

AMENDED AND RESTATED COMMUNITY BENEFIT AGREEMENT

AMONG:-

- (1) **LZN LIMITED** a company incorporated under the Companies Acts with registered number 04846309 and having its registered office at 5 Old Bailey London EC4M 7BA;
and
- (2) **THE HIGHLAND COUNCIL** incorporated under the Local Government etc. (Scotland) Act 1994 and having its principal offices at Glenurquhart Road, Inverness IV3 5NX;
and
- (3) **LOCHLUICHART LLP** a limited liability partnership incorporated in Scotland under the Limited Liability Partnership Act 2000 (Partnership Number SO302757) and having its registered office at Lochluichart Lodge, Garve, Ross-shire (conform to a change of name from Lochluichart Estate Highland LLP on 23 July 2012).

RECITALS

- (A) This Agreement amends and restates the provisions of a community benefit agreement dated 6 April 2011 which governs certain community benefit packages relating to the Lochluichart wind farm (the "**Original Community Benefit Agreement**").
- (B) The Parties wish to amend the Original Community Benefit Agreement such that the agreement is amended to govern the community benefit package in respect of the Garve Area (as defined in the Original Community Benefit Agreement) only.
- (C) By this Agreement the Parties wish to amend and restate the terms of the Original Community Benefit Agreement in the terms set out in the Schedule to this Agreement.

IT IS AGREED as follows:-

1 **AMENDMENT TO THE ORIGINAL COMMUNITY BENEFIT AGREEMENT**

With effect from the last date of signing this Agreement (the "**Effective Date**"), the Parties hereby amend the terms of the Original Community Benefit Agreement by adopting the provisions set out in the Schedule from the Effective Date so that the provisions of the Schedule shall be the new Community Benefit Agreement.

2 LAW AND JURISDICTION

2.1.1 This Agreement 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 Scotland.

2.1.2 The parties hereby submit to the exclusive jurisdiction of the Court of Session in relation to any dispute or claim arising out of or in connection with this Agreement or in relation to its existence or validity (including non-contractual disputes or claims).

IN WITNESS WHEREOF these presents on this page and the preceding page are executed as follows:

SUBSCRIBED for and on behalf of LZN LIMITED

at WARWICK on the 30th day of JANUARY 2014 by

[Signature] Director Full Name

before this witness

[Signature] Witness

KATHERINE SARAH DALTON Full Name

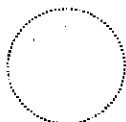
3 ATHENA COURT, TACHBROOK Address

PARK, WARWICK

SUBSCRIBED and SEALED for and on behalf of THE HIGHLAND COUNCIL

at Inverness on the Twenty-seventh day of January 2014 by

[Signature] Full Name KAREN LYONS



SUBSCRIBED for and on behalf of
LOCHLUICHART LLP

at INVERNESS
on the 22nd day
of JANUARY, 2014

by

Ian Hamish Leith Hewitt

Member

IAN HAMISH LEITH HEWITT

Full Name

before this witness

JAMES ALEXANDER CAMPBELL WHITE

Witness

JAMES ALEXANDER CAMPBELL WHITE

Full Name

121 HIGH STREET

Address

FOLKESS

This is the Schedule referred to in the foregoing Amended and Restated Original Community Benefit Agreement among LZN Limited, The Highland Council and Lochluichart LLP

SCHEDULE

Revised provisions of the community benefit agreement

AGREEMENT

between

LZN LIMITED

and

THE HIGHLAND COUNCIL

and

LOCHLUICHART LLP

COMMUNITY BENEFIT PACKAGE

relating to

LOCHLUICHART WIND FARM

AGREEMENT

AMONG:-

- (1) **LZN LIMITED** a company incorporated under the Companies Acts with registered number 04846309 and having its registered office at 5 Old Bailey London EC4M 7BA (who and whose successors as operator of the Windfarm aftermentioned are referred to as "the **Company**");

and
- (2) **THE HIGHLAND COUNCIL** incorporated under the Local Government etc. (Scotland) Act 1994 and having its principal offices at Glenurquhart Road, Inverness IV3 5NX (who and whose statutory successors are hereinafter referred to as "the **Council**")

and
- (3) **LOCHLUICHART LLP** a limited liability partnership incorporated in Scotland under the Limited Liability Partnership Act 2000 (Partnership Number SO302757) and having its registered office at Lochluichart Lodge, Garve, Ross-shire (conform to a change of name from Lochluichart Estate Highland LLP on 23 July 2012) (who and whose successors in title are hereinafter referred to as "the **Landowner**").

