

DATED

LEASE

relating to

[description of the property]

between

EAST SUSSEX COUNTY COUNCIL

and

CONTENTS

CLAUSE

1. Interpretation.....	3
2. Grant.....	7
3. Ancillary rights	8
4. Rights excepted and reserved.....	10
5. Third Party Rights	11
6. The Annual Rent.....	12
7. Landlord's warranties	12
8. Insurance.....	12
9. Rates and taxes.....	15
10. Utilities.....	15
11. VAT	15
12. Default interest and interest.....	16
13. Costs.....	16
14. Compensation on vacating	17
15. Set-off	17
16. Registration of this lease	17
17. Assignments.....	17
18. Underlettings	18
19. Charging.....	18
20. Prohibition of other dealings	18
21. Registration and notification of dealings and occupation	18
22. Closure of the registered title of this lease	19
23. Repairs.....	19
24. Alterations and signs	20
25. Returning the Property to the Landlord.....	21

26.	Use.....	21
27.	Regulations	23
28.	Compliance with laws and notices	23
29.	Encroachments, obstructions and acquisition of rights	24
30.	Breach of repair and maintenance obligations	25
31.	Indemnity.....	25
32.	Landlord’s covenant for quiet enjoyment	26
33.	Termination	26
34.	FIT Payments and use of electricity generated.....	27
35.	Guarantee and indemnity	27
36.	Re-entry and forfeiture.....	28
37.	Joint and several liability.....	28
38.	Entire agreement and exclusion of representations	29
39.	Notices, consents and approvals	29
40.	Governing law	30
41.	Jurisdiction	30
42.	Exclusion of sections 24-28 of the LTA 1954.....	30
43.	Contracts (Rights of Third Parties) Act 1999.....	31

SCHEDULE

Schedule 1	The Equipment	32
Schedule 2	Guarantee and indemnity.....	33
1.	Guarantee and indemnity.....	33
2.	Guarantor’s liability	33
3.	Variations and supplemental documents.....	34
4.	Guarantor to take a new lease or make payment.....	35
5.	Rent at the date of forfeiture or disclaimer.....	36
6.	Payments in gross and restrictions on the Guarantor	36
7.	Other securities.....	36

LR1. Date of lease

.....2018

LR2. Title number(s)

LR2.1 Landlord's title number(s)

[INSERT TITLE NUMBER(S) OR LEAVE BLANK IF NONE]

LR2.2 Other title numbers

[TITLE NUMBER(S)] OR [None]

LR3. Parties to this lease

Landlord

EAST SUSSEX COUNTY COUNCIL of County Hall, St Anne's Crescent, Lewes, East Sussex BN7 1UE

Tenant

[[COMPANY] NAME]

[[REGISTERED OFFICE] ADDRESS]

[COMPANY REGISTERED NUMBER]

Guarantor

[[COMPANY] NAME]

[[REGISTERED OFFICE] ADDRESS]

[COMPANY REGISTERED NUMBER]

LR4. Property

In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.

See the definition of "Property" in clause 1.1 of this lease.

LR5. Prescribed statements etc.

LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.

None.

LR5.2 This lease is made under, or by reference to, provisions of:

None.

LR6. Term for which the Property is leased

The term as specified in this lease at clause 1.1 in the definition of "Contractual Term".

LR7. Premium

[None]

LR8. Prohibitions or restrictions on disposing of this lease

This lease contains a provision that prohibits or restricts dispositions.

LR9. Rights of acquisition etc.

LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land

None.

LR9.2 Tenant's covenant to (or offer to) surrender this lease

None.

LR9.3 Landlord's contractual rights to acquire this lease

None.

LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property

None.

LR11. Easements

LR11.1 Easements granted by this lease for the benefit of the Property

The easements as specified in clause 3 of this lease.

LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property

The easements as specified in clause 4 of this lease.

LR12. Estate rentcharge burdening the Property

None.

LR13. Application for standard form of restriction

The Parties to this lease apply to enter the following standard form of restriction [against the title of the Property] [against title number]

None.

LR14. Declaration of trust where there is more than one person comprising the Tenant

[OMIT ALL INAPPLICABLE STATEMENTS]

[The Tenant is more than one person. They are to hold the Property on trust for themselves as joint tenants.]

[The Tenant is more than one person. They are to hold the Property on trust for themselves as tenants in common in equal shares.]

[The Tenant is more than one person. They are to hold the Property on trust [COMPLETE AS NECESSARY].]

This lease is dated2018

Parties

- (1) EAST SUSSEX COUNTY COUNCIL of County Hall, St Anne's Crescent, Lewes, East Sussex BN7 1UE (**Landlord**)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] OR [INDIVIDUAL NAME] of [ADDRESS] (**Tenant**)
- (3) [[FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] OR [INDIVIDUAL NAME] of [INDIVIDUAL ADDRESS]] (**Guarantor**)

Agreed terms

1. Interpretation

The following definitions and rules of interpretation apply in this lease.

1.1 Definitions:

Act of Insolvency:

- a) the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Tenant or any guarantor;
- b) the making of an application for an administration order or the making of an administration order in relation to the Tenant or any guarantor;
- c) the giving of any notice of intention to appoint an administrator, or the filing at court of the prescribed documents in connection with the appointment of an administrator, or the appointment of an administrator, in any case in relation to the Tenant or any guarantor;
- d) the appointment of a receiver or manager or an administrative receiver in relation to any property or income of the Tenant or any guarantor;

- e) the commencement of a voluntary winding-up in respect of the Tenant or any guarantor, except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies;
- f) the making of a petition for a winding-up order or a winding-up order in respect of the Tenant or any guarantor;
- g) the striking-off of the Tenant or any guarantor from the Register of Companies or the making of an application for the Tenant or any guarantor to be struck-off;
- h) the Tenant or any guarantor otherwise ceasing to exist (but excluding where the Tenant or any guarantor dies);
- i) the making of an application for a bankruptcy order, the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against the Tenant or any guarantor; or
- j) [the levying of any execution or other such process on or against, or taking control or possession of, the whole or any part of the Tenant's assets.]

The paragraphs above shall apply in relation to a partnership or limited partnership (as defined in the Partnership Act 1890 and the Limited Partnerships Act 1907 respectively) subject to the modifications referred to in the Insolvent Partnerships Order 1994 (*SI 1994/2421*) (as amended), and a limited liability partnership (as defined in the Limited Liability Partnerships Act 2000) subject to the modifications referred to in the Limited Liability Partnerships Regulations 2001 (*SI 2001/1090*) (as amended).

Act of Insolvency includes any analogous proceedings or events that may be taken pursuant to the legislation of another jurisdiction in relation to a tenant or guarantor incorporated or domiciled in such relevant jurisdiction.

Annual Rent: a peppercorn (if demanded)

Building: [DESCRIPTION OF THE BUILDING] shown edged blue on Plan[s] [2].

CDM Regulations: the Construction (Design and Management) Regulations 2015 (*SI 2015/51*).

Central FIT Register: the register maintained by Ofgem as defined in the SLCS.

Common Parts: the accessways, stairs, corridors, lobbies [and basement] within the Building.

Contractual Term: a term of twenty five (25) years beginning on and including the date of this lease.

Default Interest Rate: 4 % per annum above the Interest Rate.

Equipment: the solar photovoltaic equipment listed in Schedule 1 together with any permitted additional or replacement equipment which the Tenant may from time to time

install on the Property and any further or additional Equipment which may be approved by the Landlord.

FIT Order: Feed-in Tariffs Order 2012 (*SI 2012/2782*).

FIT payments: any payments (including tariffs) payable under the FIT Order and the SLCS in respect of the renewable energy generated by the Equipment (whether exported to the Grid or not).

IEE: Institution of Electrical Engineers which forms part of the Institution of Engineering and Technology

Grid: the system for transmission of electricity (both local and high voltage) in England and Wales as operated by persons licensed by Ofgem.

Insured Risks: means fire, explosion, lightning, earthquake, storm, flood, bursting and overflowing of water tanks, apparatus or pipes, impact by aircraft and articles dropped from them, impact by vehicles, subsidence, ground slip, heave, riot and civil commotion and **Insured Risk:** means any one of the Insured Risks.

