

For Iain Miller

Copy

**TRUST DEED**

**BY**

**J RITCHIE, S WONDERLEY, C H PORT, J I W MILLER, R G SIM  
and J F McMORRAN**

**KILBRAUR WINDFARM COMMUNITY BENEFIT TRUST**

**Burness**

120 Bothwell Street, Glasgow, G2 7JL  
Telephone: 0141 248 4933 FAS: 8859  
[www.burness.co.uk](http://www.burness.co.uk)

We, JAMES RITCHIE residing at 7 Eiden, Rogart, Sutherland, IV28 3UB, STEVEN WONDERLEY residing at Dalnabreac, Rogart, Sutherland, IV28 3UB, CAMPBELL HALL PORT residing at Woodlands, Woodland Way, Golspie, Sutherland, KW10 6TU, JAMES IAIN WILLIAM MILLER residing at Seaview, Main Street, Golspie, Sutherland, KW10 6RA, RONALD GEORGE SIM residing at The Braids, 13 Ben Mailey Gardens, Brora, KW9 6QL and JOHN FERME MCMORRAN residing at 3 Balnacoil, Brora, Sutherland KW9 6LX in order to create a trust to be known as KILBRAUR WINDFARM COMMUNITY BENEFIT TRUST ("the Trust")

(One) appoint as trustees ourselves (who and whose successors are referred to as "the Trustees")

(Two) pay the sum of £1 to the Trustees;

And we direct as follows:-

#### **Trust purposes**

- 1 The Trustees shall hold and apply the sum of £1 paid by us to them, and such other funds and assets as may from time to time be comprised in the Trust Property, in trust for the following purposes:-
  - (a) to advance community development (including the advancement of rural regeneration) within the three communities (as defined by the respective parish boundaries) of Golspie, Brora and Rogart ("**the Area of Benefit**");
  - (b) to relieve poverty within the Area of Benefit;
  - (c) to advance education within the Area of Benefit;
  - (d) to advance heritage through preserving for public benefit the historical, architectural and constructional heritage that may exist within the Area of Benefit in buildings (including any part of a building, and any other structure or erection) of particular beauty or of historical, architectural or constructional interest;
  - (e) to advance citizenship, including the promotion of civic responsibility, volunteering, the voluntary sector and/or the effectiveness or efficiency of charities within the Area of Benefit;
  - (f) to advance the arts or culture within the Area of Benefit;
  - (g) to advance health and to relieve ill-health within the Area of Benefit;
  - (h) to advance public participation in sport within the Area of Benefit;
  - (i) to assist in the provision of recreational facilities and/or the organisation of recreational activities, within the Area of Benefit

(which may include, without prejudice to that generality, the creation and maintenance of footpaths, cycle tracks, picnic areas and other amenities), such facilities/activities being available to members of the public at large with the object of improving their conditions of life;

- (j) to advance environmental protection or improvement (which may include, without prejudice to that generality, the preservation of natural habitats and other measures to protect wildlife) within the Area of Benefit;
- (k) to advance environmental protection by promoting the adoption of measures to encourage the more efficient use of the world's resources, and in particular more efficient use of non-renewable energy sources so as (i) to minimise the proliferation of mines, wells and other extraction facilities which degrade the natural environment and (ii) to reduce greenhouse gas emissions and thus avoid the damage to the natural environment caused by global warming;
- (l) to relieve those in need within the Area of Benefit by reason of age, ill-health, disability, financial hardship or other disadvantage;
- (m) to further other charitable purposes of a similar nature for the benefit of residents of the Area of Benefit;

and in particular through raising funds and other contributions for, and providing support to a range of projects which advance any of the above aims.

- 2 The expenses of creating and administering the Trust, and any tax payable in relation to the Trust, shall be met in priority to all other payments and transfers of assets out of the Trust Property.

### **Powers**

- 3 In the administration of the Trust, the Trustees shall, in addition to the powers and rights which are conferred by law upon trustees who are acting without remuneration, have the fullest powers with regard to investment, sale, administration and management of the Trust Property as if they were owners; in particular (but without limiting the scope of the powers which they may exercise under the preceding provision), the Trustees shall have the following powers:-
  - (a) To provide financial support through the award of grants in pursuance of the Trust Purposes.
  - (b) To take such steps as may be deemed appropriate for the purpose of raising funds and obtaining in-kind donations.
  - (c) To accept grants, donations and legacies of all kinds (and to accept any reasonable conditions attaching to them).

