

Dated 2013

Energy Supply Agreement relating to  
Riverside Stadium Middlesbrough Cleveland

Empowering Wind MFC Limited and  
Middlesbrough Football and Athletic Company (1986) Limited

## CONTENTS

1. Interpretation	1
2. Commencement and Term	4
3. Operation of the Facility	5
4. Invoicing and Payment	6
5. Metering	7
6. Force Majeure	8
7. Termination	8
8. Confidentiality	8
9. Miscellaneous	9
The Schedule	12

THIS AGREEMENT dated

is made BETWEEN:-

- (1) EMPOWERING WIND MFC LIMITED (CN 08369504) whose registered office is at 3<sup>rd</sup> Floor, 277-281 Oxford Street, London W1C 2DL (the "Generator"); and
- (2) MIDDLESBROUGH FOOTBALL & ATHLETIC COMPANY (1986) LIMITED (CN 01947851) whose registered office is at Riverside Stadium, Middlesbrough, Cleveland TS3 6RS (the "Company").

BACKGROUND:-

- (A) The Generator is proposing to install the Equipment at the Property under the terms of the Lease.
- (B) The Generator shall provide the Company with Energy up to the Agreed Output on the terms and conditions of this Agreement.

IT IS AGREED AS FOLLOWS:-

1. INTERPRETATION


1.1 Definitions

In this Agreement each of the following shall, unless otherwise stated, have the following meanings:-

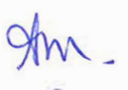
- |                        |   |
|------------------------|---|
| "Act"                  | means the Electricity Act 1989 as amended from time to time;  |
| "Actual Consumption"   | means the actual volume of electricity generated by the Equipment which is taken by the Company as calculated using measurements taken using the Metering Data; <sup>1</sup>  |
| "Agreed Output"        | means an output of upto 1500 MWh of electricity to be supplied free of charge to the Company each year, together with Energy supplied over and above 1500MWh per annum to be sold to the Company at the rate of 8.25p /KWh;   |
| "Authority"            | means the Gas and Electricity Markets Authority and includes the Office of Gas and Electricity Markets ("Ofgem") established under the Utilities Act 2000 or any successor from time to time [having responsibility at law for the implementation and administration of the Feed-In Tariff and accredited renewable energy schemes; |
| "Business Day"         | means a day (other than a Saturday) on which banks are open for business in England and Wales;  |
| <u>"Commissioning"</u> | <u>means the date of the satisfactory completion of such procedures and</u>   |

---

<sup>1</sup> This is expressed in this way as I presume that the Meter will measure the amount of electricity exported to the grid by the Equipment and the amount imported by the Club but will not actually measure the amount which the Club take from the Equipment. This will need to be calculated by measuring the amount of electricity the Equipment produces less the amount that is exported.



Date”	tests as from time to time constitute usual industry standards and practices to demonstrate that the Equipment is capable of commercial operation for the purposes of this Agreement including passing any regulatory and statutory requirements necessary for the commencement of commercial operations and “Commissioned” and “Commissioning” shall be construed accordingly;
“Connection Agreement”	means the agreement entered into by the Generator and the Local Distributor, providing for the connection of the Equipment to the distribution system of the Local Distributor;
“Contract Term”	means the period from the date of this Agreement until (and including) the earlier to occur of: <ul style="list-style-type: none"> <li>(a) twenty (20) years from the Commissioning Date; or</li> <li>(b) the date of termination of the Contract Term pursuant to clause 7;</li> </ul>
“Energy”	means the electrical energy (expressed in kWh) generated by the Equipment, other than any such electrical energy consumed by the Equipment in connection with its operation and maintenance;
“Equipment”	means the wind turbine and associated equipment installed or to be installed at the Property;
“Force Majeure”	means in respect of any party any event or circumstance which is beyond the reasonable control of such party and which results in or causes the failure of that party to perform any of its obligations under this Agreement;
“Insolvency Event”	includes the following events in respect of the party concerned: <ul style="list-style-type: none"> <li>(a) passing a resolution for the party’s winding-up (other than for the purpose of and followed by a solvent reconstruction or amalgamation) or summoning a meeting to pass any such resolution; or</li> <li>(b) the party having a petition for a winding-up order presented against it; or</li> <li>(c) any step is taken to appoint an administrator in relation to the party; or</li> <li>(d) a receiver, administrative receiver, receiver and manager or similar officer being appointed by any person of all or any part of the party’s property, assets or undertaking; or</li> </ul>