Interest Rate: the base rate from time to time of Natwest Bank plc, or if that base rate stops being used or published then a comparable commercial rate reasonably determined by the Landlord.

LTA 1954: Landlord and Tenant Act 1954.

Ofgem guidance: The guidance issued by Ofgem from time to time relating to the FIT Order, the duties imposed by the FIT Order and the SLCS, the operation of the Central FIT Register and any other matters relating to FIT payments.

Permitted Use: for the erection and operation of the Equipment in order to generate electricity.

Plan 1: the plan[s] attached to this lease [each of which is] marked "Plan 1".

Plan 2: the plan[s] attached to this lease [each of which is] marked "Plan 2".

Property: the airspace immediately above that part of the roof of the Building as is shown coloured [red] on Plan 1 up to a height of [NUMBER] metres above the roof surface (as measured perpendicular to the angle of that roof surface) but excluding:

- a) any part of the roof of the Building; and
- b) any structural part of the Building.

Rent Payment Dates: every anniversary of the date of this lease **Reservations:** all of the rights excepted, reserved and granted to the Landlord by this lease.

Service Media: [lifts and lift machinery and equipment and] all media for the supply or removal of heat, electricity, gas, water, sewage, energy, telecommunications, data and all other services and utilities and all structures, machinery and equipment ancillary to those media.

SLCS: The Standard Licence Conditions of Electricity Supply Licences as modified to provide for FIT payments and published by Ofgem from time to time.

Third Party Rights: all rights, covenants and restrictions affecting the Building including the matters referred to at the date of this lease in [the property register] [and [entry][entries] [STATE RELEVANT ENTRY NUMBER(S)] of the charges register] of title number [NUMBER] **OR** [DESCRIPTION OF RELEVANT MATTERS AFFECTING AN UNREGISTERED REVERSION].

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

- 1.2 A reference to this **lease**, except a reference to the date of this lease or to the grant of this lease, is a reference to this deed and any deed, licence, consent, approval or other instrument supplemental to it.
- 1.3 A reference to the **Landlord** includes a reference to the person entitled to the immediate reversion to this lease. A reference to the **Tenant** includes a reference to its successors in title and assigns. A reference to a **guarantor** is a reference to any guarantor of the tenant covenants of this lease including a guarantor who has entered into an authorised guarantee agreement.
- 1.4 In relation to any payment, a reference to a **fair proportion** is to a fair proportion of the total amount payable, determined conclusively (except as to questions of law) by the Landlord.
- 1.5 The expressions **landlord covenant** and **tenant covenant** each has the meaning given to it by the Landlord and Tenant (Covenants) Act 1995.
- 1.6 Unless the context otherwise requires, references to the **Building**, the **Common Parts** and the **Property** are to the whole and any part of them or it.
- 1.7 The expression **neighbouring property** does not include the Building.
- 1.8 A reference to the **term** is to the Contractual Term [and statutory continuation of this lease].
- 1.9 A reference to the **end of the term** is to the end of the term however it ends.
- 1.10 References to the **consent** of the Landlord are to the consent of the Landlord given in accordance with clause 39.5 and references to the **approval** of the Landlord are to the approval of the Landlord given in accordance with clause 39.6.
- 1.11 A **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in [England][Wales].

- 1.12 [Unless otherwise specified] a reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under it and all orders, notices, codes of practice and guidance made under it.
- 1.13 A reference to laws in general is a reference to all local, national and directly applicable supra-national laws as amended, extended or re-enacted from time to time and shall include all subordinate laws made from time to time under them and all orders, notices, codes of practice and guidance made under them.
- 1.14 Any obligation on a party not to do something includes an obligation not to agree to or suffer that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.
- 1.15 Unless the context otherwise requires, any words following the terms **including** or **include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.16 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.17 A reference to **writing** or **written** excludes fax and e-mail.
- 1.18 Unless the context otherwise requires, references to clauses and Schedules are to the clauses and Schedules of this lease and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.19 Clause, Schedule and paragraph headings shall not affect the interpretation of this lease.
- 1.20 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.21 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

2. Grant

- 2.1 At the request of the Guarantor, the **OR** The Landlord lets with full title guarantee the Property to the Tenant for the Contractual Term.

2.2 The grant is made together with the ancillary rights set out in clause 3, excepting and reserving to the Landlord the rights set out in clause 4, and subject to the Third Party Rights.

2.3 The grant is made with the Tenant paying the following as rent to the Landlord:

- (a) the Annual Rent and all VAT in respect of it;
- (b) all interest payable under this lease; and
- (c) all other sums due under this lease.

3. Ancillary rights

3.1 The Landlord grants the Tenant the following rights (the **Rights**):

- (a) the right to support for the Equipment from those parts of the structure of the Building to which the Equipment is attached or on which it rests (in each case with permission given under or in accordance with this lease);
- (b) the right [between the hours of [TIME] and [TIME] on [weekdays/weekends]] [at all times] to use those Common Parts as are shown hatched red on Plan [2] for the purposes of [vehicular and] pedestrian access between the Property and the public highway known as [INSERT NAME OF ADJACENT PUBLIC HIGHWAY] [and for access to the washrooms referred to in clause 3.1(c)] [and to access and read the meters which monitor the electricity generated by the Equipment or exported to the Grid];
- (c) [the right [between the hours of [TIME] and [TIME] on [weekdays/weekends]] to use the washrooms shown hatched green on Plan [2];]
- (d) the right, provided the Tenant complies with clause 3.9, to:
 - (i) install in the Common Parts such electricity cables and ancillary equipment as are required in order to transmit electricity to and from the Equipment, either as part of the electrical supply within the Building or in order to export to the Grid electricity generated by the Equipment;
 - (ii) access those cables and ancillary equipment (on reasonable prior notice to the Landlord, save in the case of emergency) in order to inspect, repair and maintain them;
- (e) [the right, provided the Tenant complies with clause 3.9, to use and to connect into any Service Media at the Building that satisfy all of the following tests:
 - (i) they belong to the Landlord;
 - (ii) they relate to the transmission of electricity within the Building; and

- (iii) they are in existence at the date of this lease or are installed or constructed during the period of [INSERT AGREED PERIOD] years from commencement of the Contractual Term;]
 - (f) the right, provided the Tenant complies with clause 3.9, to attach the Equipment to or rest the Equipment on that part of the roof of the Building as lies immediately below the Property; [and]
 - (g) [the right (subject to payment in accordance with clause 10.1) to the supply of electricity to the Property;] [and]
 - (h) [ANY OTHER SPECIFIC RIGHTS THAT NEED TO BE GRANTED].
- 3.2 The Rights granted in clause 3.1(b), clause 3.1(c) and clause 3.1(e) are granted in common with the Landlord and any other person authorised by the Landlord.
- 3.3 The Rights are granted subject to the Third Party Rights insofar as the Third Party Rights affect the Common Parts and the Tenant shall not do anything that may interfere with any Third Party Right.
- 3.4 The Tenant shall exercise the Rights only in connection with its use of the Property for the Permitted Use.
- 3.5 The Tenant shall exercise the Rights in accordance with any regulations made by the Landlord as mentioned in clause 27.
- 3.6 The Tenant shall comply with all laws relating to its use of the Common Parts pursuant to the Rights.
- 3.7 The Landlord may, at its discretion, change the route of any means of access to or egress from the Property through the Common Parts so long as a means of access and egress is maintained at all times, save in case of emergency.
- 3.8 In relation to the Right mentioned in clause 3.1(e), the Landlord may, at its discretion, re-route or replace any such Service Media and that Right shall then apply in relation to the Service Media as re-routed or replaced.
- 3.9 In relation to the Rights mentioned in clause 3.1(d), clause 3.1(e) and clause 3.1(f) the Tenant may only exercise those Rights:
 - (a) if the Landlord has first granted consent for the works; and
 - (b) in accordance with the terms of that consent.
- 3.10 Except as mentioned in this clause 3, neither the grant of this lease nor anything in it confers any right over the Common Parts or any other part of the Building or any

neighbouring property and section 62 of the Law of Property Act 1925 does not apply to this lease.

