

APPENDIX B

Dated 2021

**THE MAYOR AND COMMONALTY AND (1)
CITIZENS OF THE CITY OF LONDON**

and

ALDGATE SOLAR POWER LIMITED (2)

POWER PURCHASE AGREEMENT

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This **POWER PURCHASE AGREEMENT** (the "**Agreement**") is dated
2021 and is made

BETWEEN

- (1) **THE MAYOR AND COMMONALTY AND CITIZENS OF THE CITY OF LONDON** (the "**Corporation**") of PO Box 270, Guildhall, London EC2P 2EJ; and
 - (2) **ALDGATE SOLAR POWER LIMITED**, a Community Benefit Society incorporated in England and Wales under the Co-operative and Community Benefit Societies Act 2014, number RS8430, whose registered office is at 8th Floor, Blue Star House, 234-244 Stockwell Road, London SW9 9SP (the "**Seller**");
- (each a "**Party**" and together the "**Parties**").

WHEREAS

- (A) The Seller intends to install and thereafter operate a photovoltaic solar power installation of 36.8 kWp upon the Corporation's building at Middlesex Street Estate, Gravel Lane, Spitalfields, London E1 7AD; and
- (B) The Seller agrees to sell and the Corporation agrees to purchase the electricity generated by the Facility (as hereinafter defined) on the terms and conditions set out in this Agreement.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement unless the context otherwise requires the following words and expressions will bear the meanings respectively set out below. Words and expressions not otherwise defined herein shall have the meaning ascribed to them in the relevant Industry Agreement.

- "Act"** means the Electricity Act 1989 as amended by the Utilities Act 2000;
- "Affiliate"** means, in respect of a person, any person which controls (directly or indirectly) that person and any other person controlled (directly or indirectly) by such first-mentioned person, including, where a person is a company, the ultimate holding company of such person, any holding company of such person and any subsidiary (direct or indirect) of such holding company;
- "Base Rate"** means, in respect of any day, the base lending rate from time to time of Barclays Bank plc as at the close of business on the immediately preceding Business Day;
- "Benefits"** means all benefits received or accruing, or capable of being received or accrued, to either Party, and that are associated with the Facility or electricity generated by the Facility, including any and all Environmental Benefits;
- "BSC"** means the Balancing and Settlement Code established pursuant to the Transmission Licence of National Grid Company plc (or its successor as transmission system operator), as from time to time revised in accordance with that licence;

"Building"	means the building whose address is Middlesex Street Estate, Gravel Lane, Spitalfields, London E1 7AD, being the site on which the Facility is (or is to be) located;
"Business Day"	means any day other than a Saturday, a Sunday or any day designated as a bank holiday in England;
"Capped Tariff"	is a tariff equivalent to whichever is the lesser of: <ul style="list-style-type: none"> (a) 95% of the Supply Tariff; or (b) the Maximum Tariff;
"Change in Law"	means, at any time after the date of this Agreement: <ul style="list-style-type: none"> (a) the coming into effect of any Law or Directive; (b) the modification, repeal or replacement of any Law or Directive; or (c) a change in the interpretation or application by any Competent Authority of any Law or Directive;
"Commencement Date"	means the date on which the Seller declares to the Competent Authority that the Facility has been installed;
"Competent Authority"	means the Gas and Electricity Markets Authority (including the Office of Gas and Electricity Markets), any court of competent jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, administrative or regulatory body, authority, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or of the European Union (but excluding each of the Parties);
"Consumer Prices Index"	means the Consumer Prices Index (CPI)(all items)(United Kingdom);
"Contract Electricity"	means such electricity as the Facility generates, up to the total amount required for the purpose of providing electricity to the Building;
"Contract Quarter"	means a 3 consecutive month period during the Operating Period, with the first Contract Quarter beginning on the Commencement Date and ending at 24:00.00 hours on the day falling 3 months after the Commencement Date, and each subsequent Contract Quarter beginning on the expiry of the previous Contract Quarter;
"Contract Year"	means any twelve month period beginning 24:00.00 hours on 1 January and ending at 23:59.59 on 31 December, or part thereof in the first and final year of this Agreement;
"Default Rate"	means, in respect of any day, the rate of two (2) percentage points above the Base Rate as at the close of business on the immediately preceding Business Day;

“Delivery Point(s)”	means each of the physical delivery points identified by a particular meter point administration number (“ MPAN ”) more particularly identified at table 2 in Schedule 1 at which the Facility connects to each of the Buildings’ system and at which the Sale Electricity is to be delivered to the Corporation;
“Directive”	means any (from time to time) instruction, direction, rule or requirement of any Competent Authority, any provision of an Industry Agreement or any condition of any licence (or exemption from the requirement to have the same) or other required authorisation, consent, permit or approval, which is legally binding on the Party in question;
“Distribution Code”	means the code of that name established pursuant to the licence of the Distribution System Operator, as from time to time revised in accordance with that licence;
“Distribution Connection Meters”	means the metering and related communication equipment necessary for the measurement at the point of connection of the Facility to the Distribution System of the electricity generated by the Facility and delivered to the Distribution System;
“Distribution System Operator”	has the meaning given to it in the BSC;
“Distribution System”	has the meaning given to it in the BSC;
“Effective Date”	means the date of this Agreement;
“Electricity Payment”	means in respect of any Contract Quarter, the amount (expressed in Pounds Sterling (£)) calculated in accordance with Clause 7.1(c) and payable by the Corporation to the Seller for the applicable Sale Electricity;
“Environmental Benefits”	means all current and future statutory or governmental incentives applicable in the United Kingdom, of any nature whatsoever and howsoever structured, aimed (whether in whole or in part) at the protection of, benefit to or mitigation of detrimental impact on the environment, including those aimed at: reducing harm to and pollution of the environment; reducing the combustion of fossil and other carbon based fuels (including carbon or emission reduction credits, benefits or allowances or other climate change schemes); reducing the emission of harmful gases (including greenhouse gases); increasing energy efficiency; or promoting the use of energy from renewable/sustainable or waste sources. (The phrases “environment” and “pollution of the environment” shall, where used in this definition, be interpreted by reference to the Environmental Protection Act 1990);
“Event of Force Majeure”	has the meaning given to it in Clause 10.1;

