

# **COMMUNITY FUNDING AGREEMENT**

- Carsington Wind Energy Ltd** (1)  
**and**  
**Carsington and Hopton Parish Council** (2)  
**Brassington Parish Council** (3)

THIS AGREEMENT is made on 15th April, 2015

**BETWEEN:**

- (A) Carsington Wind Energy Limited, (company number 05240925) and having its registered office at Senator House, 85 Queen Victoria Street, London, EC4V 4DP ("the Company"); and
- (B) The Carsington and Hopton Parish Council, c/o Wash Farm, Carsington, DE4 4DE; and
- (C) The Brassington Parish Council, c/o 7 Ashes Lane, Fenny Bentley, Ashbourne, DE6 1LD.

each a "Party", and together the "Parties".

**1 DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following words and expressions shall have the following meanings:

(a) Affiliate	means any corporation controlling the Company (directly or indirectly) or under common control with that party; and 'Affiliates' shall be construed accordingly.
(b) Annual Grant	has the meaning given to it in clause 3.1 below;
(c) Commencement Date	Means within 28 days of the date hereof;
(d) Company	means the party referred to in preamble clause A which expression shall include its successors in title and assigns;
(e) Development Land	means the area of ground at Carsington Pastures being at grid reference SK424764,354382 in the North East Derbyshire District Council and shown delineated red on the Plan attached;
(f) Eligible Purposes	means: <ul style="list-style-type: none"><li>(i) the conservation, protection and improvement of the built and natural environment within the said parishes;</li><li>(ii) the provision of facilities for recreation, entertainment, arts, sporting activities or</li></ul>

	<p>other leisure time for the residents of the parishes or for the public at large;</p> <p>(iii) the advancement of the education of the residents of the parishes or the public in the conservation, protection and improvement of the build and natural environment and heritage awareness of same;</p> <p>(iv) the advancement of the education of the residents of the parishes or the public about all aspects of renewable energy generation and sustainability;</p> <p>(v) the promotion of sustainable development which meets the needs of the present without compromising the ability of future generations to meet their own needs by the preservation, conservation and the protection of the environment and the prudent use of resources;</p> <p>(vi) the promotion of rural regeneration in the areas served by the Parish Councils by the maintenance, improvement or provision of public amenities and/or the preservation of buildings or sites of historic or architectural importance.</p> <p>(vii) Measures to assist in fuel poverty alleviation in the Locality</p>
(g) Index Linked	<p>means increased in accordance with the following formula:</p> $\frac{\text{£X} \times \text{CPI}_n}{\text{CPI}_a}$ <p>where:</p> <p>"£X" = the sum subject to indexation;</p> <p>"Consumer Price Index" or "CPI" means the Consumer Prices Index – All Items as published by the Office for National Statistics, reference</p>

	<p>code D7BT declaring that (a) if the CPI ceases to be published or is abolished, then for the reference to the said CPI there shall be substituted reference to such alternative index as shall be agreed between the parties (acting reasonably) and if the reference date used in the compilation of the CPI shall change the figure taken to be shown in the CPI shall be the figure which would have been shown in the CPI if the original reference date had been retained; or (b) if there is a material change in the basis of the CPI, there shall be substituted reference to such other similar index or method of adjusting the charges payable hereunder as shall be agreed between the parties (both parties acting reasonably);</p> <p><b>CPI<sub>n</sub></b> means the CPI for the calendar month immediately preceding the month of payment or calculation; and</p> <p><b>CPI<sub>a</sub></b> means the CPI figures for the calendar month in which the Commencement Date falls, provided always that if the application of the formula produces a lower figure than the sum being paid prior to the application of the formula the sum so being paid shall continue to be the sum due and payable, until the next time the formula is applied;</p>
(h) Locality	means the respective geographic boundaries of each of the Parish Councils;
(i) Necessary Consents	means the principal planning permission in respect of the Wind Farm issued under the Town and Country Planning Act 1990 or on Appeal and all consents under the Electricity Act 1989 in respect of the Wind Farm and any other relevant consents necessary for the construction and operation of the Wind farm and all road construction consents and other requisite consents for the construction, widening and