4. Rights excepted and reserved

4.1 The following rights (**the Reservations**) are excepted and reserved from this lease to the Landlord for the benefit of the Building and the Landlord's Neighbouring Property [and to the extent possible for the benefit of any neighbouring or adjoining property in which the Landlord acquires an interest during the term]:

- (a) all rights of light and air over the Property as exist at the date of this lease or are subsequently enjoyed at any time during the term;
- (b) a right of protection from the Equipment for that part of the roof of the Building beneath the Equipment;
- (c) [Subject to clauses clause 26.7 to clause **Error! Reference source not found.**] at any time during the term, the full and free right to develop the Landlord's Neighbouring Property [and any neighbouring or adjoining property in which the Landlord acquires an interest during the term] as the Landlord may think fit;
- (d) the right to erect scaffolding at the Building and attach it to any part of the Building in connection with any of the Reservations;
- (e) [the right, without payment, to use such amounts of the electricity generated by the Equipment as the Landlord (or its tenants or other occupiers) shall require for use in connection with the Building [and/or the Landlord's Neighbouring Property]];
- (f) the right to re-route any means of access to or egress from the Property or the Building and to change the areas over which the Rights mentioned in clause 3.1(b) are exercised; [and]
- (g) the right to re-route and replace any Service Media over which the Rights mentioned in clause 3.1(e) are exercised; [and]
- (h) [ANY OTHER SPECIFIC RIGHTS THAT NEED TO BE RESERVED].

notwithstanding that the exercise of any of the Reservations or the works carried out pursuant to them result in a reduction in the flow of light or air to the Property or the Common Parts or loss of amenity for the Property or the Common Parts provided that they do not materially adversely affect the use and enjoyment of the Property for the Permitted Use.

4.2 The Landlord also reserves the right to enter the Property:

- (a) to inspect, repair, maintain, install, construct, re-route or replace:
 - (i) the roof and any structural parts of the Building;

- (ii) any Service Media; and
 - (b) for any other purpose mentioned in or connected with:
 - (i) this lease;
 - (ii) the Reservations; and
 - (iii) the Landlord's interest in the Property, the Building or the Landlord's Neighbouring Property.
- 4.3 The Reservations may be exercised by the Landlord and by anyone else who is or becomes entitled to exercise them, and by anyone authorised by the Landlord.
- 4.4 The Tenant shall allow all those entitled to exercise any right to enter the Property, to do so with their workers, contractors, agents and professional advisors, and to enter the Property at any reasonable time (whether or not during usual business hours) and, except in the case of an emergency, after having given reasonable notice (which need not be in writing) to the Tenant.
- 4.5 The Tenant shall (at its own expense) take such steps as are necessary (including temporarily suspending operation of or removing or relocating some or all of the Equipment) in order to permit the Landlord to exercise the Reservations mentioned in clause 4.2.
- 4.6 Any party exercising any of the Reservations shall use all reasonable endeavours to minimise any consequent disruption or interruption to the continued operation of the Equipment for the Permitted Use.
- 4.7 No party exercising any of the Reservations, nor its workers, contractors, agents and professional advisors, shall be liable to the Tenant or person at the Property for any loss, damage, injury, nuisance or inconvenience arising by reason of that party exercising any of the Reservations except for:
 - (a) physical damage to the Property or the Equipment; or
 - (b) any loss, damage, injury, nuisance or inconvenience in relation to which the law prevents the Landlord from excluding liability.

5. Third Party Rights

- 5.1 The Tenant shall comply with all obligations on the Landlord relating to the Third Party Rights insofar as those obligations relate to the Property and shall not do anything (even if otherwise permitted by this lease) that may interfere with any Third Party Right.
- 5.2 The Tenant shall allow the Landlord and any other person authorised by the terms of any Third Party Right to enter the Property in accordance with its terms.

6. The Annual Rent

- 6.1 The Tenant shall pay the Annual Rent and any VAT in respect of it in advance on or before the Rent Payment Dates.
- 6.2 The first instalment of the Annual Rent and any VAT in respect of it shall be made on [the date of this lease if demanded

7. Landlord's warranties

- 7.1 The Landlord warrants that the Landlord has good title to grant this lease;
- 7.2 The Landlord does not warrant that:
 - (a) the Property or the roof of the Building below the Property is suitable for the Equipment or the Permitted Use;
 - (b) any planning permission required for the installation or operation of the Equipment has been or will be obtained by the Landlord;
 - (c) any other consent required for the installation or operation of the Equipment has been or will be obtained by the Landlord.

8. Insurance

- 8.1 Subject to clause 8.2, the Landlord shall (at its own expense) keep the Building other than any plate glass insured against loss or damage by the Insured Risks for the sum which the Landlord considers to be its full reinstatement cost (taking inflation of building costs into account). The Landlord shall not be obliged to insure the Equipment.
- 8.2 The Landlord's obligation to insure is subject to:
 - (a) any exclusions, limitations, excesses and conditions that may be imposed by the insurers; and
 - (b) insurance being available in the London insurance market on reasonable terms acceptable to the Landlord.
- 8.3 The Tenant shall pay to the Landlord on demand any increase in the premium payable by the Landlord to insure the Building which increase is attributable (on a fair and reasonable basis) to the presence of the Equipment on the Building.
- 8.4 The Tenant shall (in relation to any policy of insurance relating to the Building of which the Tenant has been given details in writing):
 - (a) immediately inform the Landlord if any matter occurs in relation to the Tenant or the Property that the insurer or underwriter may treat as material in deciding

whether or on what terms to insure or to continue to insure the Building and shall give the Landlord notice of that matter;

- (b) not do or omit anything as a result of which:
 - (i) that policy may become void or voidable or otherwise prejudiced;
 - (ii) the payment of any policy money may be withheld; or
 - (iii) (unless the Tenant has previously notified the Landlord and has paid any increased or additional premium) any increased insurance or additional premium may become payable;
- (c) comply at all times with the requirements and recommendations of the insurers relating to the Property and the use by the Tenant of the Common Parts;
- (d) give the Landlord immediate notice of the occurrence of any damage or loss relating to the Property arising from an Insured Risk;
- (e) not effect any insurance of the Property (except any of the Equipment at the Property), but if it becomes entitled to the benefit of any insurance proceeds in respect of the Property (other than the Equipment) pay those proceeds or cause them to be paid to the Landlord promptly; and
- (f) pay the Landlord an amount equal to any insurance money that the insurers of the Building refuse to pay (in relation to the Building) by reason of any act or omission of the Tenant or any undertenant, their workers, contractors or agents or any person at the Property or the Common Parts with the actual or implied authority of any of them.

8.5 The Tenant shall (at its own expense):

- (a) keep the Equipment insured with a reputable insurer for its full reinstatement cost against the Insured Risks; and
- (b) insure against public liability (to a minimum cover of £[AMOUNT]) arising from the use and operation of the Equipment or the Rights for the Permitted Use.

[The Tenant shall maintain both insurance policies with a reputable insurer and, if so requested by the Landlord (not more frequently than annually) shall produce to the Landlord evidence of the insurance and of payment of the current premium.]

