

# **DEPARTMENT OF ENERGY AND CLIMATE CHANGE**

## **INVESTMENT CONTRACT**

### **Hornsea Offshore Wind Farm Project**

#### **Phase 1**

Laid before to Parliament pursuant to Paragraph 1 of Schedule 2 to the Energy Act 2013

May 2014

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**The Secretary of State for Energy and Climate Change (Mr Edward Davey):** In accordance with paragraph 1 of Schedule 2 to the Energy Act 2013, I make this statement to accompany the investment contract between Heron Wind Limited and the Secretary of State for Energy and Climate Change, which relates to Phase 1 of the Hornsea Offshore Wind Farm Project (“the Project”) and which I am laying before Parliament today.

- (i) In awarding this investment contract, I consider that payments to be made under the contract which are based on the difference between the strike price and the reference price specified in the contract, in relation to electricity generation) will encourage low carbon electricity generation. The payments remove uncertainty in the revenue stream during the contract term for Heron Wind Limited enabling the Project to be developed to deliver an expected 1200MW of new renewable offshore wind electricity capacity. The Project is a phased project; this investment contract relates to Phase 1 delivering an expected 400MW of the total capacity. Separate investment contracts relate to Phase 2 and Phase 3 of the Project.
- (ii) Having considered the information provided to me by the Board of Heron Wind Limited (and warranted by them as accurate), including their statement that without this investment contract the Project would be delayed by at least 24 months, I consider that without this contract there is a significant risk that the electricity generation to which the contract relates will be significantly delayed.
- (iii) In entering into this investment contract, I have had due regard to the matters set out in section 5(2) of the Energy Act 2013, including:
  - (a) the duties under sections 1 and 4(1)(b) of the Climate Change Act 2008 (carbon targets and budgets); and
  - (b) the duty under section 1(1) of the Energy Act 2013 (decarbonisation target range);

The power sector is the single largest source of UK carbon emissions. By 2050, carbon emissions from the power sector need to be close to zero to ensure that the net UK carbon account for the year 2050 is at least 80% lower than the 1990 baseline and enable the statutory target under the Climate Change Act 2008 to be met.

Government modelling suggests that around 60–80GW of new electricity capacity will need to be built by 2030, and of this around 40–70GW will need to come from low carbon technologies, of which renewable electricity could provide 35–50GW. Investment in offshore wind generation, such as that which

will be provided by the Project, is an important step to achieving these decarbonisation requirements.

The duty under section 1(1) of the Energy Act 2013 relates to a decarbonisation target range. A decarbonisation target range cannot be set in relation to any year before 2030, and the power to set that range cannot yet be exercised.

(c) ensuring the security of supply to consumers of electricity;

With the potential electrification of heating, transport and industrial processes, average electricity demand may rise by between 30% and 60% by 2050. By 2020, the UK could be importing nearly 55% or more of its gas. The additional 400MW of offshore wind capacity, expected to start generating in 2019, to which this investment contract relates will reduce our dependence on these imports and improve our security of supply.

(d) the likely cost to consumers of electricity;

This contract will use a Feed in Tariff Contract for Difference mechanism. This minimises costs to consumers as Heron Wind Limited will only receive a 'top-up' (or difference) payment between the strike price and the reference price specified in the contract, in relation to the electricity generation to which this contract relates. As the Project is expected to start generating in 2019 Heron Wind Limited will receive an initial strike price of £140/MWh. The reference price will be deducted from this. If the reference price of electricity is above the strike price, the generator must make difference payments.

(e) the target set out in Article 3(1) of, and Annex 1 to, the Renewables Directive (use of energy from renewable sources) – Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources.

We expect meeting the mandatory 2020 EU renewables target to include over 30% renewable electricity generation. Modelling by the System Operator (National Grid) suggests that this renewables share is achievable and the Project to which this contract relates is expected to make a positive contribution towards reaching that share. The Project will contribute an estimated 1200MW to the 8-15GW deployment range of projected total capacity for offshore wind set out in the Electricity Market Reform Delivery Plan, with Phase 1 contributing 400MW.

DATED 9 MAY 2014

**HERON WIND LIMITED**  
(as the **GENERATOR**)

and

**THE SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE**

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**INVESTMENT CONTRACT (OFFSHORE WIND PHASE 1)**  
**RELATING TO THE HORNSEA OFFSHORE WIND FARM PROJECT**

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**THIS INVESTMENT CONTRACT** is dated 9 MAY, 2014 (the "**Agreement Date**") and made between:

- (1) **HERON WIND LIMITED**, a private company incorporated under the laws of England and Wales, with company number 07640868 and whose registered office is 11th Floor 140 London Wall, London EC2Y 5DN (the "**Generator**"); and
- (2) **the Secretary of State for Energy and Climate Change** of 3 Whitehall Place, London SW1A 2AW.