- (e) the party making a proposal for a voluntary arrangement as defined in section 1 of the Insolvency Act 1986; or
- (f) the party entering into any other arrangement with its creditors or any of them; or
- (g) taking or suffering any other action in consequence of debt including, without limitation, giving notice to its creditors or any of them that it has suspended or is about to suspend payment; or
- (h) the party being unable to pay its debts for the purposes of section 123 of the Insolvency Act 1986 in sub section 123(1)(a) thereof or any distress, execution or other process being levied upon the whole or a substantial part of the party's assets; or
- (i) a proposal or threat to do any of the above acts or things being made; or an event analogous to the aforesaid occurring in whatever jurisdiction;

"kWh"	means kilowatt hour;
"Lease"	means the lease of even date granted to the Generator by the Company over the Property;
"Local Distributor"	means any person who is authorised by a licence under Section 6(1)(c) of the Act to distribute electricity and whose standard conditions in Section C (in whole or in part) of its licence have effect in respect of the geographic area within which the Property is located;
"Metering Data"	means the amount of Energy recorded by the Metering Equipment used to measure the kWh provided by the Generator to the Company under this Agreement;
"Metering Equipment"	means meters, metering equipment, infrastructure and measuring transformers (both voltage, current and combination units) and any other measuring equipment at the Meter Point;
"Meter Point"	means the metering configuration that measures the Agreed Output and the Actual Consumption;
"mWh"	means megawatt hour;
"Property"	means the property described in the Schedule;

“Prudent Operating Practice”	means practices, methods and procedures which are or should be adopted at the relevant time by a person exercising in the general conduct of its undertaking that degree of judgment, skill, diligence, prudence and foresight which would ordinarily and reasonably be expected from a skilled and experienced operator engaged in the business of developing and operating an electricity generating plant (of the same or similar type as the Equipment) lawfully, in accordance with all applicable safety and environmental regulations and the capability of such plant and under the same or similar circumstances and conditions;
“Renewables Benefits”	means all current and future renewables benefits associated with the availability, capacity and generation of electricity from the Equipment including without limitation those relating to accreditation of the Equipment under the Feed-In Tariff Scheme;
“Start Date”	means the date the conditions precedent in clause 2 are satisfied;
“Surplus Output”	means the difference measured in mWh of Energy between the Agreed Output and the Actual Consumption; and
“Year”	means each year of this Agreement commencing on the Start Date.

## 1.2 **Interpretation**

In this Agreement unless the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 headings and the use of bold typeface shall be for convenience only and shall not affect the interpretation or construction of this Agreement;
- 1.2.3 references to any enactment or statutory provision shall include references to such enactment or statutory provision as it may, after the date of this Agreement, from time to time be amended, supplemented or re-enacted; and
- 1.2.4 a reference to a clause or Schedule is, unless indicated to the contrary, a reference to a clause or schedule to this Agreement.

## 2. **COMMENCEMENT AND TERM**

### 2.1 **Term**

The provisions of this Agreement other than clauses 3.1 - 3.3 and 4 shall be effective from the date of this Agreement and shall continue in full force and effect until the end of the Contract Term. Clauses 3.1 - 3.3 and 4 shall commence on (and be conditional on) the satisfaction in full of the following conditions precedent and shall continue thereafter in full force and effect during the Contract Term:-

- 2.1.1 the occurrence of Commissioning; and
- 2.1.2 the Generator entering into a Connection Agreement in respect of the Equipment.