	upgrading of access roads which are necessary in order to obtain access to and from the Wind Farm;
(j) Prohibited Purpose	<p>means:</p> <ul style="list-style-type: none"> <li>(i) the advancement or support or criticism of religion or party politics; or</li> <li>(ii) activities contrary or potentially contrary to the interests of the Company - if the Parish Councils are in any doubt as to whether a proposed activity could breach this restriction, the Parish Councils shall consult the Company in writing in advance; or</li> <li>(iii) activities likely to bring the Company into disrepute or prejudice its reputation or brand - if the Parish Councils are in any doubt as to whether a proposed activity could breach this restriction, the Parish Councils shall consult the Company in writing in advance; or</li> <li>(iv) functions of councils that listed in Part IX of the Local Government Act 1972 and any statutory duty that the Parish Councils each may have under the Highways Act 1980 and any unlawful anti-renewable energy or anti wind farm activities; or</li> <li>(v) any illegal or unlawful activities.</li> </ul>
(k) Parish Councils	means collectively The Carsington and Hopton Parish Council and The Brassington Parish Council which expression shall include their respective successors in title and assigns.
(l) Wind Farm	means the wind farm known as Carsington Pastures constructed by the Company on the Development Land;

1.2 Furthermore, unless a contrary indication appears:

- (a) words in this Agreement implying the masculine, feminine or neuter genders shall be deemed to apply to other genders and where the context so admits terms expressed in the singular shall include the plural and vice versa;
- (b) the Clause headings in this Agreement are for ease of reference only and are not to be construed as being part of this Agreement for any purpose;
- (c) save where there is an express statement to the contrary references in this Agreement to Clause(s) are to Clause(s) in this Agreement;
- (d) any reference in this Agreement to an Act of Parliament or any statutory regulations shall be deemed to include a reference to any amendment or modification thereto or re-enactment or replacement thereof as well as any regulations made thereunder; and
- (e) subject to Clause 12, all sums stated to be payable in terms of this Agreement shall be inclusive of all, if any, VAT payable thereon.

## **2 PROPOSED FUNDING**

- 2.1 The Company has constructed the Wind Farm in accordance with the planning permission granted on appeal pursuant to reference No. APP/P1045/A/07/2054080 dated 17<sup>th</sup> September 2008.
- 2.2 The Parish Councils have agreed to hold and administer a community fund to make grants to assist in and support the social, economic and environmental development and improvement of the community in the area of the Locality For the avoidance of doubt, the Parish Councils may only use the Annual Grant for an Eligible Purpose or Eligible Purposes, and under no circumstances shall the Annual Grant be used for a Prohibited Purpose. For the avoidance of doubt, at the outset of this Agreement the Parish Councils intend to use the Annual Grant to fund schemes which include improvements to the village green, the village school and its playing field, the local church roof, the village hall, the water supply to local allotments and making a contribution to a nature projects run by local school children. The Company does not object in principle to the Annual Grant being used for such projects.
- 2.3 For as long as the Wind Farm generates electricity and the Company has a lease of the land on which the Wind Farm is located, the Company has agreed to make an annual community fund payment to the Parish Councils to facilitate the Parish Councils to make grants available for those initiatives referred to in Clause 2.2 on the terms and conditions set out in this Agreement.

### **3 PAYMENT OF THE GRANTS**

- 3.1 Subject to the provisions on termination and lapse in Clauses 5 and 6 below, the Company will pay to the Parish Councils the sum of £8,200 (Index Linked) per year (the "Annual Grant") on the Commencement Date and within 28 days of each anniversary of the Commencement Date. The Annual Grant will unless notified by the Parish Councils be paid on the basis of 50% to The Carsington and Hopton Parish Council and 50% to The Brassington Parish Council.
- 3.2 The Company may, at its absolute discretion and pursuant to a written request made by the Parish Councils pay to the Parish Councils the whole or part of any Annual Grant earlier than the due date stated under clause 3.1 above.
- 3.3 The Annual Grant will be paid to such designated bank accounts opened for or on behalf of each Parish Council as is duly notified to the Company in writing with supporting evidence of the account details.
- 3.4 Written confirmation of receipt of the Annual Grant will be given to the Company by each Parish Council within seven days of receipt.