## **BACKGROUND**

- (A) The Generator is in the course of carrying out an offshore wind electricity generation project (the "**Phased Project**") consisting of the Project and at least one other phase, the Project and each such other phase having separate target commissioning dates.
- (B) Application for an Investment Contract in respect of the Phased Project has been duly made and has satisfied the Qualification Criteria and Minimum Evaluation Criteria in relation to the Phased Project.
- (C) The Generator is entering into this Investment Contract in respect of Phase 1 of the Phased Project and separate agreements, on or about the date of this Investment Contract, in respect of Phases 2 and 3 of the Phased Project.
- (D) Having regard to the matters set out in Section 5(2) of the EA 2013, the Secretary of State wishes to enter into this Investment Contract in order to encourage low carbon electricity generation.
- (E) The Secretary of State is entering into this Investment Contract as CfD Counterparty.
- (F) The Generator and the Secretary of State consider that without this Investment Contract there is a significant risk that the electricity generation to which it relates will not occur or will be significantly delayed.
- (G) Once laid before Parliament in accordance with paragraph 1(5) of Schedule 2 to the EA 2013 this Investment Contract will be an investment contract within the meaning of paragraph 1 of that Schedule.
- (H) This Investment Contract is an Investment Contract for the purpose of the Conditions.

**IT IS AGREED** as follows:

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1** In this Investment Contract and its recitals:

**"Aggregate Installed Capacity Estimate"** means the aggregate of the Installed Capacity Estimates specified in this Investment Contract, the Phase 2 Investment Contract and the Phase 3 Investment Contract;

**"Conditions"** means the terms and conditions set out in the document entitled "Investment Contract Standard Terms and Conditions" as initialled for the purpose of identification on behalf of the Generator and the Secretary of State (as amended, modified, supplemented or replaced by this Investment Contract and as may be amended, modified, supplemented or replaced from time to time in accordance with the Conditions);

**"Facility"** means the generating facility comprising:

- (A) all assets (including all Generating Units):
  - (i) which are used (or intended to be used) to generate or deliver electricity;
  - (ii) which were taken into account by the Generator in determining the Initial Installed Capacity Estimate; and
  - (iii) which are (except as otherwise agreed in writing by the CfD Counterparty) situated (subject to paragraph (d)) within the shaded area marked "Phase 1" on the map contained in, and which has the geographical coordinates specified in, Annex 1 to this Investment Contract (*Description of the Facility*),

adjusted where the context requires to take due account of any changes to the composition of such assets arising as a result of, or giving rise to:

- (a) any reduction to the Installed Capacity Estimate pursuant to Condition 5 (*Adjustment to Installed Capacity Estimate: Relevant Construction Event*);
  - (b) any adjustment to the Installed Capacity Estimate pursuant to Condition 6 (*Adjustment to Installed Capacity Estimate: Permitted reduction*);
  - (c) the agreement or determination of the Final Installed Capacity pursuant to Condition 7 (*Final Installed Capacity; Maximum Contract Capacity*); and
  - (d) any turbine reallocation pursuant to Clause 6.5; and
- (B) all assets owned by the Generator and comprised or to be comprised within the Offshore Transmission System of such generating facility except for the purposes of:
  - (i) in Condition 1.1 (*Definitions*), the definitions of **"Competent Authority"**, **"Curtailment"**, **"Defined Curtailment Compensation"**, **"Defined Partial Curtailment Compensation"**, **"Discriminatory Change in Law"**, **"Eligibility Criteria"**, **"Foreseeable Change in Law"**, **"Generation Tax Liability"**, **"Partial Curtailment"**, **"QCIL Capital Costs"**, **"QCIL Capital Savings"**, **"QCIL Construction Event"**, **"QCIL**



**Construction Event Costs**", **"QCIL Operations Cessation Event"**, **"Qualifying Curtailment"**, **"Qualifying Partial Curtailment"**, **"Qualifying Shutdown Event"**, **"Required Authorisation"** and **"Specific Change in Law"**;

- (ii) Conditions 27.2(A), 29.1(E), 30.11, 35.1, 46.2 and 48.1; and
  - (iii) paragraph 9.3 of Annex 3 (*Form of Direct Agreement*) to the Conditions,
- and otherwise excluding all other assets forming part of the Transmission System or a Distribution System;

**"Group Company"** means, in respect of the Generator, any Wholly-owned Subsidiary of the Generator, any company of which the Generator is a Wholly-owned Subsidiary (a **"Parent Company"**) and any other Wholly-owned Subsidiary of any Parent Company;