“Expiry Date”	means the date twenty (20) years from the Commencement Date;
“Facility”	means the electricity generating photovoltaic installation more particularly identified in Schedule 1;
“Facility Exit Point”	means the point at the import meter terminals of the Facility as more particularly identified in Schedule 1;
“Force Majeure”	has the meaning given to it in Clause 10.1;
“Good Industry Practice”	means exercising that degree of skill diligence prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances;
“Industry Agreement”	<p>means any and all agreements entered into pursuant to the Act or any licence or otherwise, regulating the generation, transmission, distribution, supply and trading of electricity in England and Wales (but excluding the contracts of supply or trading themselves) and including:</p> <ul style="list-style-type: none"> (a) the BSC, (b) the Grid Code established pursuant to the Transmission Licence of National Grid Company plc (or its successor as GB transmission system operator), as from time to time revised in accordance with that licence, (c) the Connection and Use of System Code (CUSC), which constitutes the contractual framework for connection to, and use of, the national electricity transmission system, (d) the Distribution Code established pursuant to the licence of the Distribution System Operator, as from time to time revised in accordance with that licence, (e) the Distribution Use of System Agreement with the Distribution System Operator under which a person contracts to use the relevant Distribution System, and (f) the Master Registration Agreement established under the conditions of the Distribution System Operator’s licence, as revised from time to time in accordance with that licence, <p>and any replacement for the same from time to time;</p>
“Law”	means any law, regulation, ordinance, order, directive, notification, instruction, by-law, guideline, code or standard which is legally binding in the United Kingdom (or any part of it) from time to time;
“Lease”	means the lease dated on even date hereto between the Corporation and the Seller relating to

	the airspace immediately above that part of the roof of the Building;
“kWp”	means kiloWatt peak, being a unit of power representing maximum power;
“kWh”	means kilowatt-hour, being a unit of energy;
“Maximum Tariff”	means 0.1553 £/kWh, subject to indexation in accordance with Clause 8.6;
“Minimum Tariff”	means 0.121 £/kWh, subject to indexation in accordance with Clause 8.6;
"Metering Equipment"	means the metering and related communication equipment necessary for the measurement of the electricity generated by the Facility and delivered at the Delivery Point;
"Operating Period"	means the period beginning on the Commencement Date and expiring on the earlier of (i) termination of this Agreement in accordance with its terms, or (ii) the Expiry Date;
"Sale Electricity"	means, for each Contract Quarter, the Contract Electricity delivered by the Seller and taken by the Corporation at the Delivery Point as determined in accordance with Clause 7.1(b);
"Site Property Rights"	means the leasehold interests of the Seller under the Lease in its capacity as the Tenant, together with the benefit of all such easements, reservations and rights as are necessary to permit the Seller to construct, maintain, alter, modify and operate the Facility and otherwise comply with its obligations under this Agreement, which leasehold ownership does not expire or permit the landlord or any other person holding a reversionary interest (whether immediate or not) to terminate, other than for breach, prior to the expiry of the Operating Period;
"Supply Tariff"	means, the tariff that the Corporation would be liable to pay for the purchase of electricity at each particular Delivery Point from its regular licensed electricity supplier(s) for each half-hour period in which Sale Electricity is delivered to that Delivery Point (taking into account any variation in such tariff at different times of the day or year), and a copy of such tariff(s) will be made available to the Seller in reasonable time upon request;
"Transmission Licence"	means a transmission licence, the authorised area for which includes the geographic location of the Facility; and
"VAT"	means any value added tax or replacement or other tax levied by reference to value added.

1.2 Interpretation

In this Agreement:

- (a) reference in the singular shall include references in the plural and vice versa and words denoting natural persons shall include corporations and any legal entity and vice versa;
- (b) the words and phrases "**other**", "**including**" and "**in particular**" shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible;
- (c) except to the extent that the context requires otherwise references to a particular "**Clause**" or "**Schedule**" shall be references to a clause of or schedule to this Agreement;
- (d) except to the extent that the context requires otherwise, any reference to "this Agreement" or to any other agreement or document, is a reference to that agreement or document as amended, supplemented, novated or superseded from time to time and includes a reference to any document which amends, is supplemental to, novates, or is entered into made or given pursuant to or in accordance with any terms of it;
- (e) the headings are inserted for convenience only and are to be ignored for the purposes of construction;
- (f) the Schedules form part of this Agreement and are to be construed accordingly;
- (g) all references to "£"s are to pounds sterling;
- (h) references to any statute or statutory provision shall include (i) any subordinate legislation made under it, (ii) any provision which it has modified or re-enacted, and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification);
- (i) "**control**" of a person by another means that the other (whether alone or acting in concert with others, whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of that person or of any other person which controls that person or otherwise controls or has the power to control the affairs and policies of that person or of any other person which controls that person (and "**controlled**" and "**controlling**" shall be construed accordingly); and
- (j) references to a person shall include their permitted successors and assigns.

2 TERM

2.1 Commencement and Term

This Agreement shall come into force on the Effective Date and, subject to the provisions for earlier termination set out in this Agreement, shall continue until the Expiry Date.

