

**DATED**

**2019**

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**PINES BURN WIND FARM LTD (1)**

**and**

**PINES BURN COMMUNITY BENEFIT TRUST (2)**

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**PROJECT FUNDING AGREEMENT**

**In relation to Pines Burn Wind Farm, Scottish Borders**

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## PROJECT FUNDING AGREEMENT

Between

1. **PINES BURN WIND FARM LTD**, the Special Purpose Vehicle to operate Pines Burn Wind Farm, which expression shall include successors in title and assigns; (The "Company") and
2. **PINES BURN COMMUNITY BENEFIT TRUST**, which represents the interests of the seven Community Councils for the nominated area of benefit, which have been established under a scheme adopted by the Scottish Borders Council in accordance with the terms of Section 22 of the Local Government etc. (Scotland) Act 1994 (the "Community Benefit Trust")

### 1. WHEREAS:

- 1.1. The Company wishes to construct and operate a wind farm at Pines Burn and acknowledges the opportunity for benefit sharing in the local community in the area of the wind farm
- 1.2. In line with industry practice, the Company has agreed to contribute funds for community improvement in the area around the proposed wind farm
- 1.3. The Community Benefit Trust has agreed to spend those funds on community improvement within the vicinity of the proposed wind farm (the Area).

### 2. DEFINITIONS

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

<b>"Administration Costs"</b>	The full costs of: <ul style="list-style-type: none"> <li>• administering and managing the Funds (including preparation and auditing of annual accounts);</li> <li>• general reporting as may be required under this Agreement;</li> <li>• promotion as required under clauses 4.2.5 and 4.2.6 of this Agreement.</li> </ul>
<b>"Agreement"</b>	This agreement including any variations to it made in accordance with clause 6.1
<b>"Annual Payment"</b>	An amount paid annually to the Pines Burn Wind Farm Community Benefit Fund, such sum to be Index Linked upwards only.
<b>"Apportionment Factor"</b>	The agreed apportionment of the Pines Burn Wind Farm Community Benefit Fund which is 12.5% per nominated Community Council area, with an additional 12.5% share Hobkirk Community Council in whose area the wind farm is located.
<b>"Application(s)"</b>	An application for Funds in connection with a proposal for a community improvement project.

<b>“Approved Purposes”</b>	<ul style="list-style-type: none"> <li>• Administration Costs;</li> <li>• the purposes (including costs ancillary to such purposes) listed in the Community Programme Proposal Outline attached as Part One of the Schedule to this Agreement;</li> <li>• purposes of a comparable nature and scale to those listed in the Community Programme Proposal Outline (including costs ancillary to such purposes);</li> <li>• other purposes which may be agreed (in writing) to be Approved Purposes by the</li> <li>• Company and the Community Council.</li> </ul>
<b>“Area”</b>	The area covered by the nominated Community Councils: Hobkirk, Denholm & District, Hawick & District, Newcastleton & District, Southdean, Upper Liddesdale & Hermitage, Upper Teviotdale and Borthwick Water.
<b>“Commissioning Date”:</b>	The date when electricity is first produced from all wind turbines and exported commercially to the electricity grid.
<b>“Designated Account”</b>	<p>A separate interest-bearing account being either</p> <ul style="list-style-type: none"> <li>• a bank account at a branch (or a bank’s head office) in Scotland; or</li> <li>• a building society deposit or share account at a branch (or a society’s head office) in Scotland.</li> </ul> <p>Where</p> <ul style="list-style-type: none"> <li>• “bank” has the meaning given in section 87(1) of the Solicitors Act 1974; and</li> <li>• “building society” means a building society within the meaning of the Building Societies Act 1986.</li> </ul>
<b>“Final Generation Date”:</b>	The date when electricity ceases to be generated by the Wind Farm on a permanent basis.
<b>“Funds”</b>	Any monies paid by the Company to the Community Benefit Trust under the terms of clause 4 of this Agreement and any interest accrued thereon; the Funds will be ring-fenced annually within the account according to the Apportionment Factor for each participating Community Council area.
<b>“Fund Management Meetings”</b>	The meetings of the sub-committee of the Community Benefit Trust which has been tasked with designating and overseeing Qualifying Projects and administering Funds.
<b>“Index”.</b>	The Consumer Prices (All Items) Index maintained by the Office for National Statistics or any replacement body.
<b>Index Linked”</b>	<p>Means multiplied by CPI<sub>n</sub> divided by CPI<sub>a</sub> where:-  CPI<sub>n</sub> means the Index for the month preceding any month during which a payment is due to be made and</p> <p>CPI<sub>a</sub> means the CPI for <b>[INSERT MONTH PRECEDING MONTH OF SIGNATURE OF THIS AGREEMENT]</b>.</p>
<b>“Installed Capacity</b>	The total MW installed at the Wind Farm on the Commissioning Date
<b>“Party”</b>	A party to this Agreement (together, “the Parties” )
<b>“Pines Burn Wind Farm Community Benefit Fund”</b>	The ringfenced sum for Community <b>Benefit of £115,000 TBC</b>