### **4 THE PARISH COUNCILS' OBLIGATIONS**

- 4.1 Subject to Clause 3.1 above, the Parish Councils undertake to use the Annual Grant only for the purpose of making grant payments for the benefit of the community of the Locality in accordance with the general award areas referred to in Clause 2.2
- 4.2 The Parish Councils undertake to spend no more than 10% of each Annual Grant on its respective administrative or management costs unless otherwise agreed in writing by the Company.
- 4.3 The Parish Councils shall each submit to the Company a copy of the minutes of the meetings at which each Parish Council has resolved on activities and the expenditure and shall do so within three months from the date on which the meeting took place.
- 4.4 The Parish Councils undertake to send the Company a certified copy of each of their annual accounts each year as soon as reasonably practicable after they have been finalised.
- 4.5 The Parish Councils further agree to provide promptly to the Company at any time such additional information, reports and documents as the Company may reasonably request including evidence in support of how the Annual Grant has been used and how the Parish Council decided on the purpose for which the Annual Grant was used.
- 4.6 The Company shall be entitled to promote its association with the Parish Councils and the allocation of the Annual Grant in such ways as the Company acting reasonably shall

see fit. The Company shall keep the Parish Councils reasonably informed of any such promotion.

- 4.7 The Parish Councils have each authorised two members to enter into this contract on their behalf and shall within 10 days from the execution of this Agreement, they each shall inform the Company of the identities of the individuals with whom the Company should liaise in relation to all matters arising under this Agreement-any alteration of such nominated representative should be notified to the Company in writing without delay.
- 4.8 For the avoidance of doubt, the Company, shall be deemed to discharge its liability hereunder on compliance with the terms of clause 3.1 hereof, and shall have no liability to any party following receipt of the payments due under this Agreement into the bank accounts specified by the Parish Councils pursuant to clause 3.3 hereof; the Company shall have no liability to any party in relation to how Annual Grants are held, spent or distributed by the Parish Councils.

## **5 TERMINATION BY THE COMPANY**

- 5.1 The Company may terminate this Agreement against one or both Parish Council's by giving 28 days' notice in writing to the Parish Councils and may pay no further Annual Grants to the defaulting Parish Council(s) (if any are due) on the occurrence of one or more of the following events (which shall be specified in the said notice):-
- (a) a material breach, or multiple breaches, by the Parish Council(s) of any of the terms of this Agreement (as varied from time to time in accordance with clause 10 below) including, without limitation, any breach of any of the obligations specified in Clause 4; or
  - (b) the lapse of this Agreement pursuant to clause 6 hereof.
- 5.2 Where this Agreement is terminated by the Company against one Parish Council only, this Agreement shall remain in force in relation to the Company and the remaining Parish Council and that Parish Council shall continue to receive Annual Grant subject to the terms of this Agreement.
- 5.3 On termination of this Agreement in accordance with Clause 5.1, the Parish Councils shall provide a final report to the Company and an account of the expenditure of the Annual Grants received and spent up to the date of termination.
- 5.4 Where this Agreement is terminated by the Company under Clause 5.1(a) (material breach) the Parish Council against whom the termination right is being exercised, or both, as the case may be, shall repay any unused money from the Annual Grants as at the date of such termination notice, to the Company within 28 days of the date of such termination.



- 5.5 Without prejudice to Clause 5.4 above, termination of this Agreement shall be without prejudice to any claim which any Party may have against the other in respect of any outstanding payments or any other matter relating to the period prior to termination.
- 5.6 If the Parish Councils are subject to an event of insolvency similar to that set out in clause 6.1(b) below, or are dissolved, either or both Parish Councils may novate their rights and obligations under this Agreement to Derbyshire Dales District Council subject to the Company consenting to such novation with such consent not to be unreasonably withheld or delayed and subject to the Company being unable to find an alternative person (as defined in the Interpretation Act 1978) to administer the Annual Grant. In any event, any such new arrangement completed pursuant to this clause 5.6 shall;
- 5.5.1 be on the same terms as this Agreement, subject as aftermentioned;
- 5.5.2 endure for the residue of the lease of the Wind Farm as at that time; and,
- 5.5.3 be no more burdensome on the Company than the obligations on the Company under this Agreement.

