

DATED

30<sup>th</sup> March

2011

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**ENERGIEKONTOR UK LTD (1)**

and

**GREAT AND LITTLE CARLTON PARISH COUNCIL (2)**

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**PROJECT FUNDING AGREEMENT**

**In relation to proposed Gayton-le-Marsh Wind Farm, Lincolnshire**

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Dyne Solicitors Limited  
The White House, High Street  
Tattenhall  
Chester  
CH3 9PX  
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Ref: LS.ENE001.026

THIS DEED is made the 30<sup>th</sup> day of March 2011

Between

1. **ENERGIEKONTOR UK Ltd (Company number 03830819)** whose principal place of business is at Conyngham Hall, Knaresborough, North Yorkshire, HG5 9AY and whose registered office is at Sovereign House 212-224 Shaftesbury Avenue London WC2H 8HQ (the "Company"), which expression shall include successors in title and assigns; and
2. **PARISH COUNCIL of GREAT AND LITTLE CARLTON** of The Gables, Main St, Little Carlton, Louth LN11 8HP (the "Parish Council")

**1. WHEREAS:**

- 1.1. The Company wishes to construct and operate a wind farm at Gayton-Le-Marsh and acknowledges the potential impact on the local community in the area of the wind farm
- 1.2. In line with industry practice, the Company has agreed to contribute funds for community improvement in the area around the proposed wind farm
- 1.3. The Parish Council has agreed to spend those funds on community improvement within the vicinity of the proposed wind farm.

**2. DEFINITIONS**

In this Deed unless the context otherwise requires the following words and expressions shall have the following meanings:

<b>"Administration Costs"</b>	The full costs of: <ul style="list-style-type: none"><li>• administering and managing the Funds (including preparation and auditing of annual accounts);</li><li>• general reporting as may be required under this Agreement;</li><li>• promotion as required under clauses 4.2.5 and 4.2.6 of this Agreement.</li></ul>
<b>"Agreement"</b>	This deed of agreement including any variations to it made in accordance with clause 6.1
<b>"Annual Payment"</b>	An amount calculated by multiplying Gayton-Le-Marsh Wind Farm Community Fund by the Apportionment Factor %, such sum to be Index Linked upwards only.
<b>"Apportionment Factor"</b>	30 % share of Gayton-Le-Marsh Wind Farm Community Fund.

<b>“Application(s)”</b>	An application for Funds in connection with a proposal for a community improvement project.
<b>“Approved Purposes”</b>	<ul style="list-style-type: none"> <li>• Administration Costs;</li> <li>• the purposes (including costs ancillary to such purposes) listed in the Community Programme Proposal Outline attached as the Schedule One to this Deed;</li> <li>• purposes of a comparable nature and scale to those listed in the Community Programme Proposal Outline (including costs ancillary to such purposes);</li> <li>• other purposes which may be agreed (in writing) to be Approved Purposes by the Company and the Parish Council.</li> </ul>
<b>“Area”</b>	The area within 5km of the Wind Farm.
<b>“Commissioning Date”:</b>	The date when electricity is first produced on the Wind Farm and exported commercially to the electricity grid.
<b>“Designated Account”</b>	<p>A separate interest-bearing account being either</p> <ul style="list-style-type: none"> <li>• a bank account at a branch (or a bank’s head office) in England and Wales; or</li> <li>• a building society deposit or share account at a branch (or a society’s head office) in England and Wales.</li> </ul> <p>Where</p> <ul style="list-style-type: none"> <li>• bank” has the meaning given in section 87(1) of the Solicitors Act 1974; and</li> <li>• “building society” means a building society within the meaning of the Building Societies Act 1986.</li> </ul>
<b>“Gayton-Le-Marsh Wind Farm Community Fund”</b>	An amount calculated by multiplying the Installed Capacity by the rate of £3,000.00 (three thousand pounds) per megawatt per year.
<b>“Final Generation Date”:</b>	The date when electricity ceases to be generated by the Wind Farm on a permanent basis.
<b>“Funds”</b>	Any monies paid by the Company to the Parish Council under the terms of clause 4 of this Deed and any interest accrued thereon.
<b>“Index”.</b>	The Retail Prices (All Items) Index maintained by the Office for National Statistics or any replacement body.
<b>“Index Linked”</b>	<p>Means multiplied by RPI<sub>n</sub> divided by RPI<sub>a</sub></p> <p>where:-</p> <ul style="list-style-type: none"> <li>• RPI<sub>n</sub> means the Index for the month preceding any month during which a payment is due to be made and</li> <li>• RPI<sub>a</sub> means the RPI for <i>March 2011</i>.</li> </ul>
<b>“Installed Capacity”</b>	The number of the turbines sited on the Wind Farm multiplied by 2.5 MW (being the nominal electricity generating capacity of each of the wind turbines).