- (d) To form companies whose activities may generate income to support the furtherance of the Trust Purposes, acquire and hold shares and other interests in such companies, and carry out in relation to any such company all such functions as may be associated with a holding company.
- (e) To carry on any other activities which further any of the Trust Purposes.
- (f) To establish and/or support any other charity, and to make donations for any charitable purpose falling within the Trust Purposes.
- (g) To purchase, take on lease, hire, or otherwise acquire, any property or rights.
- (h) To improve, manage, develop, or otherwise deal with, all or any part of the Trust Property.
- (i) To sell, let, hire out, license, or otherwise dispose of, all or any part of the Trust Property.
- (j) To borrow money, and to give security in support of any such borrowings by the Trust.
- (k) To engage such consultants and advisers as are considered appropriate from time to time.
- (l) To effect insurance of all kinds (which may include officers' liability insurance).
- (m) To invest any funds which are not immediately required for the administration of the Trust or for the Trust's activities, in such investments as may be considered appropriate (and to dispose of, and vary, such investments).
- (n) To liaise with other voluntary sector bodies, local authorities, international, European, UK or Scottish government departments and agencies, and other bodies, all with a view to furthering the Trust Purposes.
- (o) To form any company which is a charity with objects which are similar (wholly or in part) to the Trust Purposes, and, if considered appropriate, to transfer to any such company (without any payment being required from the company) the whole or any part of the Trust Property.
- (p) To retain any property comprised in the Trust Property for such time as the Trustees think proper.
- (q) To have any part of the Trust Property registered in the name of a nominee and to pay reasonable fees to such nominee.
- (r) To grant proxies in favour of any of the Trustees (or any other person) to attend, act and vote for the Trustees at any meetings (whether of the nature of general meetings, class meetings, creditors' meetings or otherwise) relating to any investment held by the Trustees or relating to any claim by the Trustees in any liquidation or sequestration proceedings.

- (s) To compromise or settle by arbitration all disputed claims by or against the Trust or the Trust Property.
- (t) To reimburse any of the Trustees out of the Trust Property, in relation to all expenses reasonably incurred by him/her in the administration of the Trust.
- (u) To do anything which may be incidental or conducive to the administration of the Trust Property, the operations of the Trust or the furtherance of the Trust Purposes.

#### **Number of Trustees**

4 The number of Trustees shall be six.

#### **Appointment/removal/resignation**

5 The Trustees shall be entitled, by way of a resolution passed by majority vote at a meeting of the Trustees, to appoint any individual (subject to clause 6) as a Trustee.

6 The Trustees shall exercise their powers under clause 5 so as to secure that (so far as reasonably practicable) at any given time:

6.1 two of the Trustees are individuals nominated by Golspie Community Council;

6.2 two of the Trustees are individuals nominated by Brora Community Council; and

6.3 two of the Trustees are individuals nominated by Rogart Community Council.

7 For the avoidance of doubt, an individual nominated by a community council for the purposes of clause 6 need not be a member of that community council.

8 In the event that

8.1 any of the community councils referred to in clause 6 ceases to exist; or

8.2 for any other reason, either or both of the places reserved for individuals nominated by a given community council under clause 6 is/are vacant for a period of over [eight weeks] (providing the Trustees have given notice to the relevant community council advising them of the vacancy/ies and inviting them to submit a fresh nomination or nominations),

the Trustees shall appoint an individual or individuals resident in the relevant community who they consider reasonably appropriate to fill the relevant vacancy/ies.

- 9 Where the Trustees exercise their powers under paragraph 8.2 and the relevant community council subsequently exercises its right to nominate some other individual or individuals, the individual(s) appointed by the Trustees under paragraph 8.2 to fill the relevant vacancy/ies shall automatically vacate office with effect from the time when the relevant nomination is received by the secretary to the Trust.
- 10 The Trustees shall encourage each of the community councils referred to in clause 6 to convene an annual public meeting (advertised locally, and with reasonable prior notice of the place, date and time of the meeting) for the purpose of determining [by way of an election process in which all those attending the meeting (providing they are resident in the relevant community) shall be entitled to vote] which two individuals should be nominated (or, as the case may be, re-nominated) for appointment as Trustees under clause 6.
- 11 An individual appointed as a Trustee on the basis of nomination by one of the community councils referred to in clause 6 will retire from office
- 11.1 at the annual meeting convened by that community council (as referred to in clause 10) which next follows the date of his/her appointment (or, as the case may be, re-appointment) as a Trustee; or (if earlier)
- 11.2 with effect from the date occurring fifteen months after he/she was last appointed/re-appointed as a Trustee;
- but (in either case) on the basis that he/she may then be re-nominated by the relevant community council, and re-appointed by the Trustees accordingly.
- 12 An individual holding office as a Trustee may retire by giving notice in writing to that effect to the secretary to the Trust.
- 13 An individual appointed as a Trustee on the basis of nomination by one of the community councils referred to in clause 6 will automatically vacate office as a Trustee if the relevant community council withdraws his/her nomination by notice to the Trustees to that effect.
- 14 The Trustees shall have power to remove any individual from office as a Trustee, by way of a resolution passed at a meeting of the Trustees by a majority of two thirds or more of the Trustees then in office.

#### **Procedure at Trustees' meetings**

- 15 Subject to the provisions of the following paragraphs, the Trustees may regulate their proceedings as they think fit.
- 16 A meeting of the Trustees shall be held at least twice in each year.
- 17 Any Trustee may call a meeting of the Trustees, or request the secretary to the Trust to call a meeting of the Trustees.

