

THIS AGREEMENT is made between

- (1) **MONADHLIATH ENERGY LIMITED**, a company registered in England and Wales with registered number 07922423 and with its registered office at Beaufort Court, Egg Farm Lane, Kings Langley, Hertfordshire, WD4 8LR (the "**Company**"); and
- (2) **STRATHNAIRN COMMUNITY BENEFIT FUND LIMITED** a company registered in Scotland with registered number SC272756 and with its registered office at Drummond House Balnafoich Crossroads, Farr, Inverness, IV2 6XG (the "**Recipient**").

WHEREAS the Company has agreed to provide funding to the Recipient for certain charitable purposes it is hereby agreed as follows:

1 **DEFINITIONS AND INTERPRETATION**

In this Agreement the following expression shall have the following respective meanings unless the context otherwise requires:

- 1.1 **"Acceptable Project Applicant"** means any community group, club, society, charity or other not-for-profit entity that operates within the Area of Benefit (as later defined), which, for the avoidance of doubt, shall not include the Recipient;
- 1.2 **"Additional Funds"** means the sum of fifteen thousand pounds (£15,000) for each megawatt of installed capacity (MW) at the Wind Farm which the Company will make available to the Recipient within one month after generation of electricity from all the turbines at the Wind Farm (as later defined) which shall be split equally between each of Strathnairn Community Benefit Fund Limited, Stratherrick & Foyers Community Trust and Strathdearn Community Charitable Trust;
- 1.3 **"Annual Funds"** means the base sum of two thousand pounds (£2,000) for each megawatt of installed capacity (MW) at the Wind Farm, increased annually in line with RPI, which shall be split equally between each of Strathnairn Community Benefit Fund Limited, Stratherrick & Foyers Community Trust and Strathdearn Community Charitable Trust;
- 1.4 **"Area of Benefit"** means the Strathnairn Community Council area as defined by the unitary authority of the Highland Council;
- 1.5 **"Average Annual Funds"** means the average amount of Annual Funds paid to the Recipient per year for the previous three years or if at the time of calculation three years of Annual Funds have not been paid, the average amount of Annual Funds paid to the Recipient to that date calculated proportionately for a 12 month period;
- 1.6 **"Committee"** means an accountable committee established and supported by the Recipient, which shall comprise of residents local to the Wind Farm and a representative of the Company (the identity of which shall be nominated by the Company);

- 1.7 **“Development Funds”** means the sum of four hundred thousand pounds (£400,000.00) which the Company will make available to the Recipient upon signing of this legal agreement and prior to the start of the public safety works on the B851;
- 1.8 **"Force Majeure"** means an act of God, war, riot, civil commotion, fire, flood or any event of circumstance which is beyond the Company’s reasonable control;
- 1.9 **"Funds"** means all financial payments made to the Recipient and for the avoidance of doubt includes the Additional Funds, the Annual Funds and the Development Funds; ;
- 1.10 **“Project(s)”** means any project or projects of an Acceptable Project Applicant that are located within, but not limited to, the Area of Benefit and are in furtherance of the objectives listed within section 4.1 of this Agreement;
- 1.11 **“RPI”** means the General Index of Retail Prices – All items, as published by the Central Statistical Office – Monthly Digest of Statistics or in the event of non publication or non existence thereof such other index as may be agreed between the parties (both parties acting reasonably);
- 1.12 **“Unallocated Funds”** shall mean Annual Funds which have not been approved by the Recipient in its funding decisions, annual business plan or otherwise for support of identifiable immediate term initiatives or for investment to support identifiable longer-term initiatives;
- 1.13 **"Wind Farm"** means the Dunmaglass Wind Farm located on the Dunmaglass Estate.
- 1.14 In this Agreement, unless otherwise specified:
- 1.14.1 references to Clauses and Schedules are to clauses of and schedules to this Agreement;
- 1.14.2 headings to Clauses and Schedules are for convenience only and do not affect the interpretation of this Agreement;
- 1.14.3 references to a "person" shall be construed so as to include any individual, firm, company, government, local or municipal authority or any joint venture, association or partnership (whether or not having separate legal personality);
- 1.14.4 where the context so admits or requires, words denoting the singular include the plural and vice versa.