WHEREAS:-

- (A) The Company obtained consent from the Scottish Ministers under Section 36 of the Electricity Act 1989 on 22 December 2008 for the construction of a windfarm comprising 17 wind turbines (the "**Windfarm**"), situated within Garve & District Community Council, Ross-shire (the "**Garve Area**") and has agreed to provide a community benefit package throughout the life of the operation of the Windfarm for the benefit of the residents of the Garve Area. For the purposes of this Agreement the extent of the Garve Area shall for the duration of this Agreement be defined by the relevant Community Council boundaries contained in the Scheme for the Establishment of Community Councils in Highland, as approved by Highland Council at its meeting on 3rd March 2011.
- (B) On the basis of consultations with the communities within the Garve Area, it has been determined that the appropriate body to receive the funds to be paid over by the Company under the community benefit package referred to in preamble (A) should be the Lochluichart Community Trust (being the trust formed in accordance with Clause 1 of this Agreement) (the "**LCT**").
- (C) It has been agreed that it would be appropriate for the Council, as the local authority for the Garve Area, to enter into a formal agreement with the Company, so as to ensure that the commitment referred to in preamble (A) is the subject of legally-binding obligations.
- (D) The Landowner is the registered proprietor of the land upon which the Windfarm is to be developed namely ALL and WHOLE that part of Lochluichart Estate, by Garve, Ross-Shire being the subjects described in and disposed by Disposition by Lochluichart Estate Company Limited in favour of the Landowner dated 23 March 2010 and undergoing registration in the Land Register of Scotland under title number ROS12036.

IT IS AGREED as follows:-

1 **FORMATION AND PURPOSE OF THE LCT**

- 1.1 It is a precondition of any payment being made by the Company to the LCT that the LCT has been formed and recognised as a Scottish charity, and on the basis that the terms of the constitution (the memorandum and articles of association, in the case of a community

development trust; and the trust deed, in the case of a charitable trust) reflects and complies with the following features:-

- (a) the objects or the trust purposes of the LCT shall be restricted to charitable purposes under Section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which are also regarded as charitable purposes in relation to the application of Sections 505 and 506 of the Income and Corporation Taxes Act 1988;
- (b) a majority of the directors or (as the case may be) the trustees of the LCT from time to time shall be democratically elected (or, as the case may be, shall be nominated by community organisations operating in the Garve Area which themselves have constitutions which require democratic election/re-election procedures as the main mechanism for appointments to their board/management committee) by members of the local communities within the Garve Area (with the exception of the director/trustee nominated by the Company, as referred to in Clause 1.1(c) below); and
- (c) at any given time, one of the directors/trustees of the LCT shall be an individual nominated by the Company to serve as a director/trustee (and on the basis that the Company may withdraw its nomination and nominate some other individual for appointment at any time).

1.2 In addition to the requirements under Clause 1.1 above, the objects of, or trust purposes of, the LCT shall require the LCT to direct financial support to organisations or initiatives that are of benefit to the Garve Area. It is acknowledged by the Council, the Company and the LCT that the LCT should always give preference to the distribution of funds as opposed to their investment, which distribution or investment must in any case be in accordance with this Agreement.

1.3 When determining whether organisations or initiatives are of benefit to the Garve Area, the LCT shall:-

- (a) prohibit the use or application of funds or other assets of the LCT for the following purposes (together hereinafter referred to as the "**Prohibited Uses**"):
 - (i) services or facilities which the Council already provide at the time out of their own resources; or
 - (ii) services or facilities which the LCT already provide at the time out of their own resources; or
 - (iii) the promotion of political or religious groups, and provision of entertainment or hospitality purposes; or
 - (iv) any purpose considered by the Company, acting reasonably and in consultation with the Council, to be adverse to the Company's interest in the Windfarm.
- (b) use or apply all of the funds or other assets of the LCT (unless otherwise agreed in writing by the Company) for the following purposes (together hereinafter referred to as the "**Permitted Uses**"):
 - (i) Children and young people - especially projects focused on improving access to activities and services, and where young people play a key role in the decision-making;
 - (ii) Carbon reduction - helping to tackle climate change;