**"Parent Entity"** means a company which is a parent undertaking (within the meaning of section 1162(2) of the Companies Act 2006) of the Generator, Project Company 2 and Project Company 3 (or such other entity as is acceptable to the CfD Counterparty);

**"Phase 2 Allocation Adjustment Notice"** has the meaning given to that term in Clause 6.5(C);

**"Phase 2 Facility"** has the meaning given to the term **"Facility"** in the Phase 2 Investment Contract;

**"Phase 2 ICE Adjustment Notice"** has the meaning given to that term in Clause 6.4 (*Adjustment to Installed Capacity Estimate: Permitted Reduction*);

**"Phase 2 Installed Capacity Estimate"** has the meaning given to the term **"Installed Capacity Estimate"** in the Phase 2 Investment Contract;

**"Phase 2 Investment Contract"** means an investment contract between Project Company 2 and the CfD Counterparty entered into on or about the date of this Investment Contract in relation to the second phase of the Phased Project;

**"Phase 2 Longstop Date"** has the meaning given to the term **"Longstop Date"** in the Phase 2 Investment Contract;

**"Phase 2 Project"** has the meaning given to the term **"Project"** in the Phase 2 Investment Contract;

**"Phase 3 Allocation Adjustment Notice"** has the meaning given to that term in Clause 6.5(C);

**"Phase 3 Facility"** has the meaning given to the term **"Facility"** in the Phase 3 Investment Contract;

**"Phase 3 ICE Adjustment Notice"** has the meaning given to that term in Clause 6.4 (Adjustment to Installed Capacity Estimate: Permitted Reduction);

**"Phase 3 Installed Capacity Estimate"** has the meaning given to the term **"Installed Capacity Estimate"** in the Phase 3 Investment Contract;

**"Phase 3 Investment Contract"** means an investment contract between Project Company 3 and the CfD Counterparty entered into on or about the date of this Investment Contract in relation to the third phase of the Phased Project;

**"Phase 3 Longstop Date"** has the meaning given to the term **"Longstop Date"** in the Phase 3 Investment Contract;

**"Phase 3 Project"** has the meaning given to the term **"Project"** in the Phase 3 Investment Contract;

**"Project Company 2"** means Heron Wind Limited;

**"Project Company 3"** means Njord Limited;

**"Required ICE Threshold"** means twenty per cent. (20%) of the aggregate of:

- (A) the Installed Capacity Estimate (for these purposes only taking into account any adjustment to the Initial Installed Capacity Estimate as a result of an ICE Adjustment Notice or an Allocation Adjustment Notice having been given by the Generator to the CfD Counterparty but disregarding any adjustment to the Installed Capacity Estimate resulting from the operation of Condition 5 (*Adjustment to Installed Capacity Estimate: Relevant Construction Event*));
- (B) the Phase 2 Installed Capacity Estimate (for these purposes only taking into account any adjustment to the Phase 2 Installed Capacity Estimate as a result of a Phase 2 ICE Adjustment Notice or a Phase 2 Allocation Adjustment Notice having been given by Project Company 2 to the CfD Counterparty but disregarding any adjustment to the Phase 2 Installed Capacity Estimate resulting from the operation of Condition 5 (*Adjustment to Installed Capacity Estimate: Relevant Construction Event*) to the Phase 2 Investment Contract); and
- (C) the Phase 3 Installed Capacity Estimate (for these purposes only taking into account any adjustment to the Phase 3 Installed Capacity Estimate as a result of a Phase 3 ICE Adjustment Notice or a Phase 3 Allocation Adjustment Notice having been given by Project Company 3 to the CfD Counterparty but disregarding any adjustment to the Phase 3 Installed Capacity Estimate resulting from the operation of Condition 5 (*Adjustment to Installed Capacity Estimate: Relevant Construction Event*) to the Phase 3 Investment Contract); and

**"Wholly-owned Subsidiary"** has the meaning given to it in section 1159(2) of the Companies Act 2006.

1.2 Save as specified in this Investment Contract, words and expressions defined in the Conditions shall have the same meanings when used in this Investment Contract.

1.3 For the purposes of:

(A) Conditions 4.2 and 4.3, as amended by Clause 5.9 of this Investment Contract;  
and

(B) Annex 2 to this Investment Contract (*Project Commitments*),

the reference to the Generator in the definition of "Directors' Certificate" in Condition 1 shall be deemed to refer to the company on whose behalf the Directors' Certificate is required, by that provision, to be given.