8.6 The Landlord shall, subject to obtaining all necessary planning and other consents (which the Landlord agrees to use its reasonable endeavours to obtain), use all insurance money received in connection with any damage to the Building (other than for loss of rent) to repair the damage for which the money has been received or (as the case may be) in rebuilding the Building. The Landlord shall not be obliged to:

- (a) provide a Building identical in layout or design so long as the size and orientation of the part of the roof above which the Property was situated is reasonably equivalent to that of the Building as at the date of this lease.
 - (b) repair or rebuild the Building after a notice has been served pursuant to clause 8.8 or clause 8.9. In such circumstances the insurance money received shall belong to the Landlord in full.
- 8.7 [If the Property is damaged or destroyed by a risk against which the Landlord is obliged to insure so as to be unfit for occupation and use, or if the Common Parts are damaged or destroyed by a risk against which the Landlord is obliged to insure so as to make the Property inaccessible or unusable then, unless the policy of insurance in relation to the Property or the Common Parts has been vitiated in whole or in part in consequence of any act or omission of the Tenant, any undertenant or their respective workers, contractors or agents or any other person on the Property or the Common Parts with the actual or implied authority of any of them, payment of the Annual Rent, or a fair proportion of it according to the nature and extent of the damage, shall be suspended until the Property has been reinstated and made fit for occupation and use or the Common Parts have been reinstated so as to make the Property accessible or useable (as the case may be), or until the end of [three] years from the date of damage or destruction, if sooner.]
- 8.8 If, following damage to or destruction of the Building, the Landlord considers that it is impossible or impractical to reinstate the Building, the Landlord may terminate this lease by giving notice to the Tenant. On giving notice this lease shall determine but this shall be without prejudice to any right or remedy [of the Landlord] in respect of any breach of the [tenant] covenants of this lease. The Landlord shall not be responsible for any consequential, direct or indirect losses of the Tenant (including loss of profit) incurred between the date of damage or destruction of the Building and its reinstatement or the termination of this lease in accordance with the provisions hereof (whichever shall first occur)
- 8.9 [Provided that the Tenant has complied with its obligations in this clause] the Tenant may terminate this lease by giving notice to the Landlord if, following damage or destruction of the Building or the Common Parts by an Insured Risk, the Building has not been reinstated so as to render the Property once more fit for occupation and use or the Common Parts have not been reinstated so as to make the Property accessible within [three] years after the date of damage or destruction. On giving this notice this lease shall determine but this shall be without prejudice to any right or remedy [of the Landlord] in respect of any breach of the [tenant] covenants of this lease.

9. Rates and taxes

- 9.1 The Tenant shall pay all present and future rates, taxes and other impositions and outgoing payments payable in respect of the Property, its use and any works carried out there, except:
- (a) any taxes payable by the Landlord in connection with any dealing with or disposition of the reversion to this lease; or
 - (b) any taxes, other than VAT and insurance premium tax, payable by the Landlord by reason of the receipt of any of the rents due under this lease.
- 9.2 If any such rates, taxes or other impositions and outgoing payments are payable in respect of the Property together with other land (including any other part of the Building) the Tenant shall pay a fair proportion of the total.
- 9.3 The Tenant shall not make any proposal to alter the rateable value of the Property or that value as it appears on any draft rating list, without the approval of the Landlord.
- 9.4 If, after the end of the term, the Landlord loses rating relief (or any similar relief or exemption) because it has been allowed to the Tenant, then the Tenant shall pay the Landlord an amount equal to the relief or exemption that the Landlord has lost.

10. Utilities

- 10.1 The Tenant shall pay all costs in connection with the supply of electricity to the Property.
- 10.2 The Tenant shall comply with all laws and with any recommendations of the relevant suppliers relating to the supply of electricity to or from the Property.

11. VAT

- 11.1 All sums payable by the Tenant are exclusive of any VAT that may be chargeable. The Tenant shall pay VAT in respect of all taxable supplies made to it in connection with this lease on the due date for making any payment or, if earlier, the date on which that supply is made for VAT purposes.
- 11.2 Every obligation on the Tenant, under or in connection with this lease, to pay the Landlord or any other person any sum by way of a refund or indemnity, shall include an obligation to pay an amount equal to any VAT incurred on that sum by the Landlord or other person, except to the extent that the Landlord or other person obtains credit for such VAT under the Value Added Tax Act 1994.

12. Default interest and interest

- 12.1 If any Annual Rent or any other money payable under this lease has not been paid by the date it is due, whether it has been formally demanded or not, the Tenant shall pay the Landlord interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period beginning on the due date to and including the date of payment.
- 12.2 If the Landlord does not demand or accept any Annual Rent or other money due or tendered under this lease because the Landlord reasonably believes that the Tenant is in breach of any of the tenant covenants of this lease, then the Tenant shall, when that amount is accepted by the Landlord, also pay interest at the Interest Rate on that amount for the period beginning on the date the amount (or each part of it) became due until the date it is accepted by the Landlord.

13. Costs

- 13.1 The Tenant shall pay the costs and expenses of the Landlord including any solicitors' or other professionals' costs and expenses (incurred both during and after the end of the term) in connection with or in contemplation of any of the following:
- (a) the enforcement of the tenant covenants of this lease;
 - (b) serving any notice in connection with this lease under section 146 or 147 of the Law of Property Act 1925 or taking any proceedings under either of those sections, notwithstanding that forfeiture is avoided otherwise than by relief granted by the court;
 - (c) serving any notice in connection with this lease under section 17 of the Landlord and Tenant (Covenants) Act 1995;
 - (d) the preparation and service of a schedule of dilapidations in connection with this lease; or
 - (e) any consent or approval applied for under this lease, whether or not it is granted [(unless the consent or approval is unreasonably withheld by the Landlord in circumstances where the Landlord is not to unreasonably withhold it)].
- 13.2 Where the Tenant is obliged to pay or indemnify the Landlord against any solicitors' or other professionals' costs and expenses (whether under this or any other clause of this lease) that obligation extends to those costs and expenses assessed on a full indemnity basis.

14. Compensation on vacating

Any right under the LTA 1954 of the Tenant or anyone deriving title under the Tenant to claim compensation from the Landlord on leaving the Property is excluded, except to the extent that the legislation prevents that right being excluded.

15. Set-off

The Annual Rent and all other amounts due under this lease shall be paid by the Tenant or any guarantor (as the case may be) in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

16. Registration of this lease

Promptly following the grant of this lease, the Tenant shall apply to register this lease at HM Land Registry. The Tenant shall ensure that any requisitions raised by HM Land Registry in connection with that application are dealt with promptly and properly. Within one month after completion of the registration, the Tenant shall send the Landlord official copies of its title.

17. Assignments

17.1 The Tenant shall not assign the whole of this lease without the consent of the Landlord, such consent not to be unreasonably withheld.

17.2 The Tenant shall not assign part only of this lease.

17.3 The Landlord and the Tenant agree that for the purposes of section 19(1A) of the Landlord and Tenant Act 1927 the Landlord may give its consent to an assignment subject to all or any of the following conditions:

- (a) a condition that the assignor enters into an authorised guarantee agreement which:
 - (i) is in respect of all the tenant covenants of this lease;
 - (ii) is in respect of the period beginning with the date the assignee becomes bound by those covenants and ending on the date when the assignee is released from those covenants by virtue of section 5 of the Landlord and Tenant (Covenants) Act 1995;
 - (iii) imposes principal debtor liability on the assignor;
 - (iv) requires (in the event of a disclaimer of this lease) the assignor to enter into a new tenancy for a term equal to the unexpired residue of the Contractual Term; and
 - (v) is otherwise in a form reasonably required by the Landlord;

- (b) a condition that a person of standing acceptable to the Landlord acting reasonably enters into a guarantee and indemnity of the tenant covenants of this lease in the form set out in **Schedule 2** (but with such amendments and additions as the Landlord may reasonably require).

17.4 The Landlord and the Tenant agree that for the purposes of section 19(1A) of the Landlord and Tenant Act 1927 the Landlord may refuse its consent to an assignment if either of the following circumstances exist at the date of the Tenant's application for consent to assign this lease:

- (a) any Annual Rent or other money due under this lease is outstanding; or
- (b) the proposed assignee is not or will not be capable of being registered as a FIT generator (as defined in the SLCS).

17.5 Nothing in this clause shall prevent the Landlord from giving consent subject to any other reasonable condition, nor from refusing consent to an assignment in any other circumstance where it is reasonable to do so.

18. Underlettings

The Tenant shall not underlet the whole or any part of the Property or share or part with occupation or possession of the whole or any part of the Property.

19. Charging

19.1 The Tenant shall not charge the whole of this lease without the consent of the Landlord, such consent not to be unreasonably withheld.

19.2 The Tenant shall not charge part only of this lease.

20. Prohibition of other dealings

Except as expressly permitted by this lease, the Tenant shall not assign, underlet, charge, part with or share possession or share occupation of this lease or the Property or hold the lease on trust for any person (except pending registration of a dealing permitted by this lease at HM Land Registry or by reason only of joint legal ownership).