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<b>“Management Meetings”</b>	The meetings of the sub-committee of the Parish Council which has been tasked with designating and overseeing Qualifying Projects and administering Funds.
<b>“Party”</b>	A party to this Agreement (together, “the Parties” )
<b>“Planning Permission”:</b>	Any approval whether under the Town and Country Planning Act 1990 Electricity Act 1989 or any other enactment and whether given by the Local Planning Authority, the Secretary of State or other authorised person and any other document entered into by the Company or any other person with the Local Planning Authority, the Secretary of State or other authorised person under Section 106 and/or 299 of the Town and Country Planning 1990, and if applicable Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and/or Section 111 of the Local Government Act 1972) and/or Section 278 of the Highways Act 1980 and/or section 39 of the Wildlife and Countryside Act 1981 and/or sections 36 and 37 of the Electricity Act 1989 and/or Sections 16 or 38 of the Commons Act 2006 or otherwise relating to the Approved Development or conditions attaching to it.
<b>“Qualifying Project”</b>	An Application which is designated as a Qualifying Project by the Parish Council, in accordance with clause 4.2, and which therefore qualifies to receive Funds (in an amount determined by the Parish Council) to enable the applicant(s) to carry out the purpose(s) stated in the approved Application.
<b>“Wind Farm”</b>	The Company's proposed wind farm at Gayton-Le-Marsh which is more particularly defined on the scale plan attached at Schedule Two and edged in red.

### 3. INTERPRETATION

- 3.1. Any reference to an Act of Parliament shall include any modification extension re-enactment or replacement therefore for the time being in force and shall also include all instruments orders plan regulations permissions and directions for the time being made issued or given thereunder or deriving validity therefrom
- 3.2. Where the context so requires words importing the singular shall include the plural and vice versa
- 3.3. Any covenant on the part of the Parish Council or the Company not to do any act or thing shall be construed as a covenant not to do or permit or

suffer to be done any such act or thing by their respective servants agents employees workmen and contractors

3.4. The headings are inserted for convenience only and shall be ignored in construing this Deed

#### **4. THE PARISH COUNCIL OBLIGATIONS**

##### **Use of Funds**

4.1. The Parish Council shall use the Funds exclusively for the Approved Purposes.

4.2. The Parish Council shall:

4.2.1. assess any Application received by it against the following qualifying criteria in order to determine whether, or not, such Application should be designated as a Qualifying Project: (a) the Application's compatibility with Approved Purposes; (b) the availability of Funds for the purpose(s) of the Application;

4.2.2. designate Applications considered by the Parish Council to be suitable for such designation (according to the above criteria) as Qualifying Projects;

4.2.3. manage the Funds and disburse them to the Qualifying Projects;

4.2.4. ensure that the Qualifying Projects account to the Parish Council for the expenditure of the Funds;

4.2.5. promote the Qualifying Projects and ( subject to availability of Funds) the availability of Funds for Qualifying Projects within the community in the Area;

4.2.6. acknowledge the connection between the Wind Farm and the Qualifying Projects in publicity associated with the Qualifying Projects;

4.2.7. hold any Funds not allocated to any Qualifying Projects and carry these forward for future use for Approved Purposes;

4.2.8. Support community groups and volunteers with the development and delivery of their Qualifying Projects insofar as is reasonably practicable and lawful to do so.

4.3. For the avoidance of doubt, the Parish Council may ask for Applications to be adjusted or amended in light of the criteria for designation as a Qualifying Project and shall then be entitled (but not obliged) to reconsider such Applications for designation as Qualifying Projects (at the absolute discretion of the Parish Council).

4.4. In the event that the Parish Council is able to obtain a grant or enter into a scheme by which the Funds will be matched then any such additional monies will be used for the Approved Purposes in the same way as the Funds.