2.2 Extension of this Agreement

- (a) No later than three (3) months prior to the Expiry Date, either Party may by notice to the other request the extension of this Agreement, following which the Parties shall meet and seek to agree in good faith the terms for any such extension of this Agreement for up to a further five (5) years.

- (b) If the Parties are not able to agree on any such extension of this Agreement by the Expiry Date, this Agreement shall terminate with immediate effect on the Expiry Date.

3 OPERATING PERIOD

3.1 Sale and Purchase of the Contract Electricity

- (a) At all times during the Operating Period, the Seller shall:
 - (i) act in accordance with Good Industry Practice to ensure that the Facility is properly and safely operated and maintained in accordance with all applicable Laws and Directives;
 - (ii) sell and deliver to the Corporation the Contract Electricity at the relevant Delivery Point(s); and
- (b) At all times during the Operating Period, the Corporation shall:
 - (i) purchase and accept the Contract Electricity; and
 - (ii) pay for the Sale Electricity in accordance with Clause 7.

3.2 Supply Tariff

- (a) The Corporation shall notify the Seller each time there is a change to the Supply Tariff as soon as reasonably practicable and in any case within 14 days of such change.
- (b) Should the Corporation fail to notify the Seller of a change to the Supply Tariff in accordance with Clause 3.2((a)) before the Seller issues an invoice in accordance with Clause 7.1(a), the invoice may not be amended and the original Electricity Payment shall be due. Any recalculation of such invoice based on such revised Supply Tariff resulting in a change to the Electricity Payment due pursuant to that invoice, shall be accounted for by an adjustment to the next invoice to be issued by the Seller. No retrospective adjustment will be made in respect of a changes to the Supply Tariff if the Corporation fails to notify to the Seller within a period of 6 months from the date of such change.

3.3 Title Guarantee and Risk

Title and risk in, and ownership of, the Sale Electricity shall automatically pass to the Corporation at the Delivery Point.

4 UNDERTAKINGS

4.1 Seller's Undertakings

The Seller undertakes that it:

- (a) has and will, until the expiry of the Operating Period, continue to comply in all material respects with and will maintain all of the licences, authorities, permits, rights and consents necessary to enable it to construct, operate and maintain the Facility and perform its obligations under this Agreement; and
- (b) will take all reasonable efforts to maintain the Site Property Rights in full force and effect and comply with its material obligations under the Lease.

Subject to the limitations in Clause 12.1, the Seller will reimburse the Corporation for those costs, expenses or liabilities that the Corporation, acting reasonably, incurs as a result of the Seller breaching this Clause 4.1 provided that the Corporation shall use reasonable endeavours to minimise and mitigate against incurring such costs, expenses or liabilities

4.2 The Corporation's Undertakings

The Corporation undertakes that it:

- (a) shall, where appropriate, co-operate and work together with the Seller in good faith towards the success of the electricity generation scheme that forms the basis of this Agreement;
- (b) shall ensure that this Agreement and the Corporation will be and remain throughout the Operating Period exempt from the requirement for any of the Seller or the Corporation to hold an electricity supply licence and where necessary the Parties will explore together and where practicable implement alternative electricity supply arrangements that as closely as possible reflect the principles and terms in this Agreement in order to achieve this intention;
- (c) will not in any one Contract Year sell or supply any electricity delivered to it pursuant to this Agreement to any third party, without the Seller's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed and the Parties agree that the only circumstances in which it shall be reasonable for the Seller to withhold, condition or delay its consent are:
 - (i) where the Seller reasonably believes that such action by the Corporation may result in the Corporation and/or the Seller needing to obtain a licence to supply electricity; and/or
 - (ii) where the third party does not own or occupy premises at or adjoining the Building.

Subject to the limitations in Clause 12.1, the Corporation will reimburse the Seller for those costs, expenses or liabilities that the Seller, acting reasonably, incurs as a result of the Corporation breaching this Clause 4.2 (including, any shortfall in any Benefit the Seller did not receive that the Seller would otherwise have received) provided that the Seller shall use reasonable endeavours to minimise and mitigate against incurring such costs, expenses or liabilities.

4.3 Mutual Undertakings

- (a) Each Party shall comply with all relevant Laws and Directives. Each Party shall ensure that it does not (and shall ensure that its contractors and Affiliates do not), carry out any act (or omit to carry out any act) which it knows (or ought reasonably to know) will cause the other Party to be in breach of any relevant Law or Directive.
- (b) Each Party hereby represents and warrants that it has the power to execute and deliver this Agreement and to perform its obligations hereunder; has taken all necessary action to authorise the execution, delivery and performance of this Agreement; and that its obligations under this Agreement constitute its legal, valid and binding obligations enforceable in accordance with their respective terms.

5 METERING AND DATA COLLECTION

5.1 Meters

Throughout the Operating Period the Seller shall procure that the Metering Equipment and Distribution Connection Meters are installed, operated and maintained in accordance with Good Industry Practice and all applicable Laws, Directives and Industry Agreements. The Corporation shall be entitled to install, operate and maintain at its own expense and risk, check meters if it so desires. The Seller shall not interfere with, alter, modify or remove any of the Metering Equipment or Distribution Connection Meters, without giving written notice to the Corporation, save where such alteration, modification or removal is required by the

Competent Authority or in an emergency (in which case written notice need not be given to the Corporation).

5.2 **Meter Operators**

- (a) The Seller shall be entitled to appoint and retain, throughout the Operating Period, the services of a meter operator to maintain and read the Metering Equipment and Distribution Connection Meters and perform the obligations and carry out the activities of such a person as set out in the Industry Agreements to the extent required.
- (b) The Seller shall be responsible for all charges associated with the appointment and use of the appointed meter operator.
- (c) The Seller shall use all reasonable endeavours to ensure that at all times the appointed meter operator complies with all relevant Industry Agreements, procedures and codes of practice.