- (iii) Vulnerable people - especially projects involving increased access to services and facilities for people with disabilities, the homeless and the elderly;
- (iv) Community regeneration - projects that improve health and education, reduce crime levels, regenerate employment, housing and the physical environment;
- (v) Community buildings - projects that maintain buildings widely used by the community;
- (vi) Self-help groups - community based groups that deliver basic services;
- (vii) Environmental and wildlife projects - especially those involving improvements to communal land;
- (viii) Education and skills development - group and community-based programmes, particularly for those who have had no previous access to training opportunities;
- (ix) Health - projects providing access to services that aim to improve the health and well-being of communities; and
- (x) Heritage - projects that celebrate and protect local heritage
- (xi) Sustainability - projects that promote sustainable development; and
- (xii) Such other uses as shall be agreed between the Company, the Council and the LCT, all parties acting reasonably.

- 1.4 For the avoidance of doubt the LCT shall be entitled to contract with and employ intermediaries and third parties to assist with the distribution or application of funds or other assets of the LCT in accordance with the requirements of Clause 1.1 and 1.2; PROVIDED ALWAYS THAT prior to contracting with or employing such intermediaries or third parties, such intermediaries or third parties must first be approved in writing by both the Council and the Company (both parties acting reasonably).
- 1.5 It is acknowledged by the Council, the Company and the LCT that the LCT shall be entitled to invest its funds or other assets (including for the avoidance of doubt the Initial Payment or the Payment, as the case may be) PROVIDED ALWAYS THAT (a) as noted in Clause 1.2, preference should always be given to the distribution of funds as opposed to their investment, which distribution or investment must in any case be in accordance with this Agreement, (b) any investment made by the LCT should be for the benefit of, and appropriate for, the Garve Area and (c) any investment made by the LCT should be in accordance with the purposes of this Agreement, such that any such investment should be to achieve aims and purposes in line with the Permitted Uses and should not be used to support or facilitate the Prohibited Uses.
- 1.6 The Garve & District Community Council, in consultation with the Company, undertakes to carry out all necessary work in respect of the formation of the LCT (including the application to the Office of the Scottish Charity Regulator for charitable status, and all other relevant processes) with a view to completing the formation of the LCT as soon as reasonably practicable.
- 1.7 The Company undertakes to meet the proper and reasonable expenses incurred by the Garve & District Community Council under Clause 1.6 in forming the LCT and adjusting and finalising this Agreement.

- 1.8 The Company shall serve written notice on the Council as soon as reasonably practicable following both the formation of the LCT and its recognition as a Scottish charity. If the LCT has not been formed and recognised as a Scottish charity within a period of one year from the date of the final signature of this Agreement, the Company will take active steps to engage further with representatives of the communities within the Garve Area with a view to determining what bodies should be selected to receive, hold and administer the funds payable in terms of this Agreement in place of the LCT and as from the date on which such alternative bodies are established the references in this Agreement to the LCT shall be deemed to relate to such alternative bodies.
- 1.9 The parties hereby confirm and shall ensure that, with effect from the date on which the LCT is formed and recognised as a Scottish charity, the provisions of this Agreement (except insofar as relating to obligations specifically assigned to the Council) shall be enforceable by the LCT against the Company or (as the case may be) shall be enforceable by the Company against the LCT, as if LCT had been in existence as at the date of this Agreement and had been a party to this Agreement. For the avoidance of doubt the LCT and the Council shall, on the request of the Company, sign and complete a minute of variation to this Agreement confirming that as per this Clause 1.9 the LCT is a party to and is bound by this Agreement.
- 1.10 Any and all of the rights conferred on the LCT under this Agreement shall be personal to the LCT and shall not be capable of being assigned (wholly or in part) by the LCT unless with the prior written agreement of the Company and the Council.