#### **Funds to be held in separate account**

4.5. The Funds shall be held in a Designated Account and the Parish Council shall review the Designated Account [annually or more frequently if appropriate] to ensure that the funds are held at a bank or building society considered to be reasonably financially secure and in an account offering a competitive rate of interest taking into account the security of the relevant financial institution and prevailing market interest rates.

4.6. All interest accruing on the Designated Account shall be added to the Account when it accrues and used for the Approved Purposes

4.7. The Company shall (acting reasonably) be entitled upon reasonable notice to receive statements of account activity in relation to the Designated Account

#### **Management Meetings**

4.8. The Parish Council shall:

4.8.1. consider the selection and designation of Qualifying Projects in an open and transparent manner and to make such selections and designations at Management Meetings.

4.8.2. give the Company wherever reasonably practicable and possible not less than 5 working days' notice of the date of any forthcoming Management Meetings and permit a representative of the Company to attend and make representations.

4.8.3. ensure that minutes of Management Meetings are sent to the Company promptly following any such meeting.

4.9. For the avoidance of doubt, whilst the Company shall be entitled to permit a representative to attend and make representations at Management Meetings, the selection and designation of Qualifying Projects and the management and administration of the Funds shall be at the sole discretion of the Parish Council (subject to the provisions of this Agreement).

#### **Annual report and accounts**

4.10. The Parish Council shall at all times maintain detailed accounts of the Funds and distribution of the Funds and supply accounts and reports to the Company on an annual basis showing the Funds received and disbursed and reporting on the progress of the Qualifying Projects where Funds have been spent.

4.11. The Parish Council shall ensure that the annual accounts referred to in clause 4.10 are independently verified by a qualified accountant.

4.12. The Parish Council shall publish to the public the annual report referred to in clause 4.10 above and permit the Company to make the report available to the public

4.13. The Company shall be entitled to review the accounts referred to in clause 4.10 at any reasonable time upon reasonable notice to the Parish Council

#### **Compliance with Statute**

4.14. The Parish Council shall administer the Funds in compliance with all relevant statutory obligations.

## **5. THE COMPANY'S OBLIGATIONS**

- 5.1. The Company shall pay the Parish Council the Annual Payment in advance on the Commissioning Date and thereafter in two equal instalments on the 31<sup>st</sup> January and 31<sup>st</sup> July in each year until the Final Generation Date but so that no overpayment of the Annual Payment shall be refunded to the Company should the Final Generation Date not fall on an anniversary of the Commissioning Date and the first and last payments to be made pro rata.
- 5.2. If the Wind Farm is either to be partially or wholly decommissioned then the Company shall provide the Parish Council with a minimum of one month's prior written notice of this decision
- 5.3. If the Wind Farm is partially decommissioned the Annual Payment shall be reduced in proportion with the reduction in Installed Capacity from the date of the start of the reduction in Installed Capacity and the Annual Payment for the following year shall be reduced by the amount of any overpayment made in the previous year.
- 5.4. No reduction in the Annual Payment shall be made because of the Wind Farm or any turbine or turbines which it comprises not generating electricity unless a turbine or turbines are permanently decommissioned whereupon the Installed Capacity shall be recalculated and the provisions of clause 5.3 shall apply.
- 5.5. For the avoidance of doubt, the Funds shall remain the property of the Parish Council, or any assignee of the Parish Council approved by the Company (or its assignees), following the expiry or termination of this Agreement.

## **6. AGREEMENTS AND DECLARATIONS**

### **Amendments**

- 6.1. The Parties will record any amendment to the terms of this Deed by supplementary Deed and shall cooperate with each other to ensure that the principal aims of this Agreement as set out in the recitals above are effectively implemented.



- 6.2. The Parties shall consult with each other on a regular basis to discuss the disbursement of the Funds and the Approved Purposes with a view to ensuring that the Funds have been properly paid by the Company and disbursed by the Parish Council and that the Approved Purposes remain a relevant and appropriate use of the Funds.

#### **Duration and Termination**

- 6.3. This Agreement shall begin on the Commencement Date and shall (subject to earlier lawful termination) terminate on the Final Generation Date.
- 6.4. The Parties may terminate this Agreement before the Final Generation Date by agreement provided that such agreed early termination must be effected by Deed.