<p><b>“Planning Permission”:</b></p>	<p>Any approval whether under the Town and Country Planning (Scotland) Act 1997 or Section 36 of the Electricity Act 1989.</p>
<p><b>“Qualifying Project”</b></p>	<p>An Application which is designated as a Qualifying Project by the Community Council, in accordance with clause 4.2, and which therefore qualifies to receive Funds (in an amount determined by the Community Benefit Trust) to enable the applicant(s) to carry out the purpose(s) stated in the approved Application.</p>
<p><b>“Wind Farm”</b></p>	<p>The Company’s consented wind farm at Pines Burn which is more particularly defined on the scale plan attached at Part Two of the Schedule and edged in red.</p>

**3. INTERPRETATION**

- 3.1. Any reference to an Act of Parliament shall include any modification extension re-enactment or replacement therefore for the time being in force and shall also include all instruments orders plan regulations permissions and directions for the time being made issued or given thereunder or deriving validity therefrom
- 3.2. Where the context so requires words importing the singular shall include the plural and vice versa
- 3.3. Any covenant on the part of the Community Benefit Trust or the Company not to do any act or thing shall be construed as a covenant not to do or permit or suffer to be done any such act or thing by their respective servants agents employees workmen and contractors
- 3.4. The headings are inserted for convenience only and shall be ignored in construing this Agreement.

**4. THE COMMUNITY BENEFIT TRUST OBLIGATIONS**

**Use of Funds**

- 4.1. The Community Benefit Trust shall use the Funds exclusively for the Approved Purposes.
- 4.2. The Community Benefit Trust shall have a membership representing the seven nominated Community Councils covering the area of benefit.
- 4.3. The Community Benefit Trust shall:
  - 4.3.1. assess any Application received by it against the following qualifying criteria in order to determine whether, or not, such Application should be designated as a Qualifying Project: (a) the Application’s compatibility
  - 4.3.2. with Approved Purposes; (b) the availability of Funds for the purpose(s) of the Application;
  - 4.3.3. designate Applications considered by the Community Benefit Trust to be suitable for such designation (according to the above criteria) as Qualifying

Projects;