## 2.2 **Survival of Provisions**

Termination or expiry of this Agreement shall not affect any rights or obligations which may have accrued prior to termination, including any in respect of antecedent breaches, and the obligations of either party which are expressed to survive termination or to take effect on termination shall continue in full force and effect notwithstanding termination of this Agreement.

## 3. **OPERATION OF THE FACILITY**

### 3.1 **Entitlement to Agreed Output**

- 3.1.1 The Generator hereby agrees to deliver Energy each Year of the Contract Term to the Company and the Company hereby accepts the supply of such Energy. Energy up to a maximum of the Agreed Output. The Actual Consumption taken by the Company up to 1500 MWh per annum shall be provided free of charge in consideration of the Company leasing the Property to the Generator.
- 3.1.2 In the event the Actual Consumption is less than the Agreed Output, the Generator shall pay to the Company £0.08 for each kWh of Surplus Output during the initial year of the Agreement. On the first anniversary and each subsequent anniversary of the date of this Agreement such fee shall increase by the percentage increase in the Retail Price Index over the previous year's figure.
- 3.1.3 The parties to this Agreement acknowledge and agree that the rights granted to the Company under clause 3.1.1 do not include any right of the Company to claim the Renewables Benefits relating to the Equipment and this remains the sole property of the Generator.
- 3.1.4 Other than as set out above, the Generator shall be entitled to retain all revenue relating to the sale of Surplus Output (whether by way of the export Feed-In Tariff or otherwise).
- 3.1.5 The Company may purchase Energy over and above 1500MWh per annum from the Generator. Where the Company purchases such Energy from the Generator, the Generator shall supply such Energy to the Company at the rate of 8.25p per kWh. On the first anniversary and each subsequent anniversary of the date of this Agreement such fee shall increase by the percentage increase in the Retail Price Index over the previous year's figure.

### 3.2 **Prudent Operating Practice**

The Generator confirms that it will operate the Equipment during the Contract Term in accordance with Prudent Operating Practice.

### 3.3 **No Interest in Equipment**

The Company shall have no rights or powers or liabilities regarding the operation, maintenance or repair of the Equipment other than as expressly provided by this Agreement or the Lease (as applicable).

### 3.4 **Commissioning**

3.4.1 The Guarantor shall ensure **the Start Date** is within twelve (12) months of the date of this Agreement.

3.4.2 In the event the Generator fails to achieve the Start Date within twelve (12) months of the date of this Agreement the Generator shall pay to the Company £0.08 for kWh of electricity consumed by the Company at the Property until the Start Date. Such fee shall be index linked to the Retail Price Index and if the Start Date is after the first anniversary of the date of this Agreement such fee shall increase each year on any subsequent anniversary by the percentage increase in the Retail Price Index over the previous year's figure.

## 4. **INVOICING AND PAYMENT**

### 4.1 **Accounts and Billing**

4.1.1 The Generator shall, within 15 Business Days of the end of each Year, prepare and submit to the Company a statement of Actual Consumption and Surplus Output (if any) for that Year together with a statement setting out details of all sums due (if any) in respect of the Surplus Output to the Company from the Generator under this Agreement.

4.1.2 On receipt of such statement in accordance with clause 4.1.1, the Company shall issue an invoice for the sums due in respect of the Surplus Output.

4.1.3 Where the Actual Consumption has been estimated for any Year and more accurate data becomes available later during the Contract Term, the next invoice following receipt of such data, shall be adjusted to take account of any Actual Consumption as previously estimated in a previous Year.

### 4.2 **Payment**

The Generator shall pay all such sums due to the Company under clause 4.1 no later than:

4.2.1 20 Business Days after the end of the Year<sup>2</sup> in which the Surplus Output was generated;  
and

4.2.2 20 Business Days after receipt of the statement and invoice,

---

<sup>2</sup> The reconciliation will need to be annual as it is only at that point that it will be known what the surplus output is.



whichever is the earlier, by direct transfer to the bank account of the Company with such bank as the Company may from time to time notify to the Generator or by such other arrangements as the parties may agree.

The Company shall pay all such sums due to the Generator under clause 3.1.5 on the same basis as defined in 4.2 above.