#### **7. ASSIGNMENT**

- 7.1. The Company shall be free at any time to assign the benefit and burden of this Agreement contemporaneously to the operator of the Wind Farm and at the date of the assignment the Parish Council shall release the Company from its obligations under this Agreement and the assignee would take on all payment responsibilities arising under this Agreement.
- 7.2. The Parish Council may subject to the approval of the Company (such approval not to be unreasonably withheld or delayed) assign the benefit and burden of this Agreement to East Lindsey District Council or such other assignee as may be approved by the Company. At the effective date of such assignment ('the Effective Date') the Company shall release the Parish Council from its obligations under this Agreement (provided that the Parish Council is not hereby released from liability for its breaches of this Agreement prior to the Effective Date).

#### **8. NOTICES**

Any notice to be served on either of the Parties by the other shall be sent by prepaid recorded delivery or registered post or by facsimile transmission and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by facsimile transmission to the correct facsimile number (with correct answerback) at the number of the addressee

## **9. WAIVER**

The failure of either Party at any time or times to require performance of any provision hereof shall not affect that party's right to enforce such provision at a later time. No waiver by either party of any conditions or the breach of any term covenant representation or warranty contained in this Agreement in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or be deemed to be or construed as a waiver of the breach of any other term covenant representation or warranty in this Agreement.

## **10. NO PARTNERSHIP**

The Parties are not partners or joint venturers nor is either Party able to act as agent of the other save as authorised by this Agreement.

## **11. ENTIRE AGREEMENT**

This Agreement sets out the entire agreement between the Parties in connection with its subject matter and neither party has entered into this Agreement in reliance on any warranty, representation or statement made by the other which is not set out in this Agreement. Nothing in this Agreement purports to exclude liability for any fraudulent statement or act.

## **12. JURISDICTION**

12.1. This Agreement shall be governed by English law in every particular including formation and interpretation and shall be deemed to have been made in England

12.2. Any proceedings arising out of or in connection with this Agreement may be brought in any court of competent jurisdiction in England.

12.3. Any notice of proceedings or other notices in connection with or which would give effect to any such proceedings may without prejudice to any other method of service be served on any party in accordance with clause 8.

12.4. In the event that either party is resident outside England its address for service in England shall be the address set out in this Agreement and any time limits in any proceedings shall not be extended by virtue only of the foreign residence of that party.

## SCHEDULE ONE

### THE COMMUNITY PROGRAMME PROPOSAL OUTLINE

The Approved Purposes shall include the following :-

#### 1 Environmental Activities

Example sub-categories (indicative only) include:

- a. **Biodiversity** – protecting and enhancing local wildlife and plant life
- b. **Energy** - home and community energy efficiency and development of renewables
- c. **Food** – finding ways of making more local, organic, healthy food, grown by the community for the community
- d. **Sustainable transport** – encouraging use of public transport, bicycles and walking
- e. **Waste and recycling** - identifying more ways of reusing and recycling our waste
- f. **Regeneration**- improving community green space, community
- g. **Green initiatives**

#### 2 Educational/Skills Development

Examples (indicative only) include:

- bursaries for students
- grants for books on course reading lists
- grants for local computing course and access to computers

#### 3 Sports/Leisure

Examples (indicative only) include:

- children's play area
- sports equipment
- recreational areas
- seating
- activity areas
- public internet access

#### 4 Community Facilities

Example sub-categories (indicative only) include:

- a. **Village Hall/ Community Centre** – supporting payments for upkeep, rates etc
- b. **Community Groups** – sponsorship, donations for equipment etc

#### 5 Community Care

Examples (indicative only) include:

- addressing support needs of Young, Old, Disabled etc.

- purchasing specialist community care equipment - e.g Medical Defibrillator.

## **6 Investment**

Examples (indicative only) include:

- set up a Bursary
- purchase land as a long term investment / source of revenue.
- put aside funds for post 25 years utilisation

## **7 Infrastructure**

Examples (indicative only) include:

- Cable (TV/Broadband)
- Footpath
- Car Passing Places
- Lay by
- Kerbs
- Speed Monitor

## **8 Maintenance**

Maintenance/improvement fund for Parish Assets (pre/post 25 years)