## **6 LAPSE OF AGREEMENT**

- 6.1 Unless otherwise agreed between the Parties, this Agreement will lapse and no further Annual Grants will be payable by the Company if:
- (a) the Wind Farm permanently ceases to generate electricity;
- (b) the Company is affected by any event that would constitute an event of insolvency under English law including the Insolvency Act 1986 and no Affiliate of the Company takes over the operation of the Wind Farm including the assignment of the lease granted to the Company in respect of the Wind Farm; or
- (c) the lease granted to the Company in respect of the Wind Farm expires or otherwise determines.
- 6.2 In the event that the Company is affected by an event that would constitute an event of insolvency under English law including the Insolvency Act 1986 which results (either indirectly or directly) in the Wind Farm being operated by an Affiliate of the Company, the Company hereby undertakes to assign or novate (as the case may be) its rights and obligations under this Agreement to that Affiliate.
- 6.3 In the event that the Company assigns or novates its rights and/or obligations in the lease in the Wind Farm to another corporate body or grants a licence or sub-lease in the same the Company represents and warrants that it shall assign or novate its rights and/or obligations under this Agreement to such assignees, sub-licensee or sub-tenant (as the case may be).

## **7 DISPUTES**

Any dispute arising from or under these terms shall be referred to an independent arbiter appointed by the Company and the Parish Councils jointly. In the absence of agreement between the Parties as to the appointment of the independent arbiter, the appointment shall be made by the President (or other senior executive deputising for or replacing the President) at that time of the Law Society of England.

## **8 ASSIGNMENT**

- 8.1 The Company may assign or charge any of its rights or the benefit of all or part of this Agreement or transfer, delegate or sub-contract any of its duties or obligations under this Agreement to any successor that takes over the ownership or operation of the Wind Farm, without the consent of the Parish Councils.
- 8.2 The Company undertakes to notify the Parish Councils prior to any disposal of their interest in the Wind Farm and to procure that the party to which the disposal is made enters into an agreement with the Parish Councils (on or prior to completion of said disposal) on the same terms as this Agreement (including a provision in similar terms to this Clause 8.2, covering subsequent disposal(s)). The Parish Councils may not assign or charge any of its rights or the benefit of all or part of this Agreement or transfer, delegate or sub-contract any of their respective duties or obligations under this Agreement without the prior written consent of the Company.
- 8.3 For the avoidance of doubt, the Company shall have no liability under this Agreement following an assignment or disposal pursuant to this clause 8.

## **9 CONFIDENTIALITY**

Save that nothing in this Clause 9 shall operate to prevent either Parish Council from discussing the existence of this Agreement, the fact of the Annual Grant and its application at the Parish Council meetings in the presence of members of the public, both the Company and the Parish Councils shall treat as confidential all information received or obtained in connection with or contained in this Agreement and the Company and the Parish Councils shall not disclose any such information or the contents of this Agreement, without the consent of the other Party save:

- 9.1 to the extent required by law or by any securities exchange, regulatory or governmental body to which the Company and/or the Parish Councils are subject;
- 9.2 information which the Company and/or the Parish Councils submit to their professional advisors;

- 9.3 information required from the Company by their funders and their funders' professional advisors or potential purchasers and the purchasers' professional advisors or potential equity providers and the equity provider's professional advisors;
- 9.4 information which the Parish Councils submit, in support of funding applications or in compliance with conditions attaching to funding support provided to the Parish Councils, to funders or to prospective funders (and/or their professional advisers); or
- 9.5 information necessarily required to be given by the Company, to any other party to enable the Company to develop and/or operate the Wind Farm.
- 9.6 Notwithstanding the foregoing, the Parish Councils shall not be in breach of this clause 9 if they receive and respond to a bona fide and valid request pursuant to an enquiry submitted to them under the Freedom of Information Act 2000.