- 4.3.4. manage the Funds and disburse them to the Qualifying Projects, based on the agreed Apportionment Factor per Community Council area, subject to clause 4.3.7;
  - 4.3.5. ensure that the Qualifying Projects account to the Community Benefit Trust for the expenditure of the Funds;
  - 4.3.6. promote the Qualifying Projects and (subject to availability of Funds) the availability of Funds for Qualifying Projects within the community in the Area;
  - 4.3.7. acknowledge the connection between the Wind Farm and the Qualifying Projects in publicity associated with the Qualifying Projects;
  - 4.3.8. hold any Funds not allocated to any Qualifying Projects and carry these forward for future use for Approved Purposes, with the proviso that any Funds not allocated for a period of two years or more may be used for Qualifying Projects that have an impact overall or part of the Area, irrespective of the Apportionment Factor.
  - 4.3.9. support community groups and volunteers with the development and delivery of their Qualifying Projects insofar as is reasonably practicable and lawful to do so.
- 4.4. For the avoidance of doubt, the Community Benefit Trust may ask for Applications to be adjusted or amended considering the criteria for designation as a Qualifying Project and shall then be entitled (but not obliged) to reconsider such Applications for designation as Qualifying Projects (at the absolute discretion of the Community Benefit Trust).
- 4.5. In the event that the Community Benefit Trust is able to obtain a grant or enter into a scheme by which the Funds will be matched then any such additional monies will be used for the Approved Purposes in the same way as the Funds.

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

- 4.6. The Funds shall be held in a Designated Account and the Community Benefit Trust shall review the Designated Account [annually or more frequently if appropriate] to ensure that the funds are held at a bank or building society considered to be reasonably financially secure and in an account offering a competitive rate of interest taking into account the security of the relevant financial institution and prevailing market interest rates.
- 4.7. All interest accruing on the Designated Account shall be added to the Account when it accrues and used for the Approved Purposes
- 4.8. The Company shall (acting reasonably) be entitled upon reasonable notice to receive statements of account activity in relation to the Designated Account

#### **Fund Management Meetings**

- 4.9. The Community Benefit Trust shall:
- 4.9.1. consider the selection and designation of Qualifying Projects in an open and

- transparent manner and to make such selections and designations at Fund Management Meetings.
- 4.9.2. give the Company wherever reasonably practicable and possible not less than 5 working days' notice of the date of any forthcoming Fund Management Meetings and permit a representative of the Company to attend and make representations.
- 4.9.3. ensure that minutes of Fund Management Meetings are sent to the Company promptly following any such meeting.
- 4.10. For the avoidance of doubt, whilst the Company shall be entitled to permit a representative to attend and make representations at Fund Management Meetings, the selection and designation of Qualifying Projects and the management and administration of the Funds shall be at the sole discretion of the Community Benefit Trust (subject to the provisions of this Agreement).

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

- 4.11. The Community Benefit Trust shall at all times maintain detailed accounts of the Funds and distribution of the Funds and supply accounts and reports to the Company on an annual basis showing the Funds received and disbursed and reporting on the progress of the Qualifying Projects where Funds have been spent.
- 4.12. The Community Benefit Trust shall ensure that the annual accounts referred to in clause 4.9 are independently verified by a qualified accountant.
- 4.13. The Community Benefit Trust shall publish to the public the annual report referred to in clause 4.9 above and permit the Company to make the report available to the public
- 4.14. The Company shall be entitled to review the accounts referred to in clause 4.10 at any reasonable time upon reasonable notice to the Community Benefit Trust

#### **Compliance with Statute**

- 4.15. The Community Benefit Trust shall administer the Funds in compliance with all relevant statutory obligations.

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

- 5.1. The Company shall pay the Community Benefit Trust the Annual Payment on the first anniversary of the Commissioning Date and thereafter in **two equal instalments on the 31<sup>st</sup> January and 31<sup>st</sup> July in each year** until the Final Generation Date but so that no overpayment of the Annual Payment shall be refunded to the Company should the Final Generation Date not fall on an anniversary of the Commissioning Date and the first and last payments to be made pro rata.

- 5.2. If the Wind Farm is either to be partially or wholly decommissioned then the Company shall provide the Community Benefit Trust with a minimum of one month's prior written notice of this decision
- 5.3. If the Wind Farm is partially decommissioned the Annual Payment shall be reduced in proportion with the reduction in Installed Capacity from the date of the start of the reduction in Installed Capacity and the Annual Payment for the following year shall be reduced by the amount of any overpayment made in the previous year.
- 5.4. No reduction in the Annual Payment shall be made because of the Wind Farm or any turbine or turbines which it comprises not generating electricity unless a turbine or turbines are permanently decommissioned whereupon the Installed Capacity shall be recalculated and the provisions of clause 5.3 shall apply.
- 5.5. For the avoidance of doubt, the Funds shall remain the property of the Community Benefit Trust, or any assignee of the Community Benefit Trust approved by the Company (or its assignees), following the expiry or termination of this Agreement.