2 DONATION

- 2.1 Subject to the terms of this Agreement, the Company shall make the Annual Funds available to the Recipient by way of one annual payment one month after generation of electricity from all of the turbines at the Wind Farm and on each anniversary thereafter until the earlier of (i) the 24th anniversary of the first payment of the Funds or (ii) the date that the Wind Farm ceases to export electricity to the grid. For the avoidance of any doubt, the Annual Funds will consist of a maximum of 25 annual payments.
- 2.2 Subject to the terms of this Agreement, the Company shall make the Additional Funds available to the Recipient by way of one payment one month after generation of electricity from all of the turbines at the Wind Farm.
- 2.3 Subject to the terms of this Agreement, the Company shall make the Development Funds available to the Recipient by way of one payment upon signing of this legal agreement and prior to the start of the public safety works on the B851.
- 2.4 In the event that the Company disposes of the Wind Farm, it shall use its reasonable endeavours to ensure that the proposed purchaser assumes the responsibilities of the Company as set out in this Agreement.

3 FUNDS ARRANGEMENT

- 3.1 The Development Funds will be used to sustain a grants programme within the Area of Benefit. The Development Funds shall be ringfenced in an account until required. Any annual residues are to be carried forward into the following financial year for distribution;
- 3.2 The Company shall pay the Additional Funds and the Annual Funds into the Recipient's Account. The Additional Funds and the Annual Funds shall be ringfenced in an account until required for grant aid purposes or for investment purposes to sustain a grants programme in the future for the community in the Area of Benefit. For the avoidance of doubt, any annual residues and interest gained on the Additional Funds and the Annual Funds by investment as aforesaid shall form part of the Funds to be administered by the Recipient.
- 3.3 Within 10 days of receiving the Funds the Recipient's treasurer will acknowledge safe receipt of the same in writing to the Company.
- 3.4 The Company and the Recipient shall use their reasonable endeavours to ensure that the Funds are paid to the Recipient, and subsequently used by the Recipient, in a tax efficient way.
- 3.5 Fund payments shall cease upon (a) permanent cessation of the commercial operations of the Wind Farm for whatever reason at which time this Agreement shall terminate with immediate effect; and (b) if either party becomes insolvent, has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or

business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction).

- 3.6 Upon termination of this Agreement by the Company pursuant to Clause 3.5 (a), all amounts owing by the Company to the Recipient, up to the date of termination, shall become immediately due and payable.
- 3.7 Termination shall be without prejudice to the accrued rights of either party at the termination date.
- 3.8 The Recipient agrees to advertise the Funds to Acceptable Project Applicants within the Area of Benefit. The Recipient will procure that the Committee will review applications for grants and will make recommendations to the Recipient as to which applicants they wish to become beneficiaries of the Funds giving preference to Projects or Acceptable Project Applicants located within the Area of Benefit. The Recipient will provide the necessary support to the Committee in carrying out such review and making such recommendations.
- 3.9 The Recipient will consider the Committee's recommendations and provided that the recommended Projects do not contravene any law or regulation and are not Ineligible Projects, the Recipient will ratify the Committee's recommendations and will administer the grants accordingly.
- 3.10 The Recipient will decide to whom the grants should be paid following consultation with the Committee, provided that grants shall only be paid to Acceptable Project Applicants who are able to provide evidence at the time the grant is awarded of their non-profit or charitable entity status.

4 THE USE OF THE FUNDS

- 4.1 The Recipient will apply the Funds it receives for solely the purpose of supporting local environmental, educational, sporting, amenity or other appropriate not for profit initiatives within the Area of Benefit, which are consistent with the principles of environmental projects, community based projects, charitable trusts, clubs and societies. For the avoidance of any doubt, the Recipient shall not own or have an interest (whether directly or indirectly) in any of the Projects to which it donates the Funds.
- 4.2 The Recipient agrees with the Company that it will apply Funds it receives in accordance with Clause 4 of this Agreement to Projects, provided that, for the avoidance of any doubt, Projects will not be eligible to receive Funds if they are: (i) not proposed by an Acceptable Project Applicant; or (ii) deemed by the Company to be for the furtherance of political or religious objectives; or (iii) deemed by the Company to be in furtherance of any initiative which is adverse to, or conflicts (directly or indirectly) with, the interests of renewable energy (which shall not be limited to wind energy); or (iv) deemed by the Company to be in furtherance of any initiative that is adverse to, or conflicts (directly or indirectly) with, the interests of the Company and its affiliates; or (v) deemed by the Company to be in furtherance of any initiative that is adverse to, or conflicts (directly or indirectly) with, the