## **10 VARIATION OR AMENDMENTS**

No variation, alteration or amendment to this Agreement may be made except where expressly recorded in writing by a document expressed to be supplemental to this Agreement and signed by the duly authorised representative of each of the Parties.

## **11 NO AGENCY OR PARTNERSHIP**

Nothing in this Agreement shall be deemed to constitute a partnership or separate joint venture between the Parties.

## **12 FEES AND EXPENSES**

The Company shall be responsible for payment of its own fees and expenses for legal and other professional advisory services incurred in relation to this Agreement and shall pay the legal adviser who the Parish Councils have instructed to represent them in relation to the formation of this Agreement (the 'Legal Adviser'), for such legal services up to a maximum of £2,500 plus value added tax. Following signature of this Agreement by all Parties, the Legal Adviser shall submit its invoice to the Company and the Company shall settle the Legal Adviser's invoice within 30 days of receipt of the same.

## **13 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

For the purposes of section 1(2) of the Contracts (Rights of the Third Parties) Act 1999 the Parties state that they do not intend any term of this Agreement to be enforced by any third Parties but any third Party right which exists or is available independently of that Act is preserved

## **14 NOTICES**

### **14.1 Method**

Each notice or other communication to be given under this Agreement shall be given in writing in English and, unless otherwise provided, shall be made by hand, fax or letter. For the avoidance of doubt, notice shall not be validly served by e-mail.

#### 14.2 Delivery

Any notice or other communication to be given by one Party to another under this Agreement shall (unless one Party has by no less than 5 working days' notice to the other Party specified another address) be given or sent to the other Party at the address set out below:

**(a) Carsington Wind Energy Limited**

Address: Senator House, 85 Queen Victoria Street, London, EC4V 4DP

Attention: Paul Mewse

Email address: [paul.mewse@gdfsuez.com](mailto:paul.mewse@gdfsuez.com)

**(b) Carsington and Hopton Parish Council**

Address: Wash Farm, Carsington, DE4 4DE

Attention: Mrs Kate Murray

**(c) Brassington Parish Council**

Address 7 Ashes Lane, Fenny Bentley, Ashbourne, DE6 1LD

Attention Mrs B Kirkham

#### 14.3 A notice or other communications given by one Party to another shall be deemed to have been given:

- (a) in the case of a notice by hand, at the time of actual delivery;
- (b) if posted, by 10:00 am on the second business day following the day on which it was despatched by first class mail postage prepaid;
- (c) in the case of a fax, with a confirmed receipt of transmission of all pages from the receiving machine, on the day on which it was transmitted; or
- (d) in the case of an email, the day on which the email was sent,

provided that a notice given in accordance with the above but received on a day which is not a business day or after normal business hours in the place of receipt shall be deemed to have been received on the next business day. For the purpose of this Clause 14,

business day shall mean a day (other than a Saturday or Sunday) on which banks are open for business in London.

**15 GOVERNING LAW**

- 15.1 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 England and Wales.
- 15.2 Subject to Clause 7 above, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS whereof the Parties executed this agreement as a Deed the day and year first before written