2 REVENUE BENEFIT

- 2.1 On or before the expiry of a period of six months from the date (the "**Commissioning Date**") of completion of commissioning (within the meaning of Clause 2.7) of the Windfarm, the Company will pay to the LCT a sum (the "**Initial Payment**") calculated in accordance with the formula:

$$(C \times \text{£}2750) \times 89\%$$

where "C" represents the number of megawatts of electricity capacity installed at the Windfarm as at the Commissioning Date.

- 2.2 Without prejudice to the provisions of Clause 2.1, if, as anticipated, the Windfarm has an installed capacity at the Commissioning Date of 51 megawatts, the sum payable under Clause 2.1 shall be £124,822.50.
- 2.3 Subject to Clauses 2.4 and 2.6, on the first anniversary of the date on which the Initial Payment fell due and on each subsequent anniversary thereof (each such date being referred to as a "**Payment Date**"), the Company will pay to the LCT a sum (the "**Payment**") calculated in accordance with the formula:-

$$(A + (A \times 3\%))$$

where:-

"A" represents the Payment (or the Initial Payment in the case of the first instalment of the Payment) paid to the LCT on the preceding Payment Date to the Payment Date in question (which period from a Payment Date until the date immediately prior to the next subsequent Payment Date shall be referred to in this agreement as a "**Relevant Year**").

- 2.4 The Company's obligation to make payments under Clause 2.3 shall be extinguished with effect from the date on which the Windfarm ceases to supply electricity to the national electricity transmission system (the "**Termination Date**"), subject to the qualification that one final payment, in respect of the period from the Payment Date occurring immediately

prior to the Termination Date, shall be made by the Company to the LCT (calculated on the basis of time apportionment) within 30 days of the Termination Date.

- 2.5 For the avoidance of doubt, any cessation of supply to the national electricity transmission system which is of a temporary nature shall be ignored for the purposes of Clause 2.4; the definition of "the Termination Date" shall be interpreted accordingly (both for the purposes of this Clause 2 and for the purposes of Clause 3).
- 2.6 In the event that the installed capacity of the Windfarm is reduced at any time while the obligations of the Company under Clause 2.3 subsist (a reduction in installed capacity which is of a temporary nature being ignored for this purpose), the Company shall be entitled to reduce the rate of payments under Clause 2.3 to reflect the lower capacity of the Windfarm, to such extent as the Company may determine (the Company being bound to act reasonably in this respect) having regard to the principles reflected to in Clauses 2.1 and 2.3.
- 2.7 For the avoidance of doubt, subject to the qualification that follows, completion of commissioning of the Windfarm shall not be deemed to occur for the purposes of Clause 2.1 until the whole of the projected installed capacity of the Windfarm is fully operational, fully tested, and supplying electricity to the national electricity transmission system; the definition of "the Commissioning Date" shall be interpreted accordingly. The qualification to the above definition is that completion of the commissioning of the Windfarm (as defined above) shall not to be withheld for the purpose of frustrating the aims of this agreement.
- 2.8 The Company shall notify the LCT and the Council of the date of completion of commissioning of the Windfarm within 14 days after that occurs.
- 2.9 In addition to the payments made to the LCT under Clauses 2.1 and 2.3 above, the Company undertakes to pay the proper and reasonable costs incurred by the LCT in each Relevant Year in pursuance of its functions under this Agreement, subject to an annual maximum cap for each Relevant Year which is equivalent to four percent (4%) of the Initial Payment or the Payment (as the case may be) due in the Relevant Year in question.

3 APPLICATION OF FUNDS

- 3.1 The LCT shall:
- (a) ensure that (unless otherwise agreed by the Company) all of the sums received by it in pursuance of this Agreement shall be used to direct financial support to organisations or initiatives engaged in or providing the Permitted Uses that are of benefit to the Garve Area;
 - (b) strictly prohibit the use or application of funds or other assets of the LCT for any of the Prohibited Uses.
- 3.2 Without prejudice to the provisions of Clause 3.1, the LCT shall ensure that the payments received by it from the Company under this Agreement (with the exception of the contribution towards proper and reasonable costs referred to in Clause 2.9) will be used exclusively for purposes which constitute charitable purposes as regards the application of sections 505 and 506 of the Income and Corporation Taxes Act 1988.
- 3.3 The LCT shall be entitled to invest its funds or other assets (including for the avoidance of doubt the Initial Payment or the Payment, as the case may be) PROVIDED ALWAYS THAT (a) preference should always be given to the distribution of funds as opposed to their investment, which distribution or investment must in any case be in accordance with this Agreement, (b) any investment made by the LCT should be for the benefit of, and appropriate for, the Garve Area and (c) any investment made by the LCT should be in accordance with the purposes of this Agreement, such that any such investment should be

to achieve aims and purposes in line with the Permitted Uses and should not be used to support or facilitate the Prohibited Uses