#### 4.3 **VAT**

The sums expressed to be due and payable by the Generator under this Agreement are exclusive of VAT (or any other tax in substitution therefor or in addition thereto) and the Generator shall, in addition to such sums, pay to the Company VAT (or any other tax in substitution therefore or in addition thereto) at the rate for the time being and from time to time properly payable, in respect of any payment falling to be made under this Agreement.

#### 4.4 **Interest**

Any amount properly due and payable by the Generator pursuant to this Agreement and remaining unpaid at the expiry of the relevant period for payment shall bear interest thereafter, such interest to accrue from day to day and to be compounded with monthly rests at a rate equal to 3% above the base lending rate of Barclays Bank plc for the time being and from time to time, from (but excluding) the date of expiry of such period until (but excluding) the date upon which the amount due is actually received by the Company.

### 5. **METERING**

#### 5.1 **Metering Equipment**

The Company shall appoint an independent, recognised meter operator who shall maintain, operate and inspect the Metering Equipment on behalf of the Company. The Company shall notify the Generator of the name and contact details of the current meter operator at all times. The Company shall from time to time and on reasonable notice and during normal business hours allow the Generator's meter operator access to the Metering Equipment to verify the proper operation of that equipment.

#### 5.2 **Metering Data**

5.2.1 The Company shall provide the Generator with such Metering Data as its meter operator provides to it.

5.2.2 The Generator shall inform the Company as soon as reasonably practicable of any inaccuracies in Metering Data identified by the Generator and the Company shall inform the meter operator. In the event of a dispute on Metering Data, the Generator shall inform the Company of such dispute within 30 Business Days of its discovery, the Company shall follow the process set out in the Company's electricity supply agreement.

5.2.3 If information upon which any account is based is discovered to be inaccurate or incomplete in any respect, the Generator shall make such adjustment to its output data as may be necessary as soon as practicable.

## 6. **FORCE MAJEURE**

Neither party shall be in breach of this Agreement, or otherwise liable to the other, by reason of any delay in performance, or non-performance of any of its obligations due to an event of Force Majeure.

## 7. **TERMINATION**

The Company may by notice to the Generator forthwith terminate the Contract Term if:-

7.1 the Generator fails to pay (other than by inadvertent error in funds transmission which is discovered by the Company or, notified to the Company and corrected within 5 Business Days of such notification) any amount due from it pursuant to the terms of this Agreement and such default is unremedied at the expiry of the period 15 Business Days immediately following receipt by the Generator of written notice from the Company of such non-payment;

7.2 the Generator is in material breach of its obligations under this Agreement and such breach is continuing and such breach is remediable, or, if incapable of remedy, remains unremedied after the expiry of 15 Business Days following the giving of written notice by the Company requiring the Generator to discontinue or remedy its material breach;

7.3 either party is subject to an Insolvency Event; or

7.4 the Lease is terminated or expires for whatever reason.

## 8. **CONFIDENTIALITY**

### 8.1 **General Restriction**

Subject to the exceptions provided in clause 8.2, neither party shall, at any time **prior to or within 2 years after the termination or expiry of this Agreement**, without the prior written consent of the other, divulge or suffer or permit its officers, employees, agents or sub-contractors to divulge to any person (other than to any of its or their respective officers or employees who require the same to enable them properly to carry out their duties) any of the contents of this Agreement or any commercially confidential information relating to the negotiations concerning the same or any commercially confidential information which may come to a party's knowledge in the course of such negotiation or otherwise concerning the operations, contracts, commercial or financial arrangements or affairs of the other party.