interests of the Wind Farm itself; or (vi) deemed by the Company to support individuals whose project will not have the capacity to benefit the wider community; (such Projects to be “Ineligible Projects”). If the Company, acting reasonably, considers that any Project which has received Funds is an Ineligible Project, it shall so notify the Recipient and shall be relieved of any further obligation to make payments pursuant to Clause 2.1.

- 4.3 The Recipient shall consult with the Company in respect of the establishment of compliant procedures for the assessment of prospective Projects to be funded by the Recipient.
- 4.4 The Recipient will lead on the development of the constitution of the Committee and the selection of an initial representative body of local residents who will comprise the Committee.
- 4.5 The Recipient shall ensure that they put provisions in place so that they may hold an election of community representatives to the Committee. Such elections are to be held at an agreed frequency.
- 4.6 The Committee will establish procedures for the assessment of proposed Projects.
- 4.7 The Committee will operate according to the terms of a constitution and will meet at an agreed frequency.
- 4.8 The Committee will be responsible for placing limits (if they decide that such limits are appropriate) on the percentage of the Additional Funds and Annual Funds that can be awarded to any one applicant on any occasion or series of occasions.

5 OBLIGATIONS OF RECIPIENT

- 5.1 The Recipient shall appoint a treasurer who shall maintain accounts and report on them to the Company within 3 months of the designated year-end.
- 5.2 The Recipient shall during the term of this Agreement and for a further period of six years following the expiry or termination of this Agreement keep true, complete, separate and detailed records and books regarding all monies received from the Company under this Agreement, the spending of those monies and any revenue or other income generated from those monies, and shall permit the Company, (including any accountant or auditor appointed by any of them) at all reasonable times by prior reasonable notice to inspect, audit and take copies of such records and books, and shall give any written explanation which may be reasonably required in relation to them.
- 5.3 The Recipient shall prepare an annual report and submit it to the Company, such report shall set out the activities of the Recipient and how the Funds have been spent or otherwise set aside or allocated.
- 5.4 The Recipient shall not do anything which adversely affects (or is likely to adversely affect) the business, reputation or standing of the Company.

- 5.5 Without prejudice to any other provision of this Agreement, the Recipient shall promptly notify the Company if it becomes aware of or suspects any impropriety, mismanagement or unauthorised use regarding any monies paid by the Company to the Recipient under this Agreement.
- 5.6 The Recipient hereby acknowledges and declares that the Funds are not to be construed in any way as being compensation for the operation and/or existence of the Wind Farm. Any reference to the Funds shall at all times be as a “*contribution to local community activities*”.
- 5.7 The Recipient agrees with the Company that it will undertake all correspondence and publicity concerning the Funds in the name of Dunmaglass Wind Farm Community Fund.

6 **SUSPENSION AND TERMINATION OF FUND PAYMENTS**

- 6.1 The Company may terminate its payments of the Funds to the Recipient in the event of:
- (a) serious and/or repeated misuse of the Funds by the Recipient; or
 - (b) persistent or material breach of this Agreement by the Recipient.
- 6.2 The Company may temporarily terminate its payments of the Funds to the Recipient in the event that all or part of the Funds previously paid to the Recipient accumulate such that there is an amount of Unallocated Funds in the Recipient's Account which is greater than three times the Average Annual Funds.
- 6.3 Notwithstanding the temporary termination of Fund payments the Company shall continue to be obliged to pay the Funds to the Recipient for the relevant period but shall not be required to make such payment until the amount of Unallocated Funds in the Recipient Account is less than three times the Average Annual Funds and then only to the extent that the amount of the Unallocated Funds is less than three times the Average Annual Funds.
- 6.4 If at any time the Company suffers an event of Force Majeure or any other disruption at or in respect of the Wind Farm which results in the Company being unable to produce electricity or obtain payment for the electricity produced, in either case to a material extent at the time that annual payments of Funds is due, then the Company retains the right to suspend payment of Funds. Once the Company is again in a position to receive payment for generated electricity, payments of the Funds will be made to the Recipient on a pro rata basis for the remainder of the year in which such disruption ceases and receipt of payment for electricity recommences.
- 6.5 In the event that all or part of the Funds previously paid to the Recipient accumulate such that there is an amount of Unallocated Funds in the Recipient's Account which is greater than four times the Average Annual Fund the Recipient shall be deemed to be in breach of its obligations to distribute the Funds and shall forfeit its right to receive the Funds until such time as the Unallocated Fund in the Recipient Account falls below three times the