## **6. AGREEMENTS AND DECLARATIONS**

### **Amendments**

- 6.1. The Parties will record any amendment to the terms of this Agreement by supplementary Agreement and shall cooperate with each other to ensure that the principal aims of this Agreement as set out in the recitals above are effectively implemented.
- 6.2. The Parties shall consult with each other on a regular basis to discuss the disbursement of the Funds and the Approved Purposes with a view to ensuring that the Funds have been properly paid by the Company and disbursed by the Community Benefit Trust and that the Approved Purposes remain a relevant and appropriate use of the Funds.

### **Duration and Termination**

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

## **7. ASSIGNATION**

7.1. The Company shall be free at any time to assign the benefit and burden of this Agreement contemporaneously to the operator of the Wind Farm and at the date of the assignation the Community Benefit Trust shall release the Company from its obligations under this Agreement and the assignee would take on all payment responsibilities arising under this Agreement.

7.2. The Community Benefit Trust may subject to the approval of the Company (such approval not to be unreasonably withheld or delayed) assign the benefit and burden of this Agreement to such other assignee or assignees as may be approved by the Company. At the effective date of such assignation ('the Effective Date') the Company shall release the Community Benefit Trust from its obligations under this Agreement (provided that the Community Benefit Trust is not hereby released from liability for its breaches of this Agreement prior to the Effective Date).

## **8. NOTICES**

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

## **9. WAIVER**

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

## **10. NO PARTNERSHIP**

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

## **11. ENTIRE AGREEMENT**

This Agreement sets out the entire agreement between the Parties in connection with its subject matter and neither party has entered into this Agreement in reliance on any warranty, representation or statement made by the other which is not set out in this



Agreement. Nothing in this Agreement purports to exclude liability for any fraudulent statement or act.

## **12. JURISDICTION**

- 12.1. This Agreement shall be governed by Scottish law in every particular including formation and interpretation
- 12.2. Any proceedings arising out of or in connection with this Agreement may be brought in any court of competent jurisdiction in Scotland.

IN WITNESS WHEREOF these presents consisting of this and the [ ] preceding pages, and Schedule in two parts annexed, are executed as follows:

SIGNED for and on behalf of  
**PINES BURN WIND FARM LIMITED**

at [place]

on [date]

by [name], Director

.....  
Director

before this witness

.....name

.....address

.....

SIGNED for and on behalf of  
**PINESBURN COMMUNITY BENEFIT TRUST**

at [place]

on [date]

by

.....  
Chairman

[name] Chairman

[name] Treasurer, and

.....  
Treasurer

[name] Secretary

before this witness

.....  
Secretary

.....name

.....address

.....  
Witness

.....

## **SCHEDULE PART ONE**

### **THE COMMUNITY PROGRAMME PROPOSAL OUTLINE**

The Approved Purposes shall provide public benefit for the communities in the Area of Benefit through one or more of the following charitable purposes:-

- The prevention or relief of poverty
- The advancement of education
- The advancement of health
- The saving of lives
- The advancement of citizenship or community development, including rural regeneration
- The advancement of the arts, heritage, culture or science
- The advancement of public participation in sport
- The provision of recreational facilities or the organisation of recreational activities
- The promotion of equality and diversity
- The advancement of environmental protection or improvement
- The relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage.

#### **Exclusions:**

- Any project that would be considered a statutory responsibility and generally undertaken by a public sector body;
- Any project that promotes religion;
- Any project solely benefiting animal welfare;
- Any project that would result in a private benefit unless it meets one of the charitable purposes listed above.

## **SCHEDULE PART TWO**

### **PLAN OF THE WIND FARM**