21. Registration and notification of dealings and occupation

21.1 In this clause a **Transaction** is:

- (a) any dealing with this lease or the devolution or transmission of, or parting with possession of any interest in it;

- (b) the creation of any underlease or other interest out of this lease, or out of any interest, underlease derived from it, and any dealing, devolution or transmission of, or parting with possession of any such interest or underlease; or
- (c) the making of any other arrangement for the occupation of the Property.

21.2 In respect of every Transaction that is registrable at HM Land Registry, the Tenant shall promptly following completion of the Transaction apply to register it (or procure that the relevant person so applies). The Tenant shall (or shall procure that) any requisitions raised by HM Land Registry in connection with an application to register a Transaction are dealt with promptly and properly. Within [one month] of completion of the registration, the Tenant shall send the Landlord official copies of its title (and where applicable of the undertenant's title).

21.3 No later than one month after a Transaction the Tenant shall:

- (a) give the Landlord's solicitors notice of the Transaction; [and]
- (b) deliver two certified copies of any document effecting the Transaction to the Landlord's solicitors; and
- (c) [pay the Landlord's solicitors a registration fee of [£50] (plus VAT)].

21.4 If the Landlord so requests, the Tenant shall promptly supply the Landlord with full details of the occupiers of the Property and the terms upon which they occupy it.

22. Closure of the registered title of this lease

Within one month after the end of the term (and notwithstanding that the term has ended), the Tenant shall make an application to close the registered title of this lease and shall ensure that any requisitions raised by HM Land Registry in connection with that application are dealt with promptly and properly; the Tenant shall keep the Landlord informed of the progress and completion of its application.

23. Repairs

23.1 The Tenant shall keep the Equipment and any cables or equipment laid in accordance with clause 3.1(d)] in good repair and condition, properly cleaned, safe and in good working order [to the reasonable satisfaction of the Landlord.

23.2 Where the Equipment is damaged by an Insured Risk, the Tenant shall, subject to obtaining all necessary planning and other consents (which the Tenant agrees to use its reasonable endeavours to obtain) use all insurance money received in connection with any damage to the Equipment to repair promptly the damage for which the money has been received or (as the case may be) in replacing the Equipment. The Tenant shall not be obliged to repair or replace the Equipment after a notice has been served

pursuant to clause 8.8 or clause 8.9. In such circumstances the insurance money received by the Tenant shall belong to it in full.

23.3 The Tenant shall use all reasonable endeavours to keep the Equipment operational at all times, and shall investigate promptly, on [written] request by the Landlord, any persistent reduction in or interruption of the electricity generated by the Equipment.

23.4 The Landlord shall use its reasonable endeavours to:

- (a) keep that part of the roof of the Building as lies below the Property in sufficient repair to provide support for the Equipment;
- (b) keep reasonably well lit those Common Parts which the Tenant is entitled to use;

23.5 The Landlord shall not be obliged to carry out any works where:

- (a) the need for those works has arisen by reason of any damage or destruction caused by a risk against which the Landlord has not insured; or
- (b) the Landlord was not aware of the need for repair; or
- (c) (in the case of repairs to the roof) the Tenant has failed to discharge its obligation under clause 4.5 so that the works of repair can be carried out.

23.6 The Landlord shall not be liable for any failure to comply with clause 23.4 for any reason that is outside the reasonable control of the Landlord.

24. Alterations and signs

24.1 [The Tenant shall, within three months of the date of this Lease, install those items of the Equipment as are listed in Schedule 1 and connect that Equipment to the Building in such a manner as will enable the electricity generated by the Equipment to be used in the Building. Such works shall be carried out to the reasonable satisfaction of the Landlord.

24.2 The Landlord and the Tenant agree that

- (a) the Equipment is the property of the Tenant; and
- (b) any Equipment which is attached or affixed to the Building is attached or affixed only for the purpose of its more effective use and operation, and is not intended to be a permanent addition or improvement to the Property or the Building.

24.3 The Tenant shall not make any alteration or addition to the Property or the Equipment without the consent of the Landlord, such consent not to be unreasonably withheld.

24.4 The Tenant shall not display any sign, fascia, placard, board, poster or advertisement on the Property other than reasonable safety notices to other users of the Building.

25. Returning the Property to the Landlord

25.1 At the end of the term the Tenant shall return the Property to the Landlord in the repair and condition required by this lease.

25.2 Before the end of the term the Tenant shall at its own cost:

- (a) If the Landlord gives the Tenant notice to do so no later than three months before the end of the term and it is reasonable for the Landlord to so require remove the Equipment from the Property;
- (b) remove from the Property all other chattels (other than the Equipment) belonging to or used by it;
- (c) remove or reinstate any alterations that it or its predecessors in title have made to the Property; and
- (d) make good any damage caused to the Property by that removal.

25.3 The Tenant irrevocably appoints the Landlord to be the Tenant's agent to store or dispose of any chattels or items it has fixed to the Property and which have been left by the Tenant on the Property for more than ten working days after the end of the term. The Landlord shall not be liable to the Tenant by reason of that storage or disposal. The Tenant shall indemnify the Landlord in respect of any claim made by a third party in relation to that storage or disposal.

25.4 If the Tenant does not comply with its obligations in this clause, then, without prejudice to any other right or remedy of the Landlord, the Equipment shall become the property of the Landlord at no cost to the Landlord and the Landlord may at its sole discretion request the Tenant to undertake appropriate operations and maintenance services to continue to operate the Equipment

26. Use

26.1 The Tenant shall not use the Property for any purpose other than the Permitted Use.

26.2 The Tenant shall not install the Equipment until;-

- (a) It has carried out at its own expense site surveys and investigations and the Building has been deemed eligible for the installation of the Equipment (i.e. the Tenant has obtained a satisfactory EPC certificate and Roof Structural Survey

- (b) It has obtained the prior written consent of the landlord for both the structural calculations to show that the roof is capable of taking the weight of the Equipment and the route of the installation
 - (c) It has provided the Landlord with confirmation that the Tenant shall adhere to all asbestos regulations
- 26.3 The Landlord and the Tenant shall mutually agree in advance suitable surveyors to conduct the site surveys and/or investigations referred to in clause 26.2 and the Tenant shall disclose to the landlord all surveys and investigations and reports compiled pursuant to clause 26.2
- 26.4 The Tenant shall not use the Property or operate the Equipment for any illegal purpose nor for any purpose or in a manner that would cause loss, damage, injury, nuisance or inconvenience to the Landlord, the other tenants or occupiers of the Building or any owner or occupier of neighbouring property or any other person.
- 26.5 The Tenant shall not overload any structural part of the Building nor any Service Media at or serving the Property whether alone or jointly with other parts of the Building.
- 26.6 The Tenant shall ensure that the Equipment, electricity cables and ancillary equipment meet the British Standard and IEE Wiring Installation Regulations in force at the time of installation and the Tenant shall provide to the Landlord a Minor Works Certificate compliant with British Standard and IEE Wiring Installation Regulations in force at the time of installation prior to energising the Equipment
- 26.7 The Landlord shall not on any areas of the Building which lie within six metres of the Equipment
 - (a) erect any building or structure exceeding six metres above ground level; or
 - (b) cause or allow any tree or hedge to grow higher than ten metres above ground level.
- 26.8 The Landlord shall not be held to be in breach of clause 26.7 by reason of any equipment, building or structure that is erected pursuant to a Third Party Right or which the Landlord is obliged by law to erect.
- 26.9 The Landlord shall not erect any building or structure or equipment on the roof of the Building which may obstruct the free passage of light and air to the Property across the remainder of the Building, provided that the Landlord shall not be held to be in breach of this covenant by reason of:
 - (a) any equipment, building or structure that is in place on the roof of the Building at the date of this lease;

- (b) any equipment, building or structure erected pursuant to a Third Party Right; or
- (c) any equipment, building or structure which the Landlord is obliged by law to erect.

26.10 The Landlord shall not use the Building for any purpose or in any manner which will interfere to a material extent with the operation of the Equipment provided that the Landlord shall not be held to be in breach of this covenant by reason of the use of the Building by any other tenant or authorised occupier in accordance with a lease, licence or other document or contractual arrangement existing at the date of this lease or any statutory continuation of it

26.11 Unless expressly provided, nothing in this lease shall impose or be deemed to impose any restriction on the use of the Building or of the Landlord's Neighbouring Property or of any other neighbouring property.