Average Annual Fund, and for the avoidance of doubt the Company shall cease to be obliged to pay the Fund for the relevant period to the Recipient.

- 6.6 The Company may (acting reasonably) terminate this Agreement for any reason, five (5) years after the date of this Agreement or at any time thereafter upon giving thirty (30) days' prior written notice to the Recipient. Prior to termination under this Clause 6.6, the Company shall liaise with Highland Council to identify an alternative administrator, on terms similar to those contained in this Agreement, to ensure that the community within the Area of Benefit is provided with the Annual Funds pursuant to Clause 2.1.

7 WARRANTIES AND LIABILITY

- 7.1 The Recipient warrants that it has full power and authority under its constitution and has taken all necessary action and has obtained all authorisations, licences, consents and approvals to execute and perform this Agreement.
- 7.2 The Recipient warrants that it shall during the term of this Agreement comply with all applicable laws, regulations and regulatory requirements in carrying out its obligations under this Agreement and in all matters relating hereto.

8 GENERAL

- 8.1 This Agreement is personal to the Recipient which, save as expressly provided herein, may not, without the prior written consent of the Company, assign, sub-license, sub-contract, transfer or charge this Agreement or any part of it.
- 8.2 The Recipient acknowledges and agrees that the Company may assign, transfer or otherwise deal in any way with this Agreement or its rights and obligations hereunder without the need for the consent of the Recipient provided that the Recipient is given written notice of any such assignment, transfer or dealing within 28 days of completion of same.
- 8.3 The relationship of the parties is that of independent contractors dealing at arm's length and nothing in this Agreement shall be construed as creating a joint venture or partnership between the parties nor shall the Recipient be construed as an agent or employee of the Company, and the Recipient is not authorised to represent the Company as such.
- 8.4 A notice shall be sufficiently served:-
- 8.4.1 If to the Company, it is addressed to the Company and posted to the address given at the commencement of this Agreement; or
- 8.4.2 If to the Recipient, it is left at or posted to the address given at the commencement of this Agreement.

- 8.4.3 Notices which are posted shall be deemed to have been received on the second day after posting.
- 8.5 No variation of or amendment to this Agreement shall bind either party unless made in writing and signed by both parties hereto. Both parties shall at all times remain willing to discuss possible contractual variations that have been prompted by technical or other factors, although neither party shall have any obligation to agree to any such variation proposed.
- 8.6 The Company is entitled to attend Committee meetings and take a seat on the Committee.
- 8.7 Failure of either party to enforce or exercise, at any time or for any period, any term of this Agreement, does not constitute, and shall not be construed as, a waiver of such term and shall not affect the right later to enforce such term or any other term herein contained.
- 8.8 This Agreement shall be governed by and construed in accordance with Scottish law. The parties to this Agreement irrevocably agree that the courts of Scotland are to have exclusive jurisdiction to settle any questions or disputes which may arise out of or in connection with this Agreement.
- 8.9 The invalidity or unenforceability of any term of or any right arising pursuant to this Agreement shall not adversely affect the validity or enforceability of the remaining terms and rights.
- 8.10 This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to this Agreement except as expressly stated in this Agreement. Neither party shall have any remedy in respect of any untrue statement made to it upon which it has relied in entering into this Agreement (unless such untrue statement was made fraudulently) and that party's only remedies shall be for breach of contract as provided in this Agreement.
- 8.11 Provisions of this Agreement which either are expressed to survive its termination or from their nature or context it is contemplated that they are to survive such termination shall remain in full force and effect notwithstanding such termination. The parties shall do and execute all such further acts and things as are reasonably required to give full effect to the rights given and the transactions contemplated by this Agreement.