## 2. AGREEMENT

### *The Generator*

2.1 The Generator shall, as from the Agreement Date, comply with this Investment Contract (including the Conditions) as the "**Generator**" and agrees that the Conditions are hereby incorporated into this Investment Contract as if they were clauses of this Investment Contract.

### *The CfD Counterparty*

2.2 The CfD Counterparty shall, as from the Agreement Date, comply with this Investment Contract (including the Conditions) as the "**CfD Counterparty**" and agrees that the Conditions are hereby incorporated into this Investment Contract as if they were clauses of this Investment Contract.

### *Specific terms*

2.3 The Parties agree that, for the purposes of this Investment Contract, the Conditions shall be amended, modified, supplemented or replaced in accordance with the terms of this Investment Contract.

## 3. TERM

The "**Specified Expiry Date**" applicable to this Investment Contract is the 15<sup>th</sup> anniversary of the earlier of the Start Date and the last day of the Target Commissioning Window.

## 4. GENERATION TECHNOLOGY TYPE

### *Facility Generation Technology*

4.1 The Facility Generation Technology applicable to this Investment Contract is Offshore Wind, provided that for the purposes of paragraph (A) of the definition of Specific Change in Law or paragraphs (B) or (C) of the definition of Other Change in Law,

Offshore Wind and Onshore Wind shall be deemed to be one Facility Generation Technology.

- 4.2 The Facility Generation Technology is an Intermittent Technology and accordingly:
- (A) Part 5B (*Payment calculations: Intermittent Technologies*) to the Conditions shall apply to this Investment Contract;
  - (B) Annex 5 (*IMRP*) to the Conditions shall apply to this Investment Contract; and
  - (C) In this Investment Contract, "**Settlement Unit**" means each hour in a day divided into hour-long periods starting at 00:00 on such day.

***Renewable Qualifying Multiplier***

- 4.3 The Renewable Qualifying Multiplier shall not apply to this Investment Contract.

***CHP Qualifying Multiplier***

- 4.4 The CHP Qualifying Multiplier shall not apply to this Investment Contract.

***Fuelling Criteria***

- 4.5 There are no Fuelling Criteria applicable to this Investment Contract.

***Sustainability Criteria***

- 4.6 The Sustainability Criteria do not apply to this Investment Contract.

**5. CONDITIONS PRECEDENT AND MILESTONE**

***Interpretation***

- 5.1 The "**Initial Target Commissioning Window**" applicable to this Investment Contract shall be one year, such period commencing on 31 March 2019.
- 5.2 The "**Target Commissioning Date**" applicable to this Investment Contract shall be 31 March 2019.
- 5.3 The "**Longstop Period**" applicable to this Investment Contract shall be two (2) years.

***Further Conditions Precedent***

- 5.4 Delivery to the CfD Counterparty of a certified copy of the Interim Operational Notification issued by the Transmission System Operator under the Grid Code shall be an additional Further Condition Precedent applicable to this Investment Contract.
- 5.5 For the purpose of Clause 5.4, if by the time at which the Further Condition Precedent referred to in that Clause is to be fulfilled the relevant Interim Operational Notification

shall have been split between an ION A and an ION B as contemplated in paragraphs 2.13 to 2.18 of Ofgem's "Consultation on Implementation of the Generator Commissioning Clause in the Energy Bill 2012/13" then the reference in Clause 5.4 to the Interim Operational Notification shall be to whichever of ION A or ION B most closely signifies, in the reasonable opinion of the CfD Counterparty, the time at which the offshore transmission network is ready to export energy from the Facility onto the national electricity transmission system.

### **Milestone**

- 5.6 The "**Initial Milestone Delivery Date**" applicable to this Investment Contract shall be 31 March 2016.
- 5.7 The "**Total Project Pre-Commissioning Costs**" applicable to this Investment Contract shall be £2,050,000.00 per MW of the Aggregate Installed Capacity Estimate.
- 5.8 The "**Project Commitments**" applicable to this Investment Contract shall be the requirements set out in Parts (A) and (B) of Annex 2 to this Investment Contract (*Project Commitments*).
- 5.9 Condition 4 (*Milestone Requirement*) of the Conditions shall be deleted and replaced by the following provision:

#### **"Milestone Requirement Notice**

- 4.1 *No later than the Milestone Delivery Date, the Generator shall procure that the Generator, Project Company 2 and Project Company 3 shall jointly give a notice to the CfD Counterparty (the "**Milestone Requirement Notice**") that they consider that a Milestone Requirement has been complied with and fulfilled. The Milestone Requirement Notice shall:*

(A) *be substantially in the form set out in Annex 3 to the IC Agreement (Milestone Requirement Notice); and*