- 18 No notice of a meeting of the Trustees need be given to any Trustee who is absent from the United Kingdom.
- 19 Questions arising at a meeting of the Trustees shall be decided by a majority of votes; where there is an equality of votes, the chairperson of the meeting shall have a casting vote.
- 20 No business shall be dealt with at a meeting of the Trustees unless a quorum is present; the quorum for meetings of the Trustees shall be three.
- 21 If at any time the number of Trustees in office falls below the number fixed as the quorum, the remaining Trustee or Trustees may act only for the purpose of appointing an additional Trustee or Trustees.
- 22 The Trustees shall appoint one of the Trustees to be chair on an annual basis; the chair will rotate annually among the Trustees drawn from each of the three respective communities.
- 23 Unless he/she is unwilling to do so, the Trustee serving as chair shall preside as chairperson at every meeting of the Trustees at which he/she is present; if the chair is unwilling to act as chairperson or is not present within 15 minutes after the time when the meeting was due to commence, the Trustees present may elect from among themselves the person who will act as chairperson of the meeting.
- 24 The Trustees shall permit
- 24.1 an individual nominated by The Highland Council; and
  - 24.2 an individual nominated by the company which owns Kilbraur windfarm at the time
- to attend all meetings of the Trustees, in the capacity of observers.
- 25 A Trustee shall not vote at a meeting of the Trustees on any resolution concerning a matter in which he/she has, directly or indirectly, a personal interest or duty (unless immaterial) which conflicts or may conflict with the interests of the company.
- 26 For the purposes of the preceding clause:-
- 26.1 an interest of a person who is a member of the immediate family of a Trustee shall be treated as a personal interest of that Trustee; and
  - 26.2 a Trustee shall be deemed to have a personal interest in relation to a particular matter if a body in relation to which he/she is an employee, director, member of the management committee, trustee, major shareholder, partner, officer or elected representative has an interest in that matter;
- and on the basis that

- (a) an individual's "immediate family" shall be taken to comprise his/her spouse/partner, parents and children/step-children;
  - (b) a "major shareholder" shall be taken to be an individual who holds more than 20% of the equity share capital of the relevant body (or is entitled to more than 20% of the profits of the relevant body available for distribution) or is able to control more than 20% of the voting power at general meetings of the relevant body – in each case either alone or in conjunction with members of his/her immediate family.
- 27 The minutes of all Trustees' meetings shall be made available in the local post office (and/or any other appropriate public facility) for inspection by members of the public within the Area of Benefit.
- 28 Subject to the arrangements referred to in clause 27, each of the Trustees shall maintain confidentiality in relation to the detailed discussions which have taken place at meetings of the Trustees and in relation to any other information of which he/she may become aware in the course of his/her period in office as a Trustee.
- 29 All acts *bona fide* done by any meeting of the Trustees, by a committee of the Trustees or by a person acting as a Trustee, shall, notwithstanding that it is afterwards discovered that there was a defect in the appointment of any Trustee or that any of them had ceased to hold office or was not entitled to vote, be as valid as if every such person had been duly appointed and had continued to be a Trustee and had been entitled to vote.
- 30 A resolution in writing signed by all the persons holding office as Trustees at the time shall be as valid and effective as if it had been passed at a meeting of the Trustees duly convened and held; a resolution of that kind may take the form of a number of copies containing the text of the resolution, with each copy being signed by one or more Trustees.

### **Delegation**

- 31 The Trustees may delegate any of their powers to any committee consisting of two or more Trustees; any such delegation of powers may be made subject to such conditions as the Trustees may impose, and may be revoked or altered.
- 32 Subject to any condition imposed in pursuance of the preceding clause, the proceedings of a committee consisting of two or more Trustees shall be governed by the provisions of clauses 15 to 30 so far as they are capable of applying.

### **Remuneration**

- 33 No Trustee may serve as an employee (full-time or part-time) of the Trust, and no Trustee may be given any remuneration by the Trust for carrying out his/her duties as a trustee

### **Secretary**

- 34 The Trustees shall appoint a secretary to the Trust for such term, at such remuneration, and on such conditions, as the Trustees may think fit; and any secretary so appointed may be removed by them.
- 35 The post of secretary to the Trust shall be the subject of an advertisement in a publication which has a reasonably wide circulation within the three communities, and the Trustees shall ensure that the recruitment process is carried through in an objective and transparent manner.
- 36 The Trustees shall ensure that the secretary:
- 36.1 keeps proper minutes of all proceedings at meetings of the Trustees (and at meetings of committees of the Trustees), including the names of the Trustees present at each such meeting
  - 36.2 keeps proper records and documents in relation to all other matters connected with the administration and management of the Trust.

### **Treasurer**

- 37 The Trustees shall appoint one of the Trustees to be treasurer on an annual basis.
- 38 The Trustees shall ensure that the Treasurer
- 38.1 exercises appropriate oversight in relation to the keeping of accounting records; and
  - 38.2 prepares, or oversees the preparation of, regular management accounts which allow the Trustees to monitor the financial position of the Trust in a manner which is consistent with their legal responsibilities as charity trustees.

### **Accounts**

- 39 The Trustees shall ensure that proper accounting records are maintained, in accordance with all applicable statutory requirements.
- 40 The Trustees shall prepare annual accounts, complying with all relevant statutory requirements; if an audit is required under any statutory provisions or if the Trustees otherwise think fit, the Trustees shall ensure that an audit of such accounts is carried out by a qualified auditor.
- 41 An accountant engaged in an audit of the Trust's accounts shall be entitled to have access to all accounting records and other documents relating to the Trust.
- 42 In addition to their statutory duties in relation to the supply of annual accounts upon request by a member of the public, the Trustees shall ensure that copies of the annual accounts of the Trust are available for inspection at the local post office and/or any other appropriate public facility.