### 8.2 **Exceptions**

The restrictions imposed by clause 8.1 shall not apply to the disclosure of any information:

8.2.1 which now or hereafter comes into the public domain otherwise than as a result of a breach of an undertaking of confidentiality or which is obtainable with no more than reasonable diligence from sources other than the parties to this Agreement;

- 8.2.2 which is required by law to be disclosed to any person who is authorised by law to receive the same;
- 8.2.3 which is required to be disclosed by the regulations of any recognised exchange upon which the share capital of the party making the disclosure is or is proposed to be from time to time listed or dealt in;
- 8.2.4 to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing party is a party;
- 8.2.5 to any consultants, banks or professional advisers of the disclosing party, provided enforceable undertakings to observe the same restrictions on the use of the relevant information as are contained in this clause 8.2 have been obtained prior to such disclosure; or
- 8.2.6 from any party to any instrument or agency of Government or the European Union having jurisdiction in respect of inter-state commerce, competition or energy.

9. **MISCELLANEOUS**

9.1 **No other Representation**

Each party confirms that, except as provided in this Agreement and without prejudice to any liability for fraudulent misrepresentation, neither party has relied on any representation or warranty or undertaking which is not contained in the Agreement or any document referred to in it or which was made by the other party who is not a party to this Agreement and neither party shall have any remedy in respect of misrepresentation or untrue statement made by the other party (whether innocently or negligently) unless and to the extent that a claim lies in respect of any express representation or warranty or undertaking which is contained in this Agreement.

9.2 **Notices**

9.2.1 Any notice, approval, consent or other communication to be given by one party to the other under, or in connection with the matters contemplated by, this Agreement shall be addressed to the recipient and sent to the address or facsimile number of such other party given in the Schedule for the purpose and marked for the attention of the person so given or to such other address and/or facsimile number and/or marked for such other attention as such other party may from time to time specify by written notice given in accordance with this clause to the party giving the relevant notice or communication to it.

9.2.2 Any notice or other communication to be given by any party to the other, or in connection with the matters contemplated by, this Agreement shall be in writing and shall be given by letter delivered by hand or sent by first class prepaid post or facsimile, and shall be deemed to have been received:

- (a) in the case of delivery by hand, when delivered; or



- (b) in the case of first class prepaid post, on the second day following the day of posting; or
- (c) in the case of facsimile, on acknowledgement of the addressee's facsimile receiving equipment (where such acknowledgement occurs before 17.00 hours on the day of acknowledgement) and in any other case on the day following the date of acknowledgement.

9.3 **Counterparts**

This Agreement may be executed in counterparts and by the parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

9.4 **Variation and Waiver**

9.4.1 No delay by or omission of any party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or future exercise thereof or the exercise of any other right, power, privilege or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

9.4.2 No variation to this Agreement shall be effective unless made in writing and signed by or on behalf of the Generator and the Company.

9.5 **Assignment**

Subject always to the following provisions of this clause 9.5, neither party may transfer or otherwise assign any of its rights or obligations under this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

9.6 **Third Party Rights**


No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

9.7 **No Partnership**

Nothing in the Agreement or in any document referred to in it or any arrangement contemplated by it shall constitute the parties a partner of the other.

9.8 **Severance**

If any condition, clause or provision of the Agreement not being of a fundamental nature, is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Agreement shall not be affected thereby.



9.9 **Law**

This Agreement shall be governed by, and construed in all respects in accordance with, English Law.

9.10 **Jurisdiction**

The courts of England and Wales shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this Agreement and any matter arising therefrom.

AS WITNESS of which the parties have executed this Agreement on the date specified on page 1.

A handwritten signature in blue ink, appearing to be 'Jm.', located on the right side of the page.

**THE SCHEDULE**

1. **PROPERTY**

[            ]

2. **CONTACT DETAILS**

The Generator

Address:

Fax:

.....

Contact:

.....

The Company

Address:

Fax:

.....

Contact:

.....

SIGNED by ALAN JOHN MILLINDER duly )  
authorised for and on behalf of )  
EMPOWERING WIND LIMITED )

*Amillinder*

WITNESSED BY



MARIO ANASTASIS  
98 THE WALK  
ROTTINGHAM  
NOTTS, G16 1QF  
PROPERTY MANAGER

SIGNED by )  
authorised for and on behalf of )  
MIDDLESBROUGH FOOTBALL & ATHLETIC )  
COMPANY (1986) LIMITED )