5.3 **Rights of Access to Metering Equipment and Distribution Connection Meters**

The Corporation, and any persons authorised by the Corporation, shall be entitled at all reasonable times and on reasonable written request to the Seller to allow safe access to the Metering Equipment and Distribution Connection Meters for the purposes of inspection, testing and the collection of data or for the purposes of exercising its rights or undertaking its obligations under this Agreement, provided that any such access shall be given at the sole risk of the Corporation and subject to Corporation and any persons authorised by it complying at all times with the Seller's or the Seller's contractor's safety and security procedures and being appropriately qualified to access the Metering Equipment and Distribution Connection Meters.

5.4 **Accuracy of the Metering Equipment**

- (a) If at any time during the Operating Period, the accuracy of the Metering Equipment or Distribution Connection Meters is disputed by either Party (the "**Disputing Party**"), the Disputing Party shall notify the other Party in writing, providing all reasonable evidence in support of its claim, and the Metering Equipment or Distribution Connection Meters shall as soon as practicable thereafter be jointly tested in accordance with the relevant Laws, Directives and codes of practice.
- (b) If on carrying out a test in accordance with Clause 5.4(a), it is found that the accuracy of the Metering Equipment or Distribution Connection Meters is within the levels of accuracy stipulated in the applicable Laws, Directives and codes of practice, the cost of removing, testing and replacing the Metering Equipment, Distribution Connection Meters or any part thereof shall be paid by the Disputing Party.
- (c) If on carrying out a test in accordance with Clause 5.4(a), it is found that the accuracy of the Metering Equipment or Distribution Connection Meters is outside the levels of accuracy stipulated in the applicable Laws, Directives and codes of practice:
 - (i) the cost of removing, testing and replacing the Metering Equipment or Distribution Connection Meters or any part thereof shall be met by the Seller;
 - (ii) the Seller shall (as soon as is reasonably practicable following the completion of such testing and at its own cost and expense) acting in accordance with Good Industry Practice recalibrate or replace the Metering Equipment or Distribution Connection Meters (as is appropriate); and

- (iii) the Parties shall meet as soon as is reasonably practicable following the completion of such testing to agree the period of such inaccuracy and the Sale Electricity during such period, taking into account where relevant any accurate Metering Equipment or Distribution Connection Meter readings. If the Parties are unable to agree on the discrepancy in the amount of Sale Electricity arising during such period of inaccuracy within twenty (20) Business Days of the completion of such testing, either Party may refer the dispute to expert determination in accordance with Clause 14.

6 BENEFITS

All Benefits that relate to the Facility and/or the electricity generated by the Facility during the Term shall remain with or accrue to the Seller.

7 PAYMENTS

7.1 Electricity Payment

- (a) No later than 20 Business Days following the end of each Contract Quarter, the Seller shall prepare and submit to the Corporation an invoice (an "**Invoice**") showing the Sale Electricity taken by the Corporation for each month in the Contract Quarter in question and the Electricity Payment applicable to that Contract Quarter's aggregate Sale Electricity.
- (b) The amount of Sale Electricity taken by the Corporation in a month shall be determined by subtracting, in each case for the month in question, the electricity generated by the Facility and delivered to the Distribution System (as measured by the Distribution Connection Meters) from the electricity generated by the Facility (as measured by the Metering Equipment at the Delivery Point).
- (c) The Electricity Payment (EP_Q) for any Contract Quarter (Q) shall be calculated as follows:

$$EP_Q = (SE_Q * Tariff)$$

where:

SE_Q means the Sale Electricity, expressed in kWh at the Delivery Points for that Contract Quarter (Q);

Tariff means the tariff from time to time applicable to such Sale Electricity in that Contract Quarter expressed in £/kWh and calculated as a rate equivalent to the Minimum Tariff or the Capped Tariff (whichever is the greater). Where different tariff rates apply at different times of day, week or year, or at different Delivery Points, they shall be applied as appropriate to the volumes of Sale Electricity purchased during the period concerned at the applicable Delivery Point)

- (d) The Corporation shall pay to the Seller an amount equal to the applicable Electricity Payment within thirty (30) days of receipt of such Invoice.

7.2 No Accurate Information

- (a) If any information required to prepare an Invoice is not available at the time that Invoice is prepared, then the Seller may prepare such Invoice based on its reasonable estimate of that information.
- (b) If there is any change to the information used to prepare an Invoice after it was prepared (including where the information that was estimated in order to prepare the Invoice becomes available) then either Party may by notice to the other require an adjustment payment to be made to reflect the

changed or newly available information. The adjustment payment shall be included in the next Invoice to be produced after the date of such notice. Interest shall be payable on the adjustment payment at the Base Rate calculated from the date of such notice until the date the next invoice. Such interest will be paid by the Corporation to the Seller where the adjustment payment is an addition to the amount previously invoiced, or by the Seller to the Corporation where the adjustment payment is a deduction from the amount previously invoiced.

8 TERMS OF PAYMENT

8.1 Invoices

All Invoices submitted under this Agreement must be valid VAT invoices.

8.2 Interest

If either Party fails to make a payment under this Agreement when due, then without prejudice to any other rights or remedies that the other Party may have, the other Party shall be entitled to charge interest on all overdue amounts from the due date to the date of payment at the Default Rate.

8.3 Disputed Items

If any item or part of an item of an Invoice is disputed or subject to question by a Party (acting in good faith), then payment by the other of the undisputed remainder of that Invoice shall not be withheld on those grounds. The provisions of Clause 8.2 shall apply to such undisputed remainder and also to the disputed or questioned item to the extent that it is subsequently agreed or determined to have been properly payable. If any item or part of an item of such an Invoice is paid, but is disputed or questioned, and is subsequently agreed or determined not to have been properly payable, then the Party to whom it was paid shall refund it together with interest at the Base Rate applying from and including the date of receipt up to but excluding the date of repayment.

