

2018

Agreement pursuant to Section 106 of the Town and Country Planning Act
1990 (as amended)
relating to
Site of the former Teesside Power Station, Wilton International, Teesside

Sembcorp Utilities (UK) Limited ⁽¹⁾ and
Redcar and Cleveland Borough Council ⁽²⁾

DATE

PARTIES

- (1) Sembcorp Utilities (UK) Limited of Sembcorp UK Headquarters, Wilton International, Middlesbrough, TS90 8WS (**Owner**); and
- (2) Redcar and Cleveland Borough Council whose registered office is at Redcar and Cleveland, Kirkleatham Street, Redcar, TS10 1RT (**Council**).

BACKGROUND

- (A) The Council is the relevant planning authority for the purposes of the 2008 Act for the area within which the Land is situated and is the authority by whom these development consent obligations are enforceable.
- (B) The Owner is the owner of an estate in fee simple absolute in possession of the Land under freehold title number CE189675.
- (C) The Owner submitted an Application to the Planning Inspectorate on 22 November 2018 for development consent to construct and operate the Development. The Application was accepted for examination on 18 December 2017.
- (D) It is intended that the Owner will be the undertaker for the purposes of the Development Consent Order and it intends to construct and operate the Development as authorised by the Development Consent Order.
- (E) The parties to this Deed have agreed to enter into this Deed in order to secure the development consent obligations contained in this Deed.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in Clause 1 apply:

1990 Act	the Town and Country Planning Act 1990 (as amended)
2008 Act	the Planning Act 2008 (as amended)
Application	the application for a development consent under section 37 of the 2008 Act submitted to the Planning Inspectorate on 22 November 2017 and given reference number EN010082
Business Days	all days other than Saturdays, Sundays and UK bank holidays
Construction Period	the periods between:- (a) the Start Date and the Phase 1 Operational Date; and, (b) (if applicable) the Phase 2 Commencement Date and the Phase 2 Operational Date.
Construction Training and Employment Method Statement	A statement which aims to achieve the following outcomes: (a) advertising of employment opportunities at the Development targeted to Local Residents and designed to promote applications from them for such employment opportunities in order that they can be reasonably considered for interview and

	<p>assessed to consider their suitability for employment;</p> <p>(b) each of the vacancies on site, including those within contractors and sub-contractors of the Owner, being advertised in Job Centres in the Borough of Redcar and Cleveland and notified to the Council's Routes to Employment team at routestoemployment@redcar-cleveland.gov.uk or at Redcar & Cleveland House, Kirkleatham St, Redcar, TS10 1RT;</p> <p>(c) the application of equal opportunity procedures in accordance with current legislation by contractors and sub-contractors; and</p> <p>(d) the provision of quarterly and cumulative monitoring information that will provide evidence of the implementation of the Construction Training and Employment Method Statement during the Construction Period.</p> <p>and includes a form of Employment Returns and written statements required pursuant to Schedule 1 paragraph 7</p>
Development	an electricity generating station with a nominal net electrical output capacity of up to 1,700 MWe at ISO Conditions and associated development as listed in Part 1 of Schedule 1 of the Development Consent Order
Development Consent Order	the development consent order to be made pursuant to the Application
Development Contract	Any contract entered into by the Owner and a third party that relates to the construction of the Development
Development Contractor	Any third party that has entered into a Development Contract
Employment Return	<p>a written statement identifying:</p> <p>(a) where relevant the number of local people and local businesses engaged by the developer and each development contractor in the construction of the development</p> <p>(b) a list of the vacancies</p>
Land	the land against which the obligations herein may be enforced known as part of the land within the Wilton International site, Teesside registered at HM Land Registry under title number CE189675 and which for the purposes of identification only is shown edged red on the Plan attached to this Deed as Appendix 1
Local Businesses	any business who has a premises located in the Borough of Redcar and Cleveland
Local Residents	any resident who permanently resides in the Borough of Redcar and Cleveland
Phase 1	the first generating unit in Work No.1 and any development which is associated with or ancillary to that generating unit as described in Work No.2 as listed in Part 1 of Schedule 1 of the Development Consent Order.
Phase 1 Commencement	the date upon which Phase 1 of the Development is commenced within the meaning of section 155 of the 2008 Act provided that