3.4 Without prejudice to the provisions of Clauses 3.1, 3.2 and 3.3, the LCT shall take all such steps as may be available to it (including the imposition of appropriate grant conditions, reinforced by provision for clawback of grant in the event of breach; and the enforcement of such conditions) to ensure that any initiatives or organisation to which financial support is given out of funds paid to it under this Agreement complies with the restrictions set out in Clauses 3.1, 3.2 and 3.3 as regards the application of the relevant funds.

3.5 Without prejudice to its other rights and remedies, the Company shall be entitled, in the event of any breach of the provisions of Clauses 3.1 to 3.4, to request repayment from the LCT of any sum paid by the Company to the LCT under this Agreement, to the extent that that sum has been applied in a manner inconsistent with the provisions of any of those Clauses; the LCT shall pay to the Company the sum so requested within 28 days from the date of issue by the Company of the relevant written request for payment.

4 SALE/TRANSFER OF THE WINDFARM

4.1 In the event that the Company sells or otherwise transfers its interest in the Windfarm, the successors of the Company as operators of the Windfarm will be bound by the terms of this Agreement as if they had been a party to this Agreement at the date of signing hereof.

5 REPORTING/DISCLOSURE

5.1 The LCT shall:

(a) supply the Company with reports (at such frequency, and in such format and level of detail, as the Company may reasonably prescribe from time to time) setting out the payments made by it out of the funds received from the Company in pursuance of this Agreement, the organisations/individuals to whom such payments were made (and the progress of any projects which they were taking forward with the assistance of such funds) and the balance of such funds held by it; and

(b) provide to the Company such other information and/or evidence relating to it or to organisations/projects supported by it using payments made by the Company under this Agreement, as the Company may reasonably request from time to time.

5.2 The Company shall be entitled to publicise, in such manner, as it may deem appropriate from time to time, the existence of the community benefit package, the payments made in pursuance of this Agreement, and the identity of the projects/organisations that are supported by the LCT using payments made by the Company under this Agreement.

6 LANDOWNER CONSENT

The Landowner hereby consents to the terms of this Agreement and confirms its approval of the restrictions contained herein on the annual distribution of the Initial Payment or Payment (as the case may be).

7 WAIVER AND VARIATION

No variation in respect of this Agreement shall be valid unless the variation is contained in a formal document, duly signed on behalf of each of the parties to this Agreement.

8 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding between the parties in relation to the matters dealt with in this Agreement, and supersedes and cancels all previous negotiations, commitments and agreements between the parties with regard to such matters.

9 GOVERNING LAW

This Agreement shall be governed by, and construed in accordance with, the law of Scotland, and the parties defer to the exclusive jurisdiction of the Scottish Courts.

10 REGISTRATION

The parties hereby consent to the registration of these presents in the Books of Council and Session for preservation and execution.

IN WITNESS WHEREOF this Agreement consisting of this and the preceding 6 pages are executed as follows:-

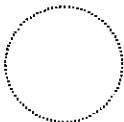
SUBSCRIBED for and on behalf of
LZN LIMITED
at WARWICK.
on the 30th day
of January. 2014
by

[Signature] Director
JOHN HAD GUY MEDLOCK Full Name

before this witness
[Signature] Witness
KATHERINE SARAH DALTON Full Name
8 ATHENA COURT, TACHBROOK Address
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Ian Melville

Member

IAN HORMAN LELIE MELVILLE

Full Name

before this witness

James White

Witness

JAMES ALEXANDER LAMERIN WHITE

Full Name

121 HIGH STREET

Address

FORRES