27. Regulations

The Tenant shall observe all [reasonable and proper] regulations made by the Landlord from time to time in accordance with the principles of good estate management and notified to the Tenant relating to the use of the Common Parts.

28. Compliance with laws and notices

28.1 The Tenant shall comply with all laws relating to:

- (a) the use of the Property for the Permitted Use;
- (b) the use of the Service Media and Common Parts which the Tenant is permitted to use;
- (c) any works carried out at the Property; and
- (d) all materials kept at or disposed from the Property.

28.2 The Tenant shall comply with all Ofgem guidance relevant to its use of the Property for the Permitted Use.

28.3 Without prejudice to any obligation on the Tenant to obtain any consent or approval under this lease, the Tenant shall carry out all works that are required under any law to be carried out at the Property whether by the owner or the occupier.

28.4 Within five working days after receipt of any notice or other communication affecting the Property or the Building (and whether or not served pursuant to any law) the Tenant shall:

- (a) send a copy of the relevant document to the Landlord; and

- (b) insofar as it relates to the Property, take all steps necessary to comply with the notice or other communication and take any other action in connection with it as the Landlord may require.
- 28.5 The Tenant shall not apply for any planning permission for the Property without the prior consent of the Landlord, which consent may be withheld in its absolute discretion except where planning permission is required in respect of alterations to the Equipment to which the Landlord has given consent as required by clause 24
- 28.6 The Tenant shall comply with its obligations under the CDM Regulations, including all requirements in relation to the provision and maintenance of a health and safety file.
- 28.7 The Tenant shall supply all information to the Landlord that the Landlord reasonably requires from time to time to comply with the Landlord's obligations under the CDM Regulations.
- 28.8 As soon as the Tenant becomes aware of any defect in the Property, it shall give the Landlord notice of it. The Tenant shall indemnify the Landlord against any liability under the Defective Premises Act 1972 in relation to the Property or the Equipment by reason of any failure of the Tenant to comply with any of the tenant covenants in this lease.
- 28.9 The Tenant shall keep the Property equipped with all fire prevention, detection and fighting machinery and equipment and fire alarms which are:
- (a) required under any relevant law;
 - (b) required by the insurers of the Property or the Building (so long as the Tenant has been previously notified of these requirements);
 - (c) reasonably recommended by the insurers of the Property or the Building (so long as the Tenant has been previously notified of these recommendations);

and shall keep that machinery, equipment and those alarms properly maintained and available for inspection.

29. Encroachments, obstructions and acquisition of rights

- 29.1 The Tenant shall not grant any right or licence over the Property to a third party.
- 29.2 If a third party makes or attempts to make any encroachment over the Property or takes any action by which a right may be acquired over the Property, the Tenant shall:
- (a) immediately inform the Landlord and shall give the Landlord notice of that encroachment or action; and

- (b) take all steps (including any proceedings) the Landlord reasonably requires to prevent or license the continuation of that encroachment or action.
- 29.3 Other than by the installation of the Equipment, the Tenant shall not obstruct the flow of light or air to the Property or any other part of the Building nor obstruct any means of access to the Property or any other part of the Building.
- 29.4 The Tenant shall not make any acknowledgement that the flow of light or air to the Property or any other part of the Building or that the means of access to the Property or any other part of the Building is enjoyed with the consent of any third party.
- 29.5 If any third party takes or threatens to take any action to obstruct the flow of light or air to the Property or obstruct the means of access to the Property the Tenant shall:
 - (a) immediately inform the Landlord and shall give the Landlord notice of that action; and
 - (b) take all steps (including any proceedings) the Landlord reasonably requires to prevent or secure the removal of the obstruction.

30. Breach of repair and maintenance obligations

- 30.1 The Landlord may enter the Property to inspect the condition and state of repair of the Equipment and may give the Tenant a notice of any breach of any of the tenant covenants in this lease relating to the condition or repair of the Property or the Equipment.
- 30.2 If the Tenant has not begun any works needed to remedy that breach within two months following that notice (or if works are required as a matter of emergency, then immediately) or if the Tenant is not carrying out the works with all due speed, then the Landlord may enter the Property and carry out the works needed.
- 30.3 The costs incurred by the Landlord in carrying out any works pursuant to this clause (and any professional fees and any VAT in respect of those costs) shall be a debt due from the Tenant to the Landlord and payable on demand.
- 30.4 Any action taken by the Landlord pursuant to this clause shall be without prejudice to the Landlord's other rights, including those under clause 36

31. Indemnity

The Tenant shall keep the Landlord indemnified against all liabilities, expenses, costs (including but not limited to any solicitors' or other professionals' costs and expenses), claims, damages and losses (including but not limited to any diminution in the value of

the Landlord's interest in the Building and loss of amenity of the Building) suffered or incurred by the Landlord arising out of or in connection with:

- (i) the construction, installation or alteration of the Equipment;
- (ii) the operation of the Equipment;
- (iii) the use of the Property for the Permitted Use;
- (iv) any exercise of any of the Tenant's Rights;
- (v) any breach of any tenant covenants in this lease; or
- (vi) any act or omission of the Tenant, any undertenant or their respective workers, contractors or agents or any other person on the Property or the Common Parts with the actual or implied authority of any of them.

32. Landlord's covenant for quiet enjoyment

The Landlord covenants with the Tenant, that, so long as the Tenant pays the rents reserved by and complies with its obligations in this lease, the Tenant shall have quiet enjoyment of the Property without any interruption by the Landlord or any person claiming under the Landlord except as otherwise permitted by this lease.

33. Termination

- 33.1 If the Landlord wishes to carry out alterations to, building works on, or redevelopment or reconstruction of the Building, the Landlord may serve notice in writing on the Tenant to terminate this lease on the date specified in the notice, which date shall not be less than six months after the date of service of the notice. On expiry of the notice, this lease shall terminate, provided that the Landlord has paid to the Tenant, in cleared funds the Tenant's reasonable costs of removing the Equipment from the Property
- 33.2 The Landlord shall be entitled to terminate this lease immediately on the giving of notice to the Tenant if the Building shall cease to be used as school premises. The Landlord shall provide as much advance notice to the Tenant as possible in such circumstances and ensure that the Tenant has access for the purpose of removing the Equipment and returning the Property to the Landlord in the state and condition required by this lease PROVIDED ALWAYS THAT the Tenant shall undertake such work as soon as possible and in any event within 4 weeks of the date of the Landlord's notice to terminate.
- 33.3 Termination of the lease in any of the circumstances referred to in clause 33 shall be without prejudice to any right or remedy of the Landlord in respect of any antecedent breach of the covenants or conditions on the part of the tenant in this lease including any covenants expressed to be complied with before the end of the term.

34. FIT Payments and use of electricity generated

- 34.1 The Tenant shall use its best endeavours to ensure that at all times during the term:
- (a) it is registered in the Central FIT Register as the FIT Generator (as defined in the SLCS) for the Equipment;
 - (b) the Equipment is registered in the Central FIT Register as an Eligible Installation (as defined in the SLCS); and
 - (c) no other party is nominated to receive the FIT payments in respect of the Equipment.
- 34.2 The Tenant shall supply to the Landlord (promptly following a request to do so) written evidence that the requirements in clause 34.1 are then currently satisfied.
- 34.3 The Tenant shall at all times maintain full records of the FIT payments which it receives, the period to which the FIT payments relate, the electricity generated by the Equipment and the electricity exported to the Grid from the Equipment. The Tenant shall supply to the Landlord, promptly following a request to do so, a copy of these records.
- 34.4 The Tenant is entitled to keep all the FIT payments.
- 34.5 The Landlord may (with payment through a power purchase agreement) use the electricity generated by the Equipment. The Landlord may use it for the benefit of the Building (or any part of the Building) and any tenant or occupier of such property.
- 34.6 The Tenant may export to the Grid any electricity generated by the Equipment which is not used by the Landlord.