(B) *include:*

- (i) *such invoices, payment receipts and other Supporting Information as they consider relevant to evidence that they and, in each case, their direct shareholders have in aggregate spent ten per cent. (10%) or more of the Total Project Pre-Commissioning Costs on the Project; or*
- (ii) *such Information as is listed as the Project Commitments and such Supporting Information as they consider relevant to evidence compliance with or fulfilment of the Project Commitments,*

*(either of which shall be the "**Milestone Requirement**").*

*For the purposes of Condition 4.1 (B):*

- (a) *money spent by a direct shareholder of the Generator to acquire an interest in the Generator may be taken into account but only to the extent that the consideration paid for the acquisition exceeds the amount spent on the Project by the Generator and its direct shareholders in the period prior to the time at which such acquisition took place; and*
- (b) *the Project shall exclude the assets comprised or to be comprised within the Offshore Transmission System of the Facility.*

- 4.2 *A Milestone Requirement Notice shall be accompanied by a Directors' Certificate on behalf of each of the Generator, Project Company 2 and Project Company 3 certifying that the information relating to that body corporate contained in, and enclosed with, the Milestone Requirement Notice is true, complete and accurate in all material respects and is not misleading, in each case by reference to the facts and circumstances then existing.*
- 4.3 *At the option of the Generator, a Milestone Requirement Notice pursuant to Condition 4.1 may be given by a Parent Entity on behalf of each of the Generator, Project Company 2 and Project Company 3, in which case the Directors' Certificate under Condition 4.2 shall be given on behalf of that Parent Entity.*
- 4.4 *The CfD Counterparty shall, within twenty (20) Business Days of receipt of a Milestone Requirement Notice, give a notice to the Generator, Project Company 2 and Project Company 3 (a "**Milestone Assessment Response Notice**"). A Milestone Assessment Response Notice shall:*
  - (A) *be substantially in the form set out in Part H of Annex 9 to the Conditions (Pro forma notices), save that it shall be addressed to the Generator, Project Company 2 and Project Company 3; and*
  - (B) *specify whether the CfD Counterparty considers that:*
    - (i) *the Milestone Requirement has been complied with and fulfilled; or*
    - (ii) *it has not been provided with sufficient Supporting Information to determine whether a Milestone Requirement has been complied with and fulfilled and, if so, details of the additional Supporting Information which the CfD Counterparty requires to determine whether a Milestone Requirement has been complied with and fulfilled (the "**Requested Milestone Supporting Information**").*

4.5 If the CfD Counterparty states in the Milestone Assessment Response Notice that:

- (A) a Milestone Requirement has been complied with and fulfilled, then the Milestone Requirement will be deemed to have been complied with and fulfilled for the purposes of the Investment Contract; or
- (B) the CfD Counterparty has not been provided with sufficient Supporting Information to determine whether a Milestone Requirement has been complied with and fulfilled:
  - (i) the Generator shall procure that the Requested Milestone Supporting Information is provided as soon as reasonably practicable, and in any event within ten (10) Business Days of receipt of the Milestone Assessment Response Notice, or such longer period as is specified by the CfD Counterparty; and
  - (ii) upon receipt of the Requested Milestone Supporting Information, the CfD Counterparty shall as soon as reasonably practicable, and in any event within twenty (20) Business Days of receipt of such Requested Milestone Supporting Information, give a further Milestone Assessment Response Notice to the Generator, Project Company 2 and Project Company 3 (the "**Further Milestone Assessment Response Notice**"). A Further Milestone Assessment Response Notice shall:
    - (a) be substantially in the form set out in Part I of Annex 9 to the Conditions (Pro forma notices), save that it shall be addressed to the Generator, Project Company 2 and Project Company 3; and
    - (b) specify whether the CfD Counterparty considers that a Milestone Requirement has or has not been complied with and fulfilled.

4.6 Nothing in this Condition 4 (Milestone Requirement) shall require the CfD Counterparty to specify in any Milestone Assessment Response Notice or Further Milestone Assessment Response Notice that the CfD Counterparty accepts that a Milestone Requirement has been complied with and fulfilled unless the CfD Counterparty is satisfied of the same.

#### **Waiver of Milestone Requirement**

4.7 The CfD Counterparty may agree by notice to the Generator, Project Company 2 and Project Company 3 to waive any Milestone Requirement.

4.8 Conditions 63 (No waiver) and 64 (Consents) shall apply to any waiver given by the CfD Counterparty pursuant to Condition 4.7."