Date	<p>the following must not be taken to be a material operation and must not amount to commencement of Phase 1 of the Development:</p> <ul style="list-style-type: none"> (a) works of site clearance and remediation; (b) environmental surveys; (c) investigations for the purpose of assessing ground conditions; (d) the erection of any temporary means of enclosure and security; (e) the temporary display of site notices or installation of a site compound or any other temporary building or structure; (f) any other preparatory works agreed in writing with RCBC
Phase 1 Operational Date	the date on which Phase 1 of the Development is first in operation following construction and commissioning
Phase 2	the second generating unit in Work No.1 and any development which is associated with or ancillary to that generating unit as described in Work No.2 as listed in Part 1 of Schedule 1 of the Development Consent Order
Phase 2 Commencement Date	<p>the date upon which Phase 2 of the Development is commenced within the meaning of section 155 of the 2008 Act provided that the following must not be taken to be a material operation and must not amount to commencement of Phase 2 of the Development:</p> <ul style="list-style-type: none"> (a) works of site clearance and remediation; (b) environmental surveys; (c) investigations for the purpose of assessing ground conditions; (d) the erection of any temporary means of enclosure and security; (e) the temporary display of site notices or installation of a site compound or any other temporary building or structure; (f) any foundation works; and (g) any other preparatory works agreed in writing with RCBC.
Phase 2 Operational Date	the date on which Phase 2 of the Development is first in operation following construction and commissioning
Plan	the plan which is annexed to this Deed
Procurement Process Report	<p>a report setting out in relation to each development contract:</p> <ul style="list-style-type: none"> (a) the nature of the development contract; (b) the name and address of anyone invited to tender for the development contract; and (c) the name and address of the successful development

contractor.

RCBC Routeway Contribution	the sum of up to five hundred thousand pounds (£500,000) paid in accordance with Schedule 14.1.1 which must be used for the RCBC Routeway Purpose
RCBC Routeway Purpose	to engage and prepare residents for opportunities during the construction phase of the plant, specifically for the planning and delivery of routeways, to provide initial training and upskilling for Local Residents, in basic construction and specific vocational skills
RCBC Supplier Development Contribution	the sum of forty thousand pounds (£40,000) paid in accordance with Schedule 14.1.2 which must be used for the RCBC Supplier Development Purpose
RCBC Supplier Development Purpose	to deliver events, workshops and coaching sessions to local businesses to achieve the requisite standards to supply the Owner and its primary contractors with goods and services
Start Date	thirty (30) days prior to the Phase 1 Commencement Date.

1.2 In this Deed unless the context requires otherwise:

- 1.2.1 reference to this Deed or any other document is to this Deed or that document as amended from time to time.
- 1.2.2 words denoting the singular include the plural and vice versa.
- 1.2.3 words denoting any gender include every gender.
- 1.2.4 reference to a "person" includes any corporate or unincorporated body and reference to a company includes a limited liability partnership.
- 1.2.5 the table of contents and headings in this Deed do not affect its interpretation.
- 1.2.6 reference to "notice" or "notify" means notice or notification in writing.
- 1.2.7 "writing" or "written" does not include email, fax or any other form of electronic communication.
- 1.2.8 the terms "including", "include", "in particular" or any similar expression are illustrative and do not limit the sense of the words preceding those terms.
- 1.2.9 reference to a statute, statutory instrument or statutory provision is a reference to it as amended, consolidated, extended or re-enacted from time to time (whether before or after the date of this Deed) and to any order, instrument, plan, regulation, permission, direction, action or other requirement issued under it or deriving validity from it.
- 1.2.10 in interpreting words and phrases used in this Deed the definitions contained in the Interpretation Act 1978 apply (unless a specific definition has been included or the context otherwise requires).
- 1.2.11 The expressions the Owner and the Council shall include their successors in title and assigns.

2. LEGAL EFFECT

- 2.1 This covenants contained in this Deed are development consent obligations (to the extent that they are capable of being so) for the purposes of Section 106 of the 1990 Act and are enforceable by the Council.
- 2.2 This Deed is made pursuant to Section 106 of the Act, section 111 of the Local Government Act 1972 and binds the Land and is enforceable against any person corporate or otherwise claiming or deriving title through or under the Owners of the Land or any part or parts thereof as if that person had been an original covenanting party to this Deed.
- 2.3 No person shall be liable for the breach of any covenant in this Deed after they have parted with their interest in the Land or the part of the Land in respect of which the breach occurs but this shall be without prejudice to their liability for any subsisting breach of covenant occurring prior to when they parted with such interest.
- 2.4 No statutory authority or service company acquiring part of the Land or any electricity sub-station gas governor or other land within the Land shall be liable for any breach of this Agreement
- 2.5 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission other than the Development Consent Order.
- 2.6 None of the obligations herein shall be enforceable against statutory undertakers or other persons who acquire any part of the Land or an interest in it for the purposes of the supply of electricity gas water or telecommunications in connection with the development of the Land.
- 2.7 This Deed is a local land charge and shall be registered as such.
- 2.8 If any provision of this Deed is held to be invalid illegal or unenforceable under any enactment or rule of law that term or provision shall to that extent be deemed not to form part of this Deed and the enforceability of the remainder of this Deed shall remain unaffected.
- 2.9 If the Development Consent Order expires before the Phase 1 Commencement Date or shall at any time be revoked this Deed shall forthwith determine and cease to have effect.