8.4 Value Added Tax

All sums payable under this Agreement are exclusive of VAT or any other applicable tax or duty payable upon such sums, which shall be added if appropriate at the rate prevailing at the relevant tax point.

8.5 Set-Off

Each Party (the "**First Party**") shall be entitled to apply any amount due to the other Party (the "**Second Party**") under this Agreement in or towards payment of any sum owing by the Second Party to the First Party under this Agreement.

8.6 Indexation

The following definitions apply to this clause:

"**Current Index Value**" the value of the CPI for the month which is two months before the relevant anniversary of the date of this Agreement on which the Minimum Tariff and the Maximum Tariff are being adjusted;

"**Base Index Value**" the value of the CPI for May 2021;

"**Base Maximum Tariff**" means 0.1553 £/kWh;

"**Base Minimum Tariff**" means 0.121 £/kWh;

"**Index**" the CPI

- (a) The Seller shall adjust the Maximum Tariff and the Minimum Tariff to the Indexed Maximum Tariff and the Indexed Minimum Tariff on each anniversary of the date of this Agreement to reflect a notional increase or decrease in the cost of electricity indicated by the percentage increase or

decrease in the Consumer Prices Index during the previous year. Notwithstanding the provisions of this clause 8.6(a) the Minimum Tariff will be the higher of the Base Minimum Tariff or the Indexed Minimum Tariff for the relevant year.

- (b) The Indexed Maximum Tariff and the Indexed Minimum Tariff will be calculated in accordance with the following formula:

$$\text{Indexed Maximum Tariff/Indexed Minimum Tariff} = (A/B) \times C$$

Where:

A = the Current Index Value;

B = the Base Index Value; and

C = the Base Maximum Tariff/Base Minimum Tariff.

- (c) The Seller shall give the Corporation notice in writing of proposed changes.
- (d) If there is any change to the methods used to compile the CPI, including any change to the items from which the Index is compiled, or if the reference base used to compile the CPI changes, the calculation of the Indexed Maximum Tariff or the Indexed Minimum Tariff shall be made taking into account the effect of this change.
- (e) The Corporation and the Seller must use reasonable endeavours to agree within a reasonable time an alternative mechanism for setting the Indexed Maximum Tariff and the Indexed Minimum Tariff if either:
- (i) the Corporation and the Seller reasonably believes that any change referred to in part (d) of this clause would fundamentally alter the calculation of the Indexed Maximum Tariff or the Indexed Minimum Tariff in accordance with this clause and has given notice to the other party of that belief; or
 - (ii) it becomes impossible or impracticable to calculate the Indexed Maximum Tariff or the Indexed Minimum Tariff in accordance with this clause.
- (f) The alternative mechanism referred to part (e) of this clause may (where reasonable) include, or consist of, substituting an alternative index for the CPI.
- (g) The alternative mechanism for setting the Indexed Maximum Tariff or the Indexed Minimum Tariff shall be agreed between the Corporation and Seller at any time or, in the absence of such agreement, shall be referred for determination as a Dispute in accordance with clause 14.1.

9 CHANGE IN LAW

9.1 Changes in Law

- (a) Subject to Clause 9.1(c), in the event of any Change in Law, which affects this Agreement (including situations in which the provisions of this Agreement become inconsistent with any applicable Law or Directive or where any word or expression defined in this Agreement by reference to its meaning in any Law or Directive ceases to have a defined meaning in such Law or Directive), the Parties shall meet to negotiate in good faith (both acting reasonably) such amendments as are necessary so that, in so far as is possible, but subject to Clause 9.1(c), the Seller is no better or worse off as regards, rights, obligations, costs, liabilities and risks than immediately prior to the relevant Change in Law.
- (b) In the absence of agreement between the Parties under 9.1(a) above, the matter shall be referred to the expert in accordance with Clause 14 to determine such amendments as are necessary so that, in so far as is

possible, but subject to Clause 9.1(c), the Seller is no better or worse off as regards, rights, obligations, costs, liabilities and risks than immediately prior to the relevant Change in Law.

- (c) The Seller shall, notwithstanding any Change in Law, be entitled to all of the Benefits that relate to the Facility and to any electricity generated during the Operating Period or that otherwise relate to this Agreement and the Corporation undertakes to pay to the Seller any amounts it may receive in respect of such Benefits as soon as reasonably practicable in accordance with this Agreement.
- (d) Without prejudice to Clauses 9.1(a) and 9.1(b), neither Party shall be liable to the other Party for a failure to perform any obligation under this Agreement which becomes prohibited or impossible to perform by reason of a Change in Law.

10 FORCE MAJEURE

10.1 Force Majeure Events

The occurrence of any event or circumstance or any combination of events or circumstances not within the reasonable control, directly or indirectly, of the affected Party, which occurs after the Effective Date and which:

- (a) prevents or delays such Party from performing its obligations under this Agreement, where such Party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event or circumstance on such Party's ability to perform its obligations under this Agreement and to mitigate the consequences thereof; and
- (b) is not the direct or indirect result of a breach by such Party of any of its obligations under this Agreement

shall constitute "**Force Majeure**" (and each such event or circumstance shall be an "**Event of Force Majeure**").