35. Guarantee and indemnity

- 35.1 [The provisions of Schedule 2 apply.]
- 35.2 If an Act of Insolvency occurs in relation to a guarantor, or if any guarantor (being an individual) dies or becomes incapable of managing his affairs the Tenant shall, if the Landlord requests, procure that a person of standing acceptable to the Landlord, within 28 days of that request, enters into a replacement or additional guarantee and indemnity of the tenant covenants of this lease in the same form as that entered into by the former guarantor.
- 35.3 Clause 35.2 shall not apply in the case of a person who is guarantor by reason of having entered into an authorised guarantee agreement.

35.4 For so long as any guarantor remains liable to the Landlord, the Tenant shall, if the Landlord requests, procure that that guarantor joins in any consent or approval required under this lease and consents to any variation of the tenant covenants of this lease.

36. Re-entry and forfeiture

36.1 The Landlord may re-enter the Property (or any part of the Property in the name of the whole) at any time after any of the following occurs:

- (a) any rent is unpaid 21 days after becoming payable whether it has been formally demanded or not;
- (b) any breach of any condition of, or tenant covenant in, this lease;
- (c) an Act of Insolvency.

36.2 If the Landlord re-enters the Property (or any part of the Property in the name of the whole) pursuant to this clause, this lease shall immediately end, but without prejudice to any right or remedy of the Landlord in respect of any breach of covenant by the Tenant or any guarantor.

37. Joint and several liability

37.1 Where the Tenant comprises more than one person, those persons shall be jointly and severally liable for the obligations and liabilities of the Tenant arising under this lease. The Landlord may take action against, or release or compromise the liability of, or grant time or other indulgence to, any one of those persons without affecting the liability of any other of them.

37.2 Where a guarantor comprises more than one person, those persons shall be jointly and severally liable for the obligations and liabilities of a guarantor arising under this lease. The Landlord may take action against, or release or compromise the liability of, or grant time or other indulgence to, any one of those persons without affecting the liability of any other of them.

37.3 The obligations of the Tenant and any guarantor arising by virtue of this lease are owed to the Landlord and the obligations of the Landlord are owed to the Tenant.

37.4 The Landlord shall not be liable to the Tenant for any failure of the Landlord to perform any landlord covenant in this lease, unless and until the Tenant has given the Landlord notice of the failure and the Landlord has not remedied the failure within a reasonable time of service of that notice **OR** unless the Landlord knows it has failed to perform the covenant, or reasonably should know this, and has not remedied that failure within a reasonable time.

38. Entire agreement and exclusion of representations

- 38.1 This lease constitutes the entire agreement and understanding of the parties relating to the transaction contemplated by the grant of this lease and supersedes any previous agreement between the parties relating to the transaction.
- 38.2 [The Tenant acknowledges that in entering into this lease it has not relied on **OR** The Tenant and the Guarantor acknowledge that in entering into this lease neither has relied on], nor shall have any remedy in respect of, any statement or representation made by or on behalf of the Landlord.
- 38.3 Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

39. Notices, consents and approvals

- 39.1 Except where this lease specifically states that a notice need not be in writing, any notice given under or in connection with this lease shall be:
- (a) in writing and for the purposes of this clause an email is not in writing; and
 - (b) given:
 - (i) by hand or by pre-paid first-class post or other next working day delivery service at the party's registered office address (if the party is a company) or (in any other case) at the party's principal place of business; or
 - (ii) by fax to the party's main fax number.
- 39.2 If a notice complies with the criteria in clause 39.1, whether or not this lease requires that notice to be in writing, it shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post or other next working day delivery service, on the [second] working day after posting; or
 - (c) if sent by fax, at [9.00 am] on the next working day after transmission.
- 39.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 39.4 Section 196 of the Law of Property Act 1925 shall otherwise apply to notices given under this lease.
- 39.5 Where the consent of the Landlord is required under this lease, a consent shall only be valid if it is given by deed, unless:

- (a) it is given in writing and signed by the Landlord or a person duly authorised on its behalf; and
- (b) it expressly states that the Landlord waives the requirement for a deed in that particular case.

If a waiver is given, it shall not affect the requirement for a deed for any other consent.

39.6 Where the approval of the Landlord is required under this lease, an approval shall only be valid if it is in writing and signed by or on behalf of the Landlord, unless:

- (a) the approval is being given in a case of emergency; or
- (b) this lease expressly states that the approval need not be in writing.

39.7 If the Landlord gives a consent or approval under this lease, the giving of that consent or approval shall not imply that any consent or approval required from a third party has been obtained, nor shall it obviate the need to obtain any consent or approval from a third party.

40. Governing law

This lease and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

41. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have [exclusive **OR** non-exclusive] jurisdiction to settle any dispute or claim arising out of or in connection with this lease or its subject matter or formation (including non-contractual disputes or claims).

42. Exclusion of sections 24-28 of the LTA 1954

42.1 The parties confirm that:

- (a) the Landlord served a notice on the Tenant, as required by section 38A(3)(a) of the LTA 1954, applying to the tenancy created by this lease, [not less than 14 days] before this lease was entered into a copy of which notice is annexed to this lease;
- (b) _____ who was duly authorised by the Tenant to do so made a statutory declaration dated _____ in accordance with the requirements of section 38A(3)(b) of the LTA 1954 a copy of which [statutory] declaration is annexed to this lease; and
- (c) there is no agreement for lease to which this lease gives effect.

42.2 The parties agree that the provisions of sections 24 to 28 of the LTA 1954 are excluded in relation to the tenancy created by this lease.

42.3 The parties confirm that:

- (a) the Landlord served a notice on the Guarantor, as required by section 38A(3)(a) of the LTA 1954, applying to the tenancy to be entered into by the Guarantor pursuant to paragraph 4 of Schedule 2, not less than 14 days before this lease was entered into (a copy of which notice is annexed to this lease); and
- (b) _____ who was duly authorised by the Guarantor to do so, made a statutory declaration dated _____ in accordance with the requirements of section 38A(3)(b) of the LTA 1954 (a copy of which statutory declaration is annexed to this lease).

43. Contracts (Rights of Third Parties) Act 1999

A person who is not a party to this lease shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this lease. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule 1 The Equipment

[Insert a description of the Equipment that has been approved for initial installation.]

Schedule 2 Guarantee and indemnity

1. Guarantee and indemnity

1.1 The Guarantor guarantees to the Landlord that the Tenant shall:

- (a) pay the rents reserved by this lease and observe and perform the tenant covenants of this lease and that if the Tenant fails to pay any of those rents or to observe or perform any of those tenant covenants, the Guarantor shall pay or observe and perform them; and
- (b) observe and perform any obligations the Tenant enters into in an authorised guarantee agreement made in respect of this lease (the **Authorised Guarantee Agreement**) and that if the Tenant fails to do so, the Guarantor shall observe and perform those obligations.

1.2 The Guarantor covenants with the Landlord as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under **paragraph 1.1** to indemnify and keep indemnified the Landlord against any failure by the Tenant:

- (a) to pay any of the rents reserved by this lease or any failure to observe or perform any of the tenant covenants of this lease; or
- (b) to observe or perform any of the obligations the Tenant enters into in the Authorised Guarantee Agreement.

2. Guarantor's liability

2.1 The liability of the Guarantor under **paragraph 1.1(a)** and **paragraph 1.2(a)** shall continue until the end of the term, or until the Tenant is released from the tenant covenants of this lease by virtue of the Landlord and Tenant (Covenants) Act 1995, if earlier.