3. COMMENCEMENT

The provisions hereof shall take effect on the date that this Deed is entered into save in respect of Clause 4.1 which shall be conditional on the Development Consent Order being duly made.

4. COVENANTS

- 4.1 The Owner hereby covenants to perform and observe:
- 4.1.1 the development consent obligations in Schedule 1; and
 - 4.1.2 any other obligations which are not development consent obligations contained in the Schedules pursuant to section 111 of the Local Government Act 1972 and all other powers so enabling,
- 4.2 The Council hereby covenants as follows:
- 4.2.1 on receipt of a written request by or on behalf of the Owner after the development consent obligations have been wholly discharged or performed the Council will effect the cancellation of any entry made in the Local Land Charges Register in respect of this Deed;
 - 4.2.2 to account to the Owner for the application of money paid to the Council pursuant to Schedule 1 of this Deed;

- 4.2.3 to use all such sums received from the Owner for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree;
- 4.2.4 to repay to the Owner any money paid to the Council under Schedule 1 which have not by the expiry of ten (10) years from the date of payment been spent on the purpose for which it was paid (together with interest thereon at the rate of 4% above the base rate of Barclays Bank from the date that the sum/those sums of money were paid to the Council);
- 4.2.5 to provide to the Owner such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed; and
- 4.2.6 where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of the Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed

5. ARBITRATION

- 5.1 In the event of any dispute or difference arising between any of the Parties in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute save where express provision is made in this Deed and such person shall act as an expert whose decision shall be final and binding on the Parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 5.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 5.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 5.3 Any expert howsoever appointed shall be subject to the express requirement that a decision is reached and communicated to the Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty (20) business days after he has received any file or written representation.
- 5.4 The expert shall be required to give notice to each of the said Parties requiring them to submit to him within ten (10) business days of notification of his appointment written submissions and supporting material and the other Party will be entitled to make a counter written submission within a further ten (10) business days.

6. INDEXATION

Each contribution required to be paid by the Owner pursuant to this Deed shall be subject to such increase as is necessary to reflect any increase in the Retail Price Index (All Items) (or such replacement index thereof) for the period commencing from the date of this Deed and ending on the date of payment of the relevant contribution such increase to be calculated by reference to the index most recently published at the date at which the relevant payment is made.

7. STATUTORY POWERS

Nothing herein contained shall fetter any of the statutory rights, powers, duties and obligations for the time being vested in the Council as local planning authority, local highway authority or otherwise.

8. REASONABLENESS

Where by this Agreement any approval consent authority direction agreement and/or action is required to be given, reached or taken by a Party any such approval consent authority direction agreement and/or action shall not be unreasonably withheld or delayed.

9. EXCLUSION OF THIRD PARTY RIGHTS

Without prejudice to the terms of this Agreement the provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded from the terms of this Deed

10. GOVERNING LAW AND JURISDICTION

The terms of this Deed shall be governed by the laws of England and Wales and are subject to the exclusive jurisdiction of the Courts of England and Wales

SCHEDULE 1

Development Consent Obligations

1. LOCAL LABOUR

- 1.1 For the Construction Period and a period of ten (10) years from the Phase 1 Operational Date, the Owner shall use its reasonable endeavours to maximise job opportunities for Local Residents, especially those:
- 1.1.1 Who are not in work; or
 - 1.1.2 Who reside within deprived communities within the Borough of Redcar and Cleveland as identified in the deprived areas within the Indices of Multiple Deprivation published in 2007.
- 1.2 Within six (6) weeks of the Start Date and following consultation within the Council the Owner shall provide (and subsequently implement) a Construction Training and Employment Method Statement for the duration of the Construction Period.

2. LOCAL CONTRACTOR OBLIGATIONS

During the Construction Period:

- 2.1 The Owner must use its reasonable endeavours to open up opportunities for Local Businesses to bid for Development Contracts.
- 2.2 The Owner must use its reasonable endeavours to provide to the Council prior notice of and information relating to the letting of Development Contracts so as to allow the Council to suggest the names of Local Businesses who might be interested in bidding for such contracts.
- 2.3 Where the Council suggests the names of Local Businesses pursuant to paragraph 2.2 the Owner shall use its reasonable endeavours to notify such Local Businesses about such forthcoming Development Contracts as may be specified by the Council and shall forward to them reasonable information about the procurement process.
- 2.4 The Owner must submit a Procurement Process Report to the Council at intervals of no more than three (3) months (the first report to be submitted three (3) months after the Phase 1 Commencement Date).

3. LIAISON

The Owner shall, within six (6) weeks of the Start Date, nominate an individual to liaise with the Council in relation to the obligations set out in this Schedule 1 at paragraphs 1 and 2, and such individual shall provide reasonable support at a maximum of two (2) events during one year run by the Council each year for the duration of the Construction Period.