Without limiting the generality of the foregoing, Force Majeure may (to the extent that it satisfies the requirements of paragraphs (a) and (b) above), include any of the following events or circumstances:

- (i) a strike, lockout or other industrial action that adversely affects the performance of either Party's obligations under this Agreement, but excluding a strike lockout or other industrial action of the affected Party's own employees;
- (ii) an act of the public enemy or terrorist, war declared or undeclared, threat of war, blockade, revolution, riot, insurrection, civil commotion, demonstration;
- (iii) sabotage or act of vandalism (but excluding sabotage or acts of vandalism by the affected Party's own employees, contractors or agents);
- (iv) lightning, earthquake, hurricane, storm, fire, flood, drought, accumulation of snow or ice and other extreme weather or environmental conditions; or
- (v) any failure of the Distribution System or the connection of the Facility thereto (except where such failure is due to an act or omission of the Seller),

which in each case prevents, or partially prevents the affected Party from performing its obligations under this Agreement, provided in each case that such an event could not have been prevented had the affected Party acted in accordance with Good Industry Practice.

10.2 **No Liability**

- (a) Save as otherwise provided in this Clause 10, a Party affected by Force Majeure shall be excused from performance and shall not be construed to be in default in respect of any obligation hereunder for so long as its failure to perform or delay in performing such obligation is due to that Force Majeure.
- (b) Notwithstanding that Force Majeure may exist, the provisions of this Clause 10 shall not excuse the failure of either Party to make any payment of money in accordance with its obligations under this Agreement.

10.3 **Notice and Remedy**

The Party affected by the Event of Force Majeure shall:

- (a) give written notice to the other Party, as soon as practicable after the occurrence of the Force Majeure, demonstrating that the Event of Force Majeure in question has reasonably prevented or delayed the affected Party's fulfilment of its obligations and stating the anticipated extent and likely duration of the Event of Force Majeure in question;
- (b) provide to the other Party a report, at least every month, in relation to the steps it is taking in accordance with Clause 10.3(c) and an update of the likely duration of the Event of Force Majeure; and
- (c) take all reasonable steps to minimise the impact of the Event of Force Majeure and, to remedy the effects of the Event of Force Majeure as soon as reasonably possible.

10.4 **Termination for Extended Events of Force Majeure**

If an Event of Force Majeure prevents or it is reasonably foreseeable that it will prevent a Party from fulfilling any material obligation under this Agreement for a continuous period in excess of twelve (12) months (including in the case where the Facility is in the process of being reconstructed or repaired), the Party not affected by the Force Majeure may terminate this Agreement at any time by written notice to the affected Party.

11 **TERMINATION**

11.1 **Events Constituting a Default**

Either Party (the "**Terminating Party**") may terminate this Agreement immediately by written notice to the other (the "**Other Party**") if anyone or more of the following has occurred and is continuing:

- (a) the other Party has failed to pay any amount due under this Agreement within forty (40) Business Days' of receiving notice requiring payment of such amount from the Terminating Party provided that such notice shall not apply to amounts in dispute while they remain disputed;
- (b) the other Party is in material breach of an undertaking, warranty or representation under this Agreement or commits a material breach of any of its obligations under this Agreement, which material breach is incapable of remedy (disregarding time of performance);
- (c) the other Party is in material breach of any of its material obligations under this Agreement, which material breach is capable of remedy and which the other Party has failed to remedy within forty (40) Business Days (or such longer period as is reasonably necessary for remedy) of having been required in writing by the Terminating Party to so remedy; or

to the extent that the Other Party seeks to challenge a termination notice pursuant to Clauses 11.1(a), (b), or (c), such termination notice shall not take effect until the outcome of the Dispute resolution is determined.

- (d) the other Party:
 - (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
 - (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; or
 - (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors.

11.2 **Rights Already Accrued**

Termination of this Agreement by either Party shall not affect any of the rights, remedies or obligations of either Party that have accrued prior to such termination or any of the provisions of this Agreement that are expressly or by implication intended to survive termination including the provisions for reimbursement at clauses 4.1 and 4.2.

11.3 **Consequences of Termination**

On the Expiry Date or the earlier termination of this Agreement for whatever reason each of the Parties shall immediately return to the other Party (or, if the other Party so requests by notice in writing, destroy) all of the other Party's property in its possession at the date of termination, including all of its confidential information, together with all copies of such information, and shall make no further use of such information.

11.4 **Termination of the Lease**

- (a) Notwithstanding the Term and termination provisions of this Agreement, the Parties acknowledge that this Agreement and the Lease shall run concurrently, and that this Agreement is coterminous with the Lease. Termination of the Lease shall therefore operate so as to automatically terminate this Agreement.
- (b) Termination of this Agreement under Clause 11.4(a) shall not give rise to a claim for damages or compensation by either Party under this Agreement, but may give rise to a claim for damages or compensation under the Lease.

12 **LIABILITY**

12.1 **Limitation of Liability**

- (a) Neither Party, nor any of its officers, employees or agents, shall in any circumstances whatsoever (except to the extent specifically provided otherwise in this Agreement) be liable to the other Party for:
 - (i) any losses arising as a result of any third party bringing a claim in respect of any nature whatsoever;
 - (ii) any loss of goodwill or reputation; or
 - (iii) any loss of profit, revenue, business, savings (anticipated or otherwise) or any other form of economic or indirect or consequential losses.
- (b) Notwithstanding Clause 12.1(a), nothing in this Agreement shall exclude or limit a Party's liability:
 - (i) for death or personal injury caused by that Party's negligence or for fraudulent misrepresentation; or

- (ii) to the other Party under or in connection with the Lease.
- (c) With the exception to any amounts payable pursuant to Clauses **Error! Reference source not found.** and 12.1(b), neither Party's liability under or in connection with this Agreement shall in any circumstances exceed £1,000 for any one incident or series of related incidents, provided that this Clause 12.1(c) shall not limit either Party's ability to sue for debts owed under this Agreement. This Clause 12.1(c) shall not apply in case of wilful default.