2.2 The liability of the Guarantor shall not be reduced, discharged or otherwise adversely affected by:

- (a) any time or indulgence granted by the Landlord to the Tenant; or
- (b) any delay or forbearance by the Landlord in enforcing the payment of any of the rents or the observance or performance of any of the tenant covenants of this lease (or the Tenant's obligations under the Authorised Guarantee Agreement) or in making any demand in respect of any of them; or
- (c) any refusal by the Landlord to accept any rent or other payment due under this lease where the Landlord believes that the acceptance of such rent or payment may prejudice its ability to re-enter the Property; or

- (d) the Landlord exercising any right or remedy against the Tenant for any failure to pay the rents reserved by this lease or to observe or perform the tenant covenants of this lease (or the Tenant's obligations under the Authorised Guarantee Agreement); or
- (e) the Landlord taking any action or refraining from taking any action in connection with any other security held by the Landlord in respect of the Tenant's liability to pay the rents reserved by this lease or observe and perform the tenant covenants of the lease (or the Tenant's obligations under the Authorised Guarantee Agreement) including the release of any such security; or
- (f) [a release or compromise of the liability of any one of the persons who is the Guarantor, or the grant of any time or concession to any one of them; or]
- (g) any legal limitation or disability on the Tenant or any invalidity or irregularity of any of the tenant covenants of the lease (or the Tenant's obligations under the Authorised Guarantee Agreement) or any unenforceability of any of them against the Tenant; or
- (h) the Tenant being dissolved, or being struck off the register of companies or otherwise ceasing to exist, or, if the Tenant is an individual, by the Tenant dying or becoming incapable of managing its affairs; or
- (i) without prejudice to paragraph 4, the disclaimer of the Tenant's liability under this lease or the forfeiture of this lease; or
- (j) the surrender of the lease in respect of part only of the Property, except that the Guarantor shall not be under any liability in relation to the surrendered part in respect of any period after the surrender; or

by any other act or omission except an express [written] release [by deed] of the Guarantor by the Landlord.

2.3 [The liability of each of the persons making up the Guarantor is joint and several.]

2.4 Any sum payable by the Guarantor shall be paid without any deduction, set-off or counter-claim against the Landlord or the Tenant.

3. Variations and supplemental documents

3.1 The Guarantor shall, at the request of the Landlord, join in and give its consent to the terms of any consent, approval, variation or other document that may be entered into by the Tenant in connection with this lease (or the Authorised Guarantee Agreement).

3.2 The Guarantor shall not be released by any variation of the rents reserved by, or the tenant covenants in, this Lease (or the Tenant's obligations under the Authorised Guarantee Agreement) whether or not:

- (a) the variation is material or prejudicial to the Guarantor; or
- (b) the variation is made in any document; or
- (c) the Guarantor has consented, in writing or otherwise, to the variation.

3.3 The liability of the Guarantor shall apply to the rents reserved by and the tenant covenants in this lease (and the Tenant's obligations under the Authorised Guarantee Agreement) as varied except to the extent that the liability of the Guarantor is affected by section 18 of the Landlord and Tenant (Covenants) Act 1995.

4. Guarantor to take a new lease or make payment

4.1 If this lease is forfeited or the liability of the Tenant under this lease is disclaimed and the Landlord gives the Guarantor notice not later than [six] months after the forfeiture or the Landlord having received notice of the disclaimer, the Guarantor shall enter into a new lease of the Property on the terms set out in **paragraph 4.2**.

4.2 The rights and obligations under the new lease shall take effect beginning on the date of the forfeiture or disclaimer and the new lease shall:

- (a) be granted subject to the right of any person to have this lease vested in them by the court and to the terms on which any such order may be made and subject to the rights of any third party existing at the date of the grant;
- (b) be for a term that expires at the same date as the end of the Contractual Term of this lease had there been no forfeiture or disclaimer;
- (c) reserve as an initial annual rent an amount equal to the Annual Rent payable under this lease at the date of the forfeiture or disclaimer or which would be payable but for any abatement or suspension of the Annual Rent or restriction on the right to collect it (subject to **paragraph 5**) and which is subject to review on the same terms and dates provided by this lease; [and]
- (d) [be excluded from sections 24 to 28 of the LTA 1954;] and
- (e) otherwise be on the same terms as this lease (as varied if there has been any variation).

4.3 The Guarantor shall pay the Landlord's solicitors' costs and disbursements (on a full indemnity basis) and any VAT in respect of them in relation to the new lease and shall execute and deliver to the Landlord a counterpart of the new lease within one month after service of the Landlord's notice.

4.4 The grant of a new lease and its acceptance by the Guarantor shall be without prejudice to any other rights which the Landlord may have against the Guarantor or against any

other person or in respect of any other security that the Landlord may have in connection with this lease.

- 4.5 The Landlord may, instead of giving the Guarantor notice pursuant to paragraph 4.1 but in the same circumstances and within the same time limit, require the Guarantor to pay an amount equal to [six] months Annual Rent and the Guarantor shall pay that amount on demand.

5. Rent at the date of forfeiture or disclaimer

If at the date of the forfeiture or disclaimer there is a rent review pending under this lease, then the initial annual rent to be reserved by the new lease shall be the greater of:

- (a) the Annual Rent previously payable (or which would have been payable but for any abatement or suspension of the Annual Rent or restriction on the right to collect it) under the lease prior to forfeiture or disclaimer; and
- (b) the open market rent of the Property at the relevant Review Date, as determined by the Landlord before the grant of the new lease.

6. Payments in gross and restrictions on the Guarantor

- 6.1 Any payment or dividend that the Landlord receives from the Tenant (or its estate) or any other person in connection with any insolvency proceedings or arrangement involving the Tenant shall be taken and applied as a payment in gross and shall not prejudice the right of the Landlord to recover from the Guarantor to the full extent of the obligations that are the subject of this guarantee and indemnity.
- 6.2 The Guarantor shall not claim in competition with the Landlord in any insolvency proceedings or arrangement of the Tenant in respect of any payment made by the Guarantor pursuant to this guarantee and indemnity. If it otherwise receives any money in such proceedings or arrangement, it shall hold that money on trust for the Landlord to the extent of its liability to the Landlord.
- 6.3 The Guarantor shall not, without the consent of the Landlord, exercise any right or remedy that it may have (whether against the Tenant or any other person) in respect of any amount paid or other obligation performed by the Guarantor under this guarantee and indemnity unless and until all the obligations of the Guarantor under this guarantee and indemnity have been fully performed.

7. Other securities

- 7.1 The Guarantor warrants that it has not taken and covenants that it shall not take any security from or over the assets of the Tenant in respect of any liability of the Tenant to

the Guarantor. If it does take or hold any such security it shall hold it for the benefit of the Landlord.

- 7.2 This guarantee and indemnity is in addition to and independent of any other security that the Landlord may from time to time hold from the Guarantor or the Tenant or any other person in respect of the liability of the Tenant to pay the rents reserved by this lease and to observe and perform the tenant covenants of this lease. It shall not merge in or be affected by any other security.
- 7.3 The Guarantor shall not be entitled to claim or participate in any other security held by the Landlord in respect of the liability of the Tenant to pay the rents reserved by this lease or to observe and perform the tenant covenants of this lease.

Executed as a deed by affixing the
Common Seal of EAST SUSSEX
COUNTY COUNCIL in the
Presence of;-

Authorised Signatory

Executed as a deed by [NAME OF TENANT]
acting by [NAME OF FIRST DIRECTOR], a
director and [NAME OF SECOND
DIRECTOR/SECRETARY], [a director **OR** its
secretary]

.....
[SIGNATURE OF FIRST DIRECTOR]
Director

.....
[SIGNATURE OF SECOND DIRECTOR OR
SECRETARY]
[Director **OR** Secretary]

OR

Executed as a deed by [NAME OF TENANT]
acting by [NAME OF DIRECTOR] a director, in
the presence of:

.....
[SIGNATURE OF DIRECTOR]
Director

.....

[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND OCCUPATION] OF
WITNESS]

OR

Executed as a deed by [NAME OF TENANT]
in the presence of:

.....
[SIGNATURE OF TENANT]

.....

[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND OCCUPATION] OF
WITNESS]

Executed as a deed by [NAME OF GUARANTOR] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR/SECRETARY], [a director **OR** its secretary]

.....
[SIGNATURE OF FIRST DIRECTOR]
Director

.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]
[Director **OR** Secretary]

OR

Executed as a deed by [NAME OF GUARANTOR] acting by [NAME OF DIRECTOR] a director, in the presence of:

.....
[SIGNATURE OF DIRECTOR]
Director

.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

OR

Executed as a deed by [NAME OF GUARANTOR] in the presence of:

.....
[SIGNATURE OF GUARANTOR]

.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]