4. FINANCIAL CONTRIBUTIONS

- 4.1 The Owner covenants with the Council to observe and perform the following obligations:
- 4.1.1 To pay the RCBC Routeway Contribution as follows:
 - (a) Thirty five thousand pounds (£35,000) index linked within six (6) weeks of the Phase 1 Commencement Date; and
 - (b) Fifteen thousand pounds (£15,000) index linked within six (6) weeks of the Phase 2 Commencement Date if applicable; and

- (c) Thirty five thousand pounds (£35,000) index linked on each anniversary of the Phase 1 Commencement Date for a period of nine (9) years (being nine further payments of £35,000 pounds and comprising three hundred and fifteen thousand pounds (£315,000) in total); and
- (d) Fifteen thousand pounds (£15,000) index linked on each anniversary of the Phase 2 Commencement Date for a period of nine (9) years (being nine further payments of £15,000 pounds and comprising one hundred and thirty five thousand pounds (£135,000) in total) if applicable.

4.1.2 To pay the RCBC Supplier Development Contribution as follows:

- (a) Ten thousand pounds (£10,000) index linked within six (6) weeks of the Phase 1 Commencement Date; and
- (b) Ten thousand pounds (£10,000) index linked on each anniversary of the Phase 1 Commencement Date for a period of three (3) years (being three further payments of ten thousand pounds (£10,000) and comprising thirty thousand pounds (£30,000) in total).

5. GENERAL

- 5.1 Nothing in this Schedule will prevent the Owner or any of its contractors or sub-contractors from undertaking a competitive selection process in relation to the vacancies relating to the construction of the Development.
- 5.2 Nothing in this Schedule will prevent the Owner or any of its contractors or sub-contractors from awarding any contract or sub-contract on the basis of a competitive bidding process.

6. NOTIFICATION

- 6.1 The Owner must at least seven (7) Business Days prior to the Start Date notify the Council in writing of the date it believes the Start Date will be.
- 6.2 The Owner must, within ten (10) Business Days of the Phase 1 Commencement Date, notify the Council in writing that it considers that the Phase 1 Commencement Date has occurred and shall specify in that notice the date that they believe the Phase 1 Commencement Date to be.
- 6.3 The Owner must, within ten (10) Business Days of the Phase 2 Commencement Date, notify the Council in writing that it considers that the Phase 2 Commencement Date has occurred and shall specify in that notice the date that they believe the Phase 2 Commencement Date to be.
- 6.4 The Owner must, within ten (10) Business Days of the Phase 1 Operational Date, notify the Council in writing that it considers that the Phase 1 Operational Date has occurred and shall specify in that notice the date that they believe the Phase 1 Operational Date to be.
- 6.5 The Owner must, within ten (10) Business Days of the Phase 2 Operational Date, notify the Council in writing that it considers that the Phase 2 Operational Date has occurred and shall specify in that notice the date that they believe the Phase 2 Operational Date to be.

7. NOTIFICATION AND REPORTING

- 7.1 During the Construction Period the Owner must use its reasonable endeavours:
 - 7.1.1 To obtain Employment Returns from the Development Contractor that provide the information required to demonstrate to what extent the outcomes set out at paragraphs 1 and 2 of Schedule 2 have been achieved.

- 7.1.2 Submit the Employment Returns to the Council and to Job Centre Plus at intervals of no more than three (3) months (the first report to be submitted three (3) months after the Phase 1 Commencement Date).
 - 7.1.3 At the time of completion of a Development Contract with a Development Contractor to issue to that Development Contractor a written statement in accordance with the form provided in the Construction Training and Employment Method Statement notifying them that they are required to submit an Employment Return to the Owner at intervals of no more than two (2) months.
 - 7.1.4 At the time of completion of a Development Contract with a Development Contractor to issue to that Development Contractor a written statement in accordance with the form provided in the Construction Training and Employment Method Statement indicating the Owner's commitment to ensuring equal opportunities of employment and training for Local Residents and Local Businesses.
- 7.2 Once the Construction Period has ended the Owner must use its reasonable endeavours to:
- 7.2.1 Obtain Employment Returns from any contractors and sub-contractors; and
 - 7.2.2 Submit the Employment Returns to the Council at intervals of no more than six (6) months (the first report to be submitted six (6) months after the end of the Construction Period).

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

Executed as a deed by **Sembcorp Utilities (UK) Limited** acting by a director:

.....
Director

in the presence of a witness:

Signature (Witness)

Print Name

Address

.....

Occupation

Executed as a deed by affixing the common seal of **Redcar and Cleveland Borough Council** in the presence of:

Insert Common Seal of Company

.....
Director

.....
Director / Secretary

APPENDIX 1

The Land