### **Annual public meeting**

- 43 The Trustees shall arrange an annual public meeting, at which the Trustees shall outline the work of the Trust over the period covered by the most recent completed annual accounts, and any significant changes in policy or other developments affecting the work of the Trust; the location of the annual public meeting shall rotate among the three communities of Golspie, Brora and Rogart.
- 44 The Trustees shall take all reasonable steps (but only insofar as consistent with the principle of rotation, as referred to in clause 40) to ensure that the time and venue of the annual public meeting is conducive to encouraging as many people from the local communities as possible (and having regard to issues of mobility and accessibility) to attend the meeting.
- 45 For the avoidance of doubt, no member of the public attending the annual public meeting shall have a right to vote, nor shall the meeting have power to direct the Trustees to take, or refrain from, any particular course of action.

### **Operation of bank accounts**

- 46 The signature of two Trustees shall be required in relation to all cheques issued by the Trust and all other operations (excluding lodgement of funds) on the bank and building society accounts held by the Trust; for the avoidance of doubt, the Trustees may authorise all or any of the Trustees to act as authorised signatories for this purpose.

### **Payments to charities etc**

- 47 The receipt of the treasurer or other appropriate officer for any funds or other assets paid or transferred by the Trustees to any charity shall represent sufficient discharge to the Trustees.

### **Limitations on liability**

- 48 The Trustees shall not be liable for loss or depreciation of the value of investments retained or made by them, nor for omissions, nor for neglect in management, nor for insolvency of debtors, nor for the acts, omissions, neglect or default of one another or of any banker, solicitor, factor or other agent employed by them.

### **Conduct of Trustees**

- 49 Each of the Trustees shall, in exercising his/her functions as a trustee of the Trust, act in the interests of the Trust; and, in particular, must
- (a) seek, in good faith, to ensure that the Trust acts in a manner which is in accordance with its objects (as set out in this trust deed)
  - (b) act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person

- (c) in circumstances giving rise to the possibility of a conflict of interest of interest between the Trust and any other party
  - (i) put the interests of the Trust before that of the other party, in taking decisions as a Trustee
  - (ii) where any other duty prevents him/her from doing so, disclose the conflicting interest to the Trust and refrain from participating in any discussions or decisions involving the other Trustees with regard to the matter in question
- (d) ensure that the Trust complies with any direction, requirement, notice or duty imposed on it by virtue of the Charities and Trustee Investment (Scotland) Act 2005.

#### **Amendment of trust deed/winding-up**

- 50 If in the opinion of the Trustees any change in circumstances or alteration in the law has made or is likely to make execution of the Trust Purposes impossible or impracticable, *or* if in the opinion of the Trustees the administration of the Trust could be improved or the Trust Purposes be advanced in a more appropriate manner *or* if the Trustees consider that the name of the Trust should be changed, the Trustees may (subject to clauses 51 to 53) in their discretion,
- (a) supplement or amend the provisions of this trust deed or any deed supplemental to this trust deed; or
  - (b) wind up the Trust and transfer the Trust Property (after settlement of all debts and liabilities) to some other charity or charities having similar objects to those of the Trust.
- 51 In no circumstances is the Trust Estate to be held or applied for any purpose which is not an exclusively charitable purpose.
- 52 No amendment to this trust deed or any deed supplemental to this trust deed which would alter the provisions relating to the composition of the board of Trustees or the nomination/retiral/re-nomination of Trustees shall be effective unless it is made with the written consent of all of the community councils referred to in clause 6 (or of such of them as are in existence at the time).
- 53 No amendment to this trust deed or any deed supplemental to this trust deed which would alter the provisions relating to the attendance at Trustees meetings of an individual nominated by the owner of Kilbraur windfarm shall be effective unless it is made with the written consent of the company which owns Kilbraur windfarm at the time.

#### **Interpretation**

54 In this trust deed

“charity”

means a body which is either a “Scottish charity” within the meaning of section 13 of the Charities

and Trustee Investment (Scotland) Act 2005 or a “charity” within the meaning of section 1 of the Charities Act 2006, providing (in either case) its objects consist solely of charitable purposes;

“charitable purpose” means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of sections 505 and 506 of the Income and Corporation Taxes Act 1988;

“the Trust Deed” means this trust deed (including any supplementation or amendment effected in accordance with the provisions of clauses 50 to 53);

“the Trust Property” means the sum of £1 paid by us to the Trustees, and such other funds and assets as may from time to time be received by the Trustees as trustees under the Trust Deed (from us or any other person), and the assets in which; any funds so received may from time to time be invested.

“the Trust Purposes” means the purposes specified in clause 1.

55 Any reference in this trust deed to a provision of any legislation shall include any statutory modification or re-enactment of that provision in force from time to time.

56 The Trustees shall be entitled to rely, without further enquiry, on any letter or other document signed (or purporting to be signed) on behalf of a community council by the secretary or chair of that community council, as having been validly issued by that community council.

We declare that the Trust Deed shall be irrevocable.