12.2 Liability for Meter Operator

The Seller shall, subject to the other provisions of this Clause, be liable to the Corporation for all reasonable costs and expenses suffered or necessarily incurred by the Corporation as a direct result of any wrongful act or omission of any meter operator engaged by the Seller, save to the extent that such acts or omissions were caused by any acts or omissions of the Corporation.

12.3 Industry Charges

The Seller acknowledges and agrees that it shall be solely responsible for any costs, charges and expenses arising from the delivery of electricity generated by the Facility on to the Distribution System, and shall pay the charges relating to the connection of the Facility to and the delivery of electricity generated by the Facility onto the Distribution System.

13 ASSIGNMENT AND TRANSFER

- (a) Subject to Clause 13(b), neither Party may transfer or assign any of its rights or obligations under this Agreement nor enter into any sub-contracted relationships with any person relating to the performance of its obligations under this Agreement or delegate the performance of any of its obligations under this Agreement without the prior written consent of the other Party.
- (b) Unless agreed otherwise by the Parties, if the estate of either Party under the Lease are assigned to a third party in accordance with clause 16 of the Lease, the rights and obligations of that Party under this Agreement shall also be transferred by way of novation to such third party. The terms of the novation agreement are to be agreed between the Parties in accordance with Clause 17.4 and the assigning Party under the Lease will be responsible (at its own cost) for procuring:
 - (i) the agreement of such third party to the terms of the novation agreement; and
 - (ii) the due execution and delivery of the novation agreement by such third party.

14 DISPUTE RESOLUTION

14.1 Dispute Resolution

- (a) All disputes or matters in difference of whatever nature arising out of or in connection with this Agreement (each a "**Dispute**") between the Parties shall be resolved in accordance with the terms of this Clause 14.
- (b) Any Dispute shall be notified by the non-defaulting Party to the other and then in the first instance be referred to the senior management for discussion and resolution. If the Dispute is not resolved within thirty (30) Days of such referral, then:
 - (i) if the Dispute relates primarily to technical matters concerning the Facility or the electricity industry rather than legal interpretation of law or this Agreement, the Dispute may at any time during the next twenty (20) Business Days be referred by either Party (by notice to

the other) to an expert and Clause 14.2 shall apply. In the absence of such a reference the Dispute shall be determined in accordance with Clause 17.8;

- (ii) if the Dispute relates to a matter expressly provided in this Agreement to be determined by an expert, the Dispute shall be referred to an expert and Clause 14.2 shall apply; and
- (iii) otherwise, the Dispute shall be determined in accordance with Clause 17.8.

14.2 Any Dispute referred to an expert pursuant to Clause 14.1(a) shall be referred to an expert to be agreed between the Parties or in default of agreement appointed by the President for the time being of the Electricity Supply Industry Arbitration Association of England and Wales. All references to expert determination shall be conducted in accordance with Centre for Effective Dispute Resolution's Model Expert Determination Procedure for the time being in force. The expert shall act as expert and not as arbitrator. Save in the case of fraud or manifest error, any expert's determination made pursuant to this Clause 14.2 shall be final and binding between the Parties and enforceable as a contractual obligation in any court. Each of the Parties shall bear the whole of its own costs and one half of the costs of the expert and any independent advisers to the expert, unless the expert (in his discretion) determines otherwise.

14.3 Nothing in this Clause shall prevent either Party from having recourse to a court of competent jurisdiction for the purpose of seeking a preliminary injunction or such other provisional judicial relief as is reasonably necessary.

15 **CONFIDENTIALITY AND ANNOUNCEMENTS**

15.1 **General Restriction**

Subject to the exceptions provided in Clause 15.2 and 15.3, neither of the Parties shall, from the Effective Date until two (2) years following the Expiry Date or earlier termination of this Agreement, without the consent of the other Party, divulge or suffer or permit its officers, employees, agents or contractors to divulge to any person any of the contents of this Agreement or any commercially confidential information relating to this Agreement or to the negotiations concerning this Agreement which may come to a Party's knowledge in the course of such negotiations or otherwise concerning the operations, contracts, commercial or financial arrangements or affairs of the other Party.

15.2 **Exceptions**

The restrictions imposed by Clause 15.1 shall not apply (but in each case only to the extent necessary) to the disclosure of any information:

- (a) which now or hereafter comes into the public domain otherwise than as a result of a breach of this Agreement or which is obtainable from sources other than the Parties;
- (b) which is required under a Law or a Directive to be disclosed to any person who is authorised by such Law or Directive to receive the same;
- (c) which is required to be disclosed by the regulations of any recognised exchange upon which the share capital of the Party making the disclosure is or is proposed to be from time to time listed or dealt in;
- (d) which is required to be given to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing Party is party;
- (e) which is given by the disclosing Party, or any other company that is from time to time a subsidiary or holding company of the disclosing Party or a subsidiary of any such holding company ("subsidiary" and "holding

company” having the meanings set out in section 1159 Companies Act 2006) or Affiliate, to any of its officers, employees or contractors who require the same to enable them properly to carry out their duties provided such persons are bound by obligations of confidentiality equivalent to those in this Clause 15;

- (f) which is given to any consultants, banks, financiers, insurers or advisors to the disclosing Party, provided such persons are bound by obligations of confidentiality equivalent to those in this Clause 15;
- (g) which is given to any actual or prospective lender to the disclosing Party or acquirer of an interest in the disclosing Party or their Affiliates and their respective personnel and advisors, provided such persons are bound by obligations of confidentiality equivalent to those in this Clause 15.

15.3 The Seller shall be entitled to incorporate the existence of this Agreement into its marketing and publicity material without the written consent of the Corporation.