## 6. ADJUSTMENTS TO INSTALLED CAPACITY ESTIMATE

### *Interpretation*

- 6.1 The “**Initial Installed Capacity Estimate**” applicable to this Investment Contract is 400 MW.
- 6.2 For the purposes of this Investment Contract, the “**Installed Capacity Estimate**” shall mean the Generator’s estimate of the Installed Capacity from time to time, being the Initial Installed Capacity Estimate as may be adjusted pursuant to Condition 5 (*Adjustment to Installed Capacity Estimate: Relevant Construction Event*), Condition 6 (*Adjustment to Installed Capacity Estimate: Permitted reduction*) and/or Clause 6.5 of this Investment Contract (*Turbine reallocation*).
- 6.3 The “**Required Installed Capacity**” applicable to this Investment Contract is 85% of the Installed Capacity Estimate.

### *Adjustment to Installed Capacity Estimate: Permitted Reduction*

- 6.4 An ICE Adjustment Notice given pursuant to Condition 6.1 of the Conditions shall be invalid and of no effect unless and until a valid and effective notice has been given to the CfD Counterparty pursuant to Condition 6.1 of the Phase 2 Investment Contract (a “**Phase 2 ICE Adjustment Notice**”) and Condition 6.1 of the Phase 3 Investment Contract (a “**Phase 3 ICE Adjustment Notice**”).

### *Turbine reallocation*

- 6.5 The Generator may give a notice to the CfD Counterparty at any time prior to the date falling three months prior to the first day of the Target Commissioning Window (an “**Allocation Adjustment Notice**”). An Allocation Adjustment Notice shall:
- (A) be substantially in the form of Annex 4 to this Investment Contract (*Allocation Adjustment Notice*);
  - (B) be given jointly by the Generator, Project Company 2 and Project Company 3 except in relation to any of them whose project has been terminated;
  - (C) constitute a notice given by Project Company 2 under Clause 6.5 of the Phase 2 Investment Contract (a “**Phase 2 Allocation Adjustment Notice**”) and a notice given by Project Company 3 under Clause 6.5 of the Phase 3 Investment Contract (a “**Phase 3 Allocation Adjustment Notice**”);
  - (D) specify the proposed reallocation of the offshore wind turbines among this Investment Contract, the Phase 2 Investment Contract and the Phase 3 Investment Contract from the effective date of such Allocation Adjustment Notice and the effect of such reallocation on the Installed Capacity Estimate, the Phase 2 Installed Capacity Estimate and the Phase 3 Installed Capacity Estimate;



- (E) include details of any change in assets comprising the Facility;
  - (F) if the Generator has provided the CfD Counterparty with a Further CP Notice in respect of the Further Conditions Precedent listed at Paragraph 2.1(D) of Part B of Schedule 1 (*Conditions Precedent*) prior to the date of the Allocation Adjustment Notice and there has been a change to the electrical schematic diagram, include an updated date and time stamped copy of the electrical schematic diagram, certified as being correct and up-to-date by a director of the Generator and showing the locations of the Facility Metering Equipment associated with all assets comprised within the Facility; and
  - (G) include such Supporting Information as the Generator considers relevant to evidence the allocation adjustment.
- 6.6 Any Allocation Adjustment Notice shall be invalid and of no effect unless each of the Installed Capacity Estimate, the Phase 2 Installed Capacity Estimate and the Phase 3 Installed Capacity Estimate in the Allocation Adjustment Notice is no greater than it was immediately prior to the Allocation Adjustment Notice.
- 6.7 Any Allocation Adjustment Notice shall be irrevocable.
- 7. CHANGES IN LAW**
- 7.1 The “**Assumed Load Factor**” applicable to this Investment Contract is 39%.
- 7.2 The “**Post-Tax Real Discount Rate**” applicable to this Investment Contract is 8.6%.
- 8. PAYMENT CALCULATIONS: STRIKE PRICE**
- 8.1 The “**Base Year**” applicable to this Investment Contract is 2012.
- 8.2 The “**Initial Strike Price**” applicable to this Investment Contract is £140 per MWh.
- 9. BALANCING SYSTEM CHARGES AND TLM(D)**
- 9.1 The “**Initial Balancing System Charge**” at the Agreement Date is £1.66 per MWh.
- 9.2 The “**Initial Balancing System Charge Window**” is March 2013 to February 2014 inclusive.
- 9.3 The “**Initial TLM(D) Charge**” for each calendar year from (and including) the Agreement Date to the end of the Term is that included opposite the relevant year in Annex 5 to this Investment Contract (*Initial TLM(D) Charges*).
- 10. TERMINATION**
- 10.1 If the Installed Capacity Estimate (for these purposes only taking into account any adjustment to the Initial Installed Capacity as a result of (i) an ICE Adjustment Notice or (ii) an Allocation Adjustment Notice having been given by the Generator to the CfD

Counterparty but disregarding any adjustment to the Installed Capacity Estimate resulting from the operation of Condition 5 (*Adjustment to Installed Capacity Estimate: Relevant Construction Event*) is lower than the Required ICE Threshold, the CfD Counterparty shall have the right but not the obligation to give the Generator a Pre-Start Date Termination Notice in accordance with Condition 49 (*Termination*) of the Conditions.