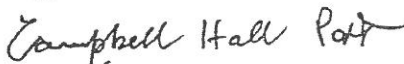
This trust deed, consisting of this and the 11 preceding pages, is executed as follows:-

SIGNED by the said

STEVEN WONDERLEY



CAMPBELL HALL PORT



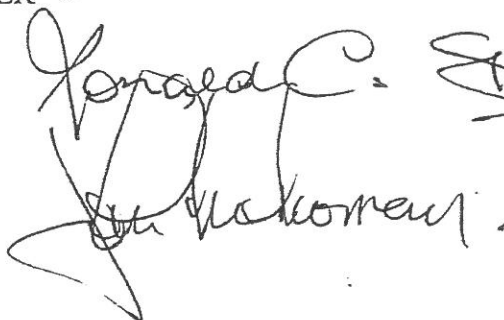
JAMES IAIN WILLIAM MILLER



RONALD GEORGE SIM



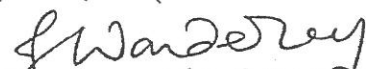
JOHN FERME MCMORRAN



all together at ROUART

on 18TH JANUARY 2009

in the presence of

 (JOY WONDERLEY)  
MRS J WONDERLEY, 271 (D) DARNABREAC, ROUART,  
SUTHERLAND, IV28 3UB

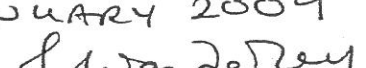
SIGNED by the said JAMES RITCHIE



at EIDEN, ROUART

on 18TH JANUARY 2009

in the presence of

 (JOY WONDERLEY)  
MRS J WONDERLEY, 271 DARNABREAC, ROUART,  
SUTHERLAND, IV28 3UB

**MINUTE OF VARIATION**

**BY**

**J HEDGES, S WONDERLEY, C H PORT, J I W MILLER,  
J F McMORRAN and R G SIM**

**KILBRAUR WINDFARM COMMUNITY BENEFIT TRUST**

**Burness** 

120 Bothwell Street, Glasgow, G2 7JL  
Telephone: 0141 248 4933 FAS: 8859  
[www.burness.co.uk](http://www.burness.co.uk)

We, JONATHAN HEDGES residing at Caravan, Rossal, Rogart, Sutherland, IV28 3UD, STEVEN WONDERLEY residing at Dalnabreac, Rogart, Sutherland, IV28 3UB, CAMPBELL HALL PORT residing at Woodlands, Woodland Way, Golspie, Sutherland, KW10 6TU, JAMES IAIN WILLIAM MILLER residing at Seaview, Main Street, Golspie, Sutherland, KW10 6RA, JOHN FERME MCMORRAN residing at 3 Balnacoil, Brora, Sutherland KW9 6LX and RONALD GEORGE SIM residing at The Braids, 13 Ben Mailey Gardens, Brora KW9 6QL, being the current trustees of KILBRAUR WINDFARM COMMUNITY BENEFIT TRUST (“the Trust”) being a Scottish charity (Scottish charity number SC040268) created by a trust deed (“the Trust Deed”) dated 18 January 2009 and registered in the Books of Council and Session on 2 February 2009 (in pursuance of clause 50 of the Trust Deed) VARY the Trust Deed as follows:

1. The provisions of clause 37 shall, as from the date of this Minute of Variation, be deemed to be amended
  - 1.1 by the deletion of the words “any of the Trustees” and the insertion in their place of the words “any individual who the Trustees consider to be a suitable and competent person”; and
  - 1.2 by the deletion of the words “on an annual basis”.
2. The following additional provisions shall, as from the date of this Minute of Variation, be deemed to be inserted immediately after clause 37:
  - “37A. The question of who should serve as the Treasurer shall be reviewed on an annual basis by the trustees and decided by them.
  - 37B. An individual may resign from office as Treasurer at any time, by giving notice in writing to that effect to the secretary to the Trust.
  - 37C The Trustees may remove any individual from office as the Treasurer at any time, by resolution to that effect passed at a meeting of the Trustees.”

And we confirm that, except as varied by this Minute of Variation, the provisions of the Trust Deed shall remain in full force and effect.

This Minute of Variation, consisting of this and the preceding page, is executed as follows:-

SIGNED by the said

STEVEN WONDERLEY

CAMPBELL HALL PORT

JAMES IAIN WILLIAM MILLER

JOHN FERME MCMORRAN

JONATHAN HEDGES

RONALD GEORGE SIM

all together at

on

in the presence of

DATE: 3.10.08

DRAFT NO: 4

**AGREEMENT**

between

**KILBRAUR WIND ENERGY LIMITED**

and

**THE HIGHLAND COUNCIL**

**COMMUNITY BENEFIT PACKAGE**

**Burness**

120 Bothwell Street, Glasgow, G2 7JL  
Telephone: 0141 248 4933 FAS: 8859  
[www.burness.co.uk](http://www.burness.co.uk)

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## **AGREEMENT**

### **BETWEEN:-**

(1) **KILBRAUR WIND ENERGY LIMITED** incorporated under the Companies Acts with registered number SC254430 and having its registered office at Beauly House, Dochfour Business Centre, Dochgarroch, Inverness IV3 8JY (“**the Company**”);

and

(2) **THE HIGHLAND COUNCIL** incorporated under the Local Government etc (Scotland) Act 1994 and having its principal offices at Glenurquhart Road, Inverness IV3 5NX (“**the Council**”).