15.4 Without prejudice to any other rights or remedies which a Party may have, the Parties acknowledge and agree that damages would not be an adequate remedy for any breach of this Clause 15 and the remedies of injunction, specific performance and other equitable relief are appropriate for any threatened or actual breach of any such provision.

16 **FREEDOM OF INFORMATION**

16.1 The Seller acknowledges that the Corporation is subject to the requirements of the Freedom of Information Act 2000 (“**FOIA**”) and the Environmental Impact Regulations 2004 (“**EIR**”). The Seller shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Corporation to enable the Corporation to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Corporation all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Corporation with a copy of all Information (as meant by section 84 of the FOIA) belonging to the Corporation requested in the Request For Information which is in its possession or control in the form that the Corporation requires within five (5) Working Days (or such other period as the Corporation may reasonably specify) of the Corporation's request for such Information; and
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Corporation.

16.2 The Seller acknowledges that the Corporation may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Seller. The Corporation shall take reasonable steps to notify the Seller of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Corporation shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

17 MISCELLANEOUS PROVISIONS

17.1 Waiver of Rights

- (a) Where either Party grants the other any indulgence, forbearance or extension of time or does not ascertain or exercise any of its rights or remedies, or delays in doing so, the rights and remedies of that Party in respect of this Agreement shall be in no way diminished, waived or extinguished.
- (b) If either Party waives any breach of this Agreement, it will still be entitled to enforce that provision subsequently and that waiver shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

17.2 Notices

- (a) Save as otherwise expressly provided in this Agreement, any notice or other communication to be given by one Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall be given by letter delivered by hand or sent by first class prepaid post (airmail if overseas) or facsimile or email to the relevant addresses set out below (or as otherwise notified by either party in writing):
 - (i) For the Seller:
Repowering Limited
Acting on behalf of Aldgate Solar Power
8th Floor, Blue Star House
234-244 Stockwell Road SW9 9SP
Attention: Project Manager
 - (ii) For the Corporation:
Barbican Estate & Property Services
Community & Children's Services
Barbican Estate Office
3 Lauderdale Place
Barbican
London EC2Y 8EN
Attention: Director, Barbican Estate & Property Services
- (b) A notice served in accordance with Clause 17.2(a) above shall be deemed to have been received:
 - (i) in the case of delivery by hand, when delivered; or
 - (ii) in the case of first class prepaid post, on the second Business Day following the day of posting or if sent airmail from overseas on the fifth Business Day following the day of posting; or
 - (iii) in the case of facsimile, on acknowledgement by the addressee's facsimile receiving equipment where such acknowledgement occurs before 17:00 hours on the day of acknowledgement and in any other case at 09:30 on the day following the day of acknowledgement; or
 - (iv) in the case of email, on the date on which the respective email was received provided that where an automated out-of-office message is received in response to a notice served by e-mail, the notice shall not have been received.

17.3 Severance

If at any time any part of this Agreement (including any one or more of the Clauses of this Agreement or any sub-Clause or paragraph or any part of one or more of

these Clauses) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this Agreement and the validity or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.

17.4 Further Assurance

- (a) Each Party agrees from time to time to do and perform such other and further acts and execute and deliver any and all such other instruments as may be required by law or reasonably requested by the other Party to establish, maintain and protect the rights and remedies of the other Party and to carry out and effect the intent and purpose of this Agreement.
- (b) At any time after the date of this Agreement the Parties shall, and shall use all reasonable endeavours, to procure that any necessary third party shall execute such documents and do such acts and things as that Party may reasonably require for the purpose of giving to that Party the full benefit of all the provisions of this Agreement.

17.5 Entire Agreement

Other than the terms of the Lease, this Agreement contains the entire agreement between the Parties in relation to its subject matter. Each of the Parties irrevocably and unconditionally waives any right it may have to claim damages for, or to rescind this Agreement because of, breach of any warranty not expressly contained in this Agreement, or any misrepresentation whether or not contained in this Agreement, unless such misrepresentation was made fraudulently.

17.6 Counterparts

This Agreement may be executed in any number of counterparts. Provided that both the Parties enter into the Agreement in that way, this has the same effect as if the signatures on the counterparts were on a single copy of the Agreement.

17.7 Third Party Rights

A person who is not a party to this Agreement (including any employee, officer, agent, representative or subcontractor of either party) shall have no rights, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise, to enforce any term of this Agreement.

17.8 Governing Law and Jurisdiction

This Agreement shall be governed by and construed in all respects in accordance with the laws of England and the Parties agree (subject to Clause 14) to the exclusive jurisdiction of the English Courts.

17.9 No Partnership

Nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the Parties and no employee of one Party shall be deemed to be or have become an employee of the other Party.

EXECUTED AS A DEED by the parties or their authorised representatives and Delivered the day and year first above written

The Common Seal of **THE MAYOR AND)**
COMMONALTY AND CITIZENS OF THE)
CITY OF LONDON was hereunto affixed in)
the presence of:

Examined		
Ctee/Court		
Date		
Passed for Sealing		
Fund		
Power		
Seal Folio No.		

EXECUTED as a Deed and duly authorised for)
and on behalf of **Aldgate Solar Power Limited**)

.....
Signature of Director

.....
Signature of Director

SCHEDULE 1
Facility Information

FACILITY GENERAL SPECIFICATION

The details and technical specifications of the Facility shall be as follows:

Description of Facility:	Solar Photo Voltaic System
Location of Facility:	Middlesex Street Estate, Gravel Lane, Spitalfields, London E1 7AD
Capacity of Facility to generate electricity:	36.80 kWp
Delivery Point:	
Metering Equipment Meter Reference No.	See table below for breakdown of different meters installed.

Table 2

Address/Block	Corporation MPAN	Generation Meter Serial Number	Distribution Connection Meter Serial Number
Petticoat Tower	1200010129041		212399339