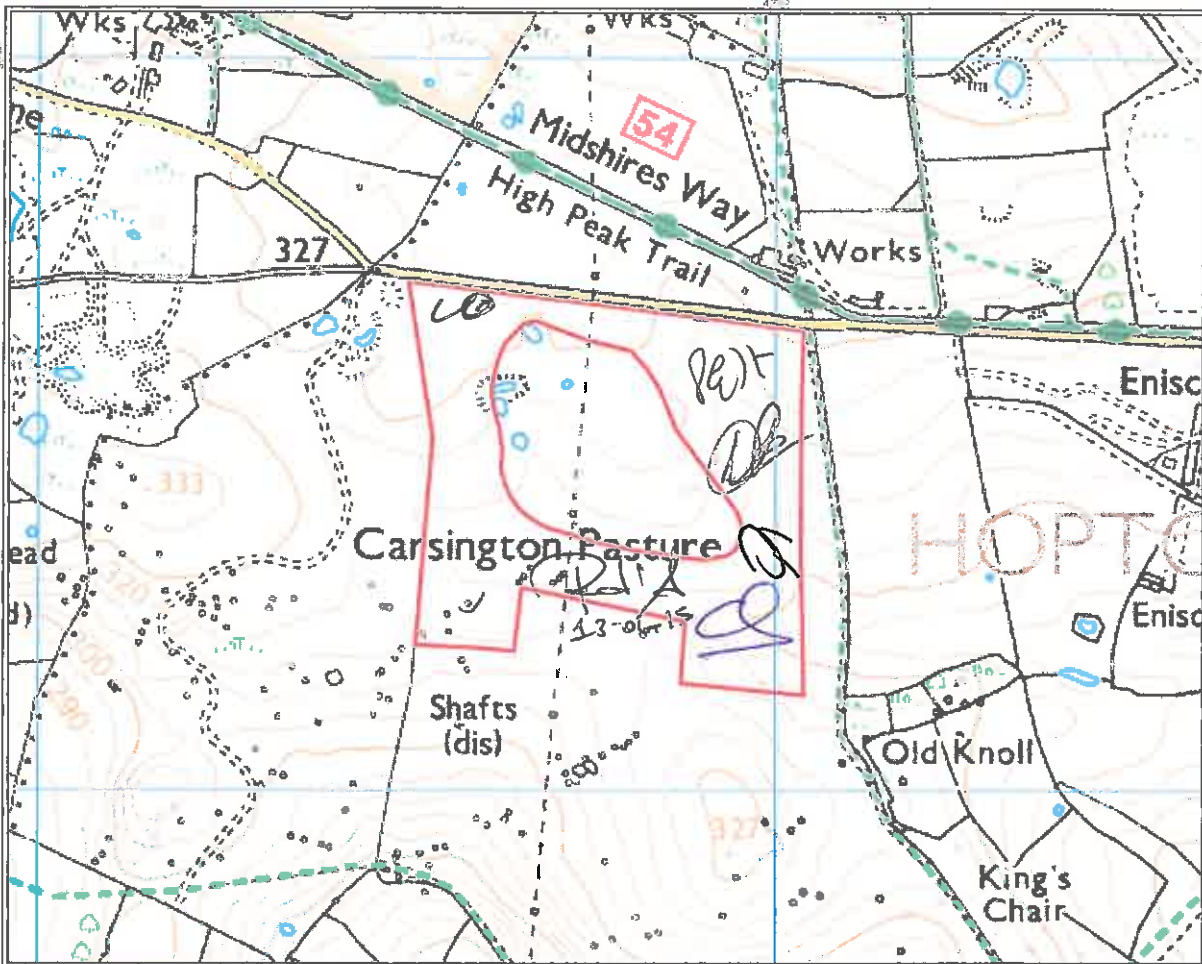
SIGNED as a DEED by ) *Southway*  
Carsington and Hopton Parish Council ) CRAIG SOUTHWAY 27 MARCH 2015  
[Name]

Acting by ) *C. Oulfield*  
[two of its members] ) [Name] C. OULFIELD 27-3-15

SIGNED as a DEED by ) *P. E. Horrocks*  
Brassington Parish Council ) P.E. HORROCKS. 26<sup>th</sup> MARCH 2015  
Acting by ) *D.A. Brown*  
(two of its members) ) D.A. BROWN 27/3/15

SIGNED as a DEED by ) *[Signature]*  
Carsington Wind Energy Limited ) [Name] CARL FORREMAN 27/3/15

Acting by ) *[Signature]*  
[two directors] ) 13-04-15  
[Name] FABIO DIALONZO  
Director



**Carsington Pastures  
Wind Farm**

westcoastenergy  
GDF SUEZ



Legend  
 Development Land

westcoastenergy  
GDF SUEZ

Plan to Accompany Community  
Funding Agreement

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Drawn by: AW  
 Checked by: AW  
 Approved by: SS  
 28/03/2015  
 854/BP/224a