### **WHEREAS:-**

- (A) Falck Renewables Limited, in partnership with RDC Scotland, has obtained planning permission from the Council for the Kilbraur windfarm development (“**the Windfarm**”), situated within the Community Council area of Rogart and Brora with access via the Community Council area of Golspie (together referred to as “**the Areas of Benefit**”).
- (B) Falck Renewables Limited and RDC Scotland have formed a project company, Kilbraur Wind Energy Limited, to develop the project; and, through the Company, have agreed to provide a community benefit package throughout the life of the operation of the Windfarm for the benefit of the residents of the Areas of Benefit.
- (C) On the basis of consultations with the community within the Areas of Benefit, it has been determined that the appropriate body to receive the funds to be paid over by the Company under the community benefit package referred to in preamble (B) should be a charitable trust to be formed with the name “**Kilbraur Windfarm Community Benefit Trust**”.
- (D) Pending the establishment of the charitable trust referred to in preamble (C), it has been agreed that it would be appropriate for the Council, as the local authority for the Areas of Benefit, to enter into a formal agreement with the Company, so as to ensure that the commitment referred to in preamble (B) is the subject of legally-binding obligations.

### **IT IS AGREED** as follows:-

#### **1 FORMATION OF THE CHARITABLE TRUST**

- 1.1 It is a precondition of any payment being made by the Company under this Agreement that the charitable trust referred to in preamble (C) above is formed and recognised as a Scottish charity, and on the basis that the terms of the trust deed reflects the following features:-

- 1.1.1 the trust purposes shall be restricted to charitable purposes under Section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which are also regarded as charitable purposes in relation to the application of Sections 505 and 506 of the Income and Corporation Taxes Act 1988;
  - 1.1.2 all or a majority of the trustees from time to time shall be nominated by community councils;
  - 1.1.3 an individual nominated by the Company from time to time shall be entitled to attend meetings of the trustees, in the capacity of observer;
  - 1.1.4 in addition to the requirements under paragraph 1.1.1, the trust purposes shall direct financial support principally to organisations or initiatives that are of benefit to the relevant Area of Benefit.
- 1.2 The Company undertakes to work with the community councils within the Area of Benefit order to facilitate the formation of the charitable trust referred to in clause 1.1 (including the application to the Office of the Scottish Charity Regulator for charitable status, and all other relevant processes) with a view to completing the formation of the charitable trust as soon as reasonably practicable.
- 1.3 Without prejudice to the provisions of clause 1.2, the Company undertakes to meet the reasonable legal expenses incurred in forming the charitable trust referred to in clause 1.1.
- 1.4 If the charitable trust referred to in clause 1.1 has not been formed and recognised as a Scottish charity within a period of one year from the date of this Agreement, the Company will take active steps to engage further with representatives of the community within the Areas of Benefit with a view to determining what bodies should be selected to receive, hold and administer the funds associated with the community benefit package in place of the charitable trust envisaged in clause 1.1 and as from the date on which such alternative body is established the references in this Agreement to the charitable trust shall be deemed to relate to that alternative body.

## 2 REVENUE BENEFIT

- 2.1 On or before the expiry of a period of one year from the date (“the Commissioning Date”) of completion of commissioning (within the meaning of clause 2.8) of the Windfarm, the Company will pay to the charitable trust referred to in clause 1.1 (“the Kilbraur Trust”) a sum calculated in accordance with the formula:

$$C \times \text{£}1,000$$

where (in each case) “C” represents the number of megawatts of electricity capacity installed at the Windfarm as at the Commissioning Date.

- 2.2 With reference to the provisions of clause 2.1, the Windfarm shall have an installed capacity at the Commissioning Date of 47.5 megawatts, and accordingly the aggregate sum payable under clause 2.1 shall be £47,500.
- 2.3 Subject to clauses 2.5 and 2.7, on the second anniversary of the Commissioning Date and on each subsequent anniversary of the Commissioning Date,

- 2.3.2 the Company will pay to the Kilbraur Trust a sum calculated in accordance with the formula:-

$$A \times \frac{X}{Y}$$

where:-

“A” represents the aggregate sum paid to the Kilbraur Trust under clause 2.1;

“X” represents (subject to clause 2.4) the level of the All Items Retail Prices Index published by the Office of National Statistics as applying to the month immediately prior to the anniversary at which the payment is to be made;

“Y” represents (subject to clause 2.4) the level of the All Items Retail Prices Index published by the Office of National Statistics as applying to the month immediately prior to the first anniversary of the Commissioning Date.

- 2.4 If the index referred to in clause 2.3 ceases to be published or the basis upon which such index is calculated is substantially changed or rebased, such substituted or alternative index measuring inflation in the United Kingdom and/such other method of calculation most likely to achieve a reasonably equivalent result shall be adopted as the Company may determine (the Company being bound to act reasonably in this respect).

