorded as exported to the Grid).
8. **Minimum Supply Sum:** the sum calculated in accordance with clause 5.3 of Part B.
9. **Permitted Use:** for the erection and operation of the Equipment in order to generate and supply electricity.
10. **[Plan:** the plan attached to this agreement marked 'plan'.]
11. **Purchase Price**: the price specified in Part A of this agreement.
12. **Purchaser’s Apparatus**: means any electrical equipment and apparatus operated by the Purchaser which are connected to the electricity delivery point.
13. **Purchaser's Neighbouring Property:** each and every part of the adjoining and neighbouring property in which the Purchaser has an interest.
14. **Renewable Benefits:** any benefits arising from the installation and/or use of and/or generation from the Equipment and the environmental benefits of such use and/or generation including any, climate change levy exemption certificates, levy exemption certificates (or any similar certificates) or other carbon savings benefit, whether under the Electricity and Gas (Carbon Emissions Reduction) Order 2008 or in accordance with the Electricity and Gas (Community Energy Savings Programme) Order 2009 or otherwise howsoever arising (Carbon Saving), the reduction of greenhouse gas emissions, the SEG Scheme and any other benefits including those introduced as a result of a change in law.
15. **RPI:** the Retail Prices Index published by the Office for National Statistics or any successor body.
16. **SEG Payments:** any payments (including tariffs) payable under the Smart Export Guarantee (*SI 2019/1005*) and the Standard Licence Conditions of Electricity Supply Licences (as modified and published by Ofgem from time to time) in respect of the renewable energy generated by the Equipment (whether exported to the Grid or not).
17. SEG Scheme: the smart export guarantee, an obligation set up by the government for licensed electricity suppliers to offer a tariff and make payment to small-scale low-carbon generators for electricity exported to the Grid as introduced under the Smart Export Guarantee Order (SI 2019/1005) (or any applicable replacement or successor scheme or legislation). **Service Media:** all media for the supply or removal of electricity, gas, water, sewage, telecommunications, data and other services and utilities and all structures, machinery and equipment ancillary to them.
18. **VAT:** value added tax chargeable under the Value Added Tax Act 1994 or any similar replacement tax.

## The definitions and provisions in Part A, Part B, Part C and the Schedules of this agreement are incorporated into this agreement. Reference to this agreement, except a reference to the date of this agreement, is a reference to this agreement and any deed, licence, consent, approval or other instrument supplemental to it.

## Reference to the Purchaser includes the person with any freehold or leasehold interest in the Building. Reference to the Generator includes its successors in title and assigns. A person includes a corporate or unincorporated body.

## A working day is a day which is not a Saturday, Sunday or a bank or public holiday in England.

## Unless the context otherwise requires, where the words include(s) or including are used in this agreement, they are deemed to have the words "without limitation" following them.

## Except where a contrary intention appears, reference to a clause or Schedule, is reference to a clause of, or Schedule to, this agreement and reference in a Schedule to a paragraph is to a paragraph of that Schedule.

* 1. Schedule 1
	2. The Equipment
		1. Photo-voltaic cells and the frames supporting those photo-voltaic cells together with such means of connection of the cells and frames to the Building
		2. Cabling, isolators and isolator enclosures, meters and meter enclosures and associated mountings, transformers, transformer enclosures and inverters and inverter enclosures
		3. Health and safety notices and other agreed signage
		4. Associated equipment and overhead and/or underground Service Media to connect the Equipment to any electrical distribution system or telecommunications system
		5. Any ancillary equipment reasonably necessary or desirable for the Permitted Use
	3. Schedule 2
	4. Regulations

The Purchaser shall procure that any person at the Building or the Purchaser's Neighbouring Property shall:

* + - * 1. use reasonable endeavours to minimise any consequent disruption or interruption to the continued operation of the Equipment for the Permitted Use;
				2. serve reasonable written notice on the Generator if it wishes to inspect, repair, maintain, install, construct or replace the roof and any structural parts of the Building or the Purchaser's Neighbouring Property and exercise such right under the supervision of the Generator if properly required by the Generator; and
				3. comply with any other proper regulations notified by the Generator to the Purchaser from time to time

This agreement is signed and dated on the date stated at the beginning of it.

Signed:......................................................................... Print Name:..................................................................

For and on behalf of **[ ]**

Signed:......................................................................... Print Name:..................................................................

For and on behalf of PEC RENEWABLES LIMITED