- 10.2 Condition 49.13 of the Conditions shall be deleted and replaced with the following provision:

*"49.13 The termination rights in this Condition 49 (Termination) or in the IC Agreement are the only rights that either Party has to terminate the Investment Contract."*

## **11. TRANSFERS**

- 11.1 For the purposes of Condition 77.1 of the Conditions, the CfD Counterparty shall not withhold its consent to the novation of the rights, benefits, obligations and liabilities of the Generator under this Investment Contract provided that:

- (A) no Default has arisen and is continuing;
- (B) the rights, benefits, obligations and liabilities of the Generator under this Investment Contract are transferred to and assumed by a Group Company;
- (C) the Generator shall have given to the CfD Counterparty not less than ten (10) Business Days written notice prior to any such novation specifying the identity of the relevant Group Company to which it intends to transfer its rights, benefits, obligations and liabilities and shall have provided such details in relation to that Group Company as the CfD Counterparty may reasonably request having received such notification;
- (D) the novation relates to all (and not part only) of the rights, benefits, obligations and liabilities of the Generator under this Investment Contract;
- (E) such novation takes effect prior to the Start Date;
- (F) the rights, benefits, obligations and liabilities of the Generator under all other IC Documents are also transferred to and assumed by the same Group Company at the same time;
- (G) such novation takes effect either:
  - (i) before the earlier of 31 December 2015 and the date on which the definition of an "eligible generator" first comes into force by virtue of section 10(3) of EA 2013; or
  - (ii) (if after that date) in accordance with EA 2013 Regulations which permit the novated Investment Contract to take effect as a CFD (within the meaning of section 6 of EA 2013; and

(H) the novation is entered into in the form set out in Annex 6 to this Investment Contract (*Novation Agreement*), with such amendments as the CfD Counterparty may agree.

11.2 Where the CfD Counterparty consents to a novation pursuant to Clause 11.1 it shall enter into a novation agreement in the form described in Clause 11.1(H) with the Generator and the Group Company to which the rights, benefits, obligations and liabilities of the Generator are to be novated.

## 12. NOTICES

12.1 The address and (where such communication is expressly permitted by email) email address of each Party for any notice to be given under this Investment Contract, and the department or officer (if any) for whose attention the notice is to be made, is:

(A) in the case of the Generator:

Address:	33 Grosvenor Place, Belgravia, London SW1X 7HY
Email address:	cfd@dongenergy.dk
For the attention of:	Executive Vice President DONG Energy Wind Power A/S

(B) in the case of the CfD Counterparty:

Address:	Department of Energy and Climate Change 55 Whitehall London SW1A 2EY
Email address:	Investment.contracts@decc.gsi.gov.uk
For the attention of:	The Contract Manager

## 13. AGENT FOR SERVICE OF PROCESS

13.1 Condition 85 (*Agent for service of process*) shall not apply to this Investment Contract and there shall be no Service Agent.