- 2.5 The Company's obligation to make payments under clause 2.3 shall be extinguished with effect from the date ("**the Termination Date**") on which the Windfarm ceases to supply electricity to the national electricity transmission system, subject to the qualification that one final payment, in respect of the period from the immediately preceding anniversary of the Commissioning Date to the date of such cessation, shall be made by the Company to the Kilbraur Trust (calculated on the basis of time apportionment) on the date of cessation.
- 2.6 For the avoidance of doubt, any cessation of supply to the national electricity transmission system which is of a temporary nature shall be ignored for the purposes of clause 2.5; the definition of "**the Termination Date**" shall be interpreted accordingly (both for the purposes of this clause 2 and for the purposes of clause 3).
- 2.7 In the event that the installed capacity of the Windfarm is reduced at any time while the obligations of the Company under clause 2.3 subsist (a reduction in installed capacity which is of a temporary nature being ignored for this purpose), the Company shall be entitled to reduce the rate of payments under clause 2.3 to reflect the lower capacity of the Windfarm, to such extent as the Company may determine (the Company being bound to act reasonably in this respect) having regard to the principles reflected to in clauses 2.1 and 2.3.
- 2.8 For the avoidance of doubt, completion of commissioning of the Windfarm shall not be deemed to occur for the purposes of clause 2.1 until the whole of the projected installed capacity of the Windfarm is fully operational, fully tested, and supplying electricity to the national electricity transmission system; the definition of "**the Commissioning Date**" shall be interpreted accordingly.
- 2.9 The Company shall notify the Kilbraur Trust of the date of completion of commissioning of the Windfarm (within the meaning of clause 2) within 14 days after that occurs.

### **3 PERFORMANCE PAYMENT**

- 3.1 In addition to the payments under clause 2, the Company shall (subject to clause 3.2) make annual payments to the Kilbraur Trust on or before the date ("**the Performance Payment Date**") occurring four weeks after each anniversary of the Commissioning Date, calculated in accordance with the formula:

$$P \times 32.83p.$$

where "P" represents the electrical output, expressed in megawatt hours, generated by the Windfarm during the 12 month period ended on the day preceding the anniversary of the Commissioning Date which falls immediately prior to the Performance Payment Date on which the relevant payment is to be made.

- 3.2 Without prejudice to clause 3.1, if as anticipated the expected average annual output of the Windfarm with an installed capacity of 47.5MW is 144,700 MWh, the aggregate Performance Payments will average out at £47,500 per year over the generating life of the Windfarm; no warranties are, however, given by the Company in this respect and, for the avoidance of doubt, the payments under clause 3.1 shall be calculated solely on the basis of the actual electrical output of the Windfarm during each of the relevant 12 month periods.
- 3.3 The Company's obligation to make payments under clause 3.1 shall be extinguished with effect from the Termination Date.
- 3.4 The Company shall supply to representatives of the Kilbraur Trust on request copies of the calculations and supporting vouchers relating to its calculation of the sums due by the Company under clause 3.1; a certificate by a member of the management team of the Company as to the amount of the payment due under clause 3.1 in respect of any 12 month period shall, however, be conclusive except in the case of manifest error.

#### **4 CAPITAL BENEFIT**

- 4.1 On the later of
- 4.1.1 the date on which the Windfarm ceases to supply electricity to the national electricity transmission system; and
- 4.1.2 the twenty fifth anniversary of the Commissioning Date,
- the Company will pay to the Kilbraur Trust a capital sum (in addition to the payments which have been made under clause 2), of £475,000 (based on the installed capacity at the Commissioning Date of 47.5 megawatts).
- 4.2 For the avoidance of doubt, any cessation of supply to the national electricity transmission system which is of a temporary nature shall be ignored for the purposes of clause 4.1.

#### **5 APPLICATION OF FUNDS**

- 5.1 The Kilbraur Trust shall ensure
- 5.1.1 that all sums received by it in pursuance of this Agreement (disregarding for this purpose the contribution towards legal expenses referred to in clause 1.3) will be used solely for the purposes referred to in paragraphs 1.1.1 and 1.1.3; and
- 5.1.2 that none of such sums will at any time be used for any of the following purposes:
- 5.1.2.1 services or facilities which the Council already provide at the time out of their own resources; or

- 5.1.2.2 services or facilities which the Kilbraur Trust already provide at the time out of their own resources; or
  - 5.1.2.3 political, religious, entertainment or hospitality purposes; or
  - 5.1.2.4 any purpose adverse to the Company's interest in the Windfarm.
- 5.2 Without prejudice to the provisions of clause 5.1, the Kilbraur Trust shall ensure that the payments received by it from the Company under this Agreement (with the exception of the contribution towards legal expenses referred to in clause 1.3) will be used exclusively for purposes which constitute charitable purposes as regards the application of sections 505 and 506 of the Income and Corporation Taxes Act 1988.
- 5.3 Without prejudice to the provisions of clauses 5.1 and 5.2, the Kilbraur Trust shall take all such steps as may be available to it (including the imposition of appropriate grant conditions, reinforced by provision for clawback of grant in the event of breach; and the enforcement of such conditions) to ensure that any organisation to which financial support is given out of funds paid to it under this Agreement complies with the restrictions set out in clauses 5.1 and 5.2 as regards the application of the relevant funds.
- 5.4 Without prejudice to its other rights and remedies, the Company shall be entitled, in the event of any breach of the provisions of clauses 5.1 to 5.3, to request repayment from the Kilbraur Trust of any sum paid by the Company to it under this Agreement, to the extent that that sum has been applied in a manner inconsistent with the provisions of any of those clauses; the Kilbraur Trust shall pay to the Company the sum so requested within 14 days from the date of issue by the Company of the relevant written request for payment.

## **6 SALE/TRANSFER OF THE WINDFARM**

- 6.1 In the event of the ownership or control of the Windfarm passing from the Company to any other party ("the Third Party") whilst there is a subsisting obligation on the Company in terms of clauses 1 to 4 which has not been implemented in full, the Company, in any agreement transferring its ownership or control of the Windfarm, shall ensure that the Third Party enters into a similar agreement to this Agreement with the Council (or, if the sale or transfer occurs after the date referred to in clause 7.1, with the Kilbraur Trust) in similar terms to this Agreement (and incorporating a provision referring to sale or transfer by that party in accordance with this clause 6.1).

## **7 POSITION FOLLOWING FORMATION OF THE KILBRAUR TRUST**

- 7.1 With effect from the date on which the Kilbraur Trust is formed and recognised as a Scottish charity, the provisions of this Agreement (except insofar as relating to obligations specifically assigned to the Council) shall be enforceable by the Kilbraur Trust against the Company or (as the case may

be) shall be enforceable by the Company against the Kilbraur Trust, as if the Kilbraur Trust had been in existence as at the date of this Agreement and had been a party to this Agreement.

- 7.2 Without prejudice to the provisions of clause 7.1, the Council undertakes that, if the Company so requests at any time after the date referred to in clause 7.1, it shall procure that the Kilbraur Trust enters into a formal document (in such terms as the Company may reasonably request) confirming that the provisions of this Agreement shall be binding upon the parties in accordance with the principles reflected in clause 7.1.

## **8 PROVISIONS RELATING TO THE KILBRAUR TRUST**

- 8.1 All references in this Agreement to “the Kilbraur Trust” shall be deemed to refer to the individuals who constitute the trustees of the Kilbraur Trust at the relevant time and in their capacity as such trustees.
- 8.2 The receipt of any one trustee of the Kilbraur Trust, or of any secretary or other officer or employee of the Kilbraur Trust, for any sums paid by the Company under this Agreement shall be taken to be sufficient evidence of receipt by the Kilbraur Trust.

## **9 PROHIBITION ON ASSIGNATION**

- 9.1 Subject to the provisions of clause 8.1, the rights conferred on the Kilbraur Trust under this Agreement shall be personal to the Kilbraur Trust and shall not be capable of being assigned (wholly or in part) by the Kilbraur Trust.

## **10 REPORTING/DISCLOSURE**

- 10.1 The Kilbraur Trust shall
- 10.1.1 supply the Company with reports (at such frequency, and in such format and level of detail, as the Company may reasonably prescribe from time to time) setting out the payments made by it out of the funds received from the Company in pursuance of this Agreement, the organisations/individuals to whom such payments were made (and the progress of any projects which they were taking forward with the assistance of such funds) and the balance of such funds held by it; and
  - 10.1.2 provide to the Company such other information and/or evidence relating to it or to organisations/projects supported by it using payments made by the Company under this Agreement, as the Company may reasonably request from time to time.
- 10.2 The Company shall be entitled to publicise, in such manner, as it may deem appropriate from time to time, the existence of the community benefit package, the payments made in pursuance of this Agreement, and the identity of the projects/organisations that are supported by the Kilbraur Trust using payments made by the Company under this Agreement.

10.3 For the avoidance of doubt, the observer nominated by the Company in pursuance of the provisions referred to in clause 1.1.3 shall be entitled to disclose to the Company any matters of which he/she becomes aware through his/her attendance at meetings of the trustees of the Kilbraur Trust, if and to the extent that he/she considers that such information could have a bearing on the interests of the Company.

**11 WAIVER AND VARIATION**

- 11.1 Any waiver (express or implied) by the Company of any provision of this Agreement or of any breach of this Agreement shall be without prejudice to the other rights available to the Company, and shall not operate as a continuing waiver or a variation of the relevant provision nor be deemed to operate as a waiver of any subsequent breach.
- 11.2 No variation in respect of this Agreement shall be valid unless the variation is contained in a formal document, duly signed on behalf of each of the parties to this Agreement.

**12 ENTIRE AGREEMENT**

- 12.1 This Agreement constitutes the entire agreement and understanding between the parties in relation to the matters dealt with in this Agreement, and supersedes and cancels all previous negotiations, commitments and agreements between the parties with regard to such matters.
- 12.2 The Council confirms that it has not relied upon any representation, warranty or undertaking by the Company in relation to any of the matters dealt with in this Agreement.

**13 GOVERNING LAW**

This Agreement shall be governed by, and construed in accordance with, the law of Scotland.

IN WITNESS WHEREOF this Agreement consisting of this and the preceding 6 pages are executed as follows:-

SUBSCRIBED for and on behalf of  
the said KILBRAUR WIND  
ENERGY LIMITED

at

on

by

\_\_\_\_\_  
Print Full Name

\_\_\_\_\_  
Director

before this witness

\_\_\_\_\_  
Print Full Name

\_\_\_\_\_  
Witness

Address  
  
\_\_\_\_\_

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SEALED with the COMMON  
SEAL of the said THE HIGHLAND  
COUNCIL and SUBSCRIBED for  
and on its behalf

by

at

on

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Proper officer