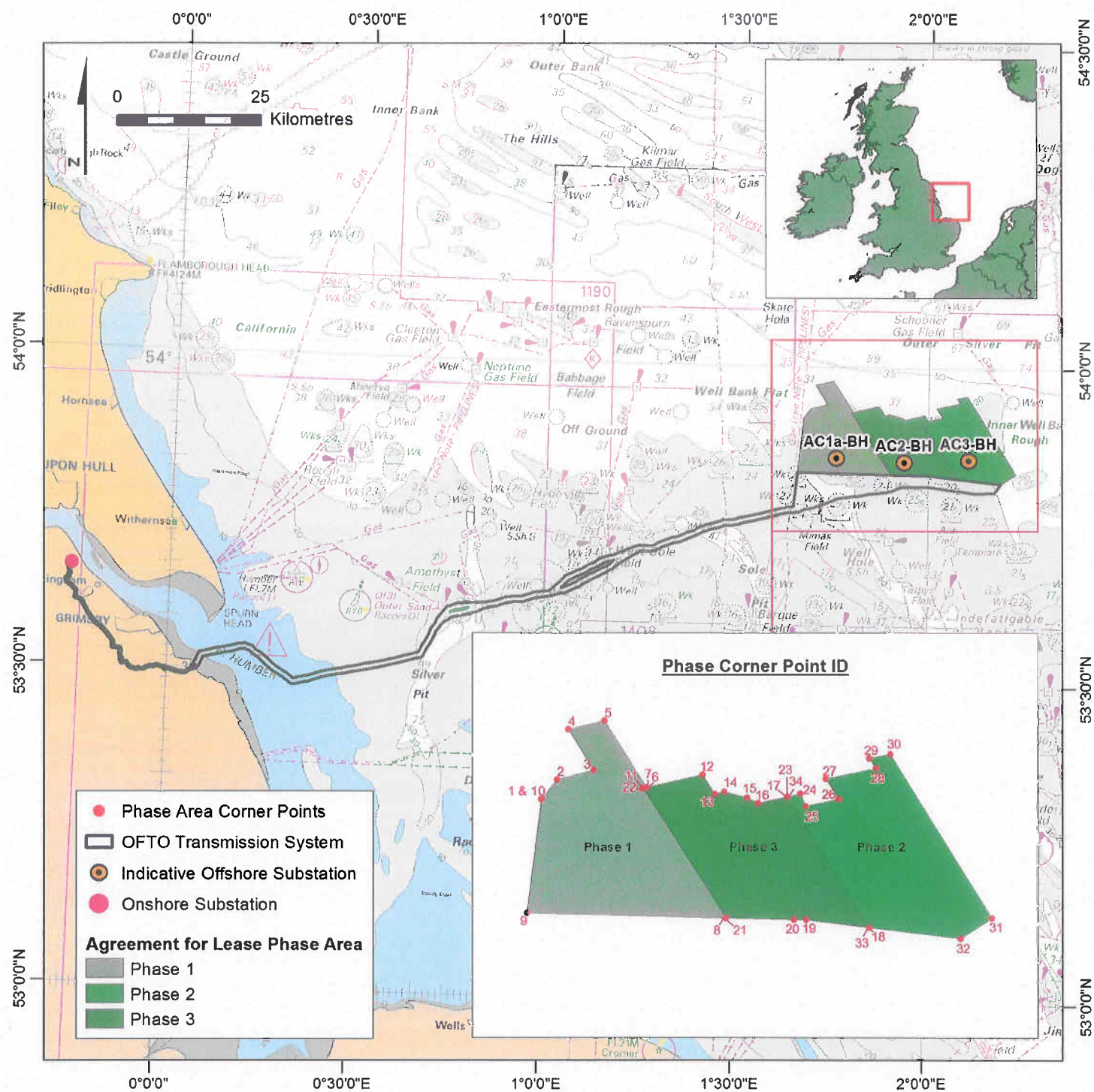
**Annex 1**  
**(Description of the Facility)**

The Facility is part of the Hornsea offshore wind farm. It is shown shaded in pale green and marked "Phase 1" on the map on the following page of this Investment Contract.

The Facility falls within the area delineated by the following grid references:

<b>CORNER POINT ID</b>	<b>LATITUDE</b>	<b>LONGITUDE</b>
1	53° 55' 9.293" N	1° 39' 52.024" E
2	53° 56' 3.228" N	1° 41' 0.143" E
3	53° 56' 29.670" N	1° 43' 45.592" E
4	53° 58' 17.828" N	1° 41' 46.795" E
5	53° 58' 42.179" N	1° 44' 31.880" E
6	53° 55' 46.445" N	1° 47' 47.796" E
7	53° 55' 44.123" N	1° 47' 31.921" E
8	53° 50' 0.845" N	1° 53' 51.856" E
9	53° 50' 5.117" N	1° 38' 58.579" E
10	53° 55' 9.293" N	1° 39' 52.024" E

The map also shows the offshore transmission substation and OFTO Transmission System.



**Annex 2**  
**(Project Commitments)**

**Part A: General Project Commitments**

Delivery to the CfD Counterparty of the following:

- (A) a copy of a resolution of the board of directors of the Generator (or an equivalent management committee or body) resolving to:
  - (i) undertake the Project;
  - (ii) approve the total financial commitments required to commission the Project (the **"Total Phase 1 Project Spend"**); and
  - (iii) approve a timetable for undertaking the Project which demonstrates that the Facility can reasonably be expected to be commissioned no later than the Longstop Date;
- (B) a copy of a resolution of the board of directors of Project Company 2 (or an equivalent management committee or body) resolving to:
  - (i) undertake the Phase 2 Project;
  - (ii) approve the total financial commitments required to commission the Phase 2 Project (the **"Total Phase 2 Project Spend"**); and
  - (iii) approve a timetable for undertaking the Phase 2 Project which demonstrates that the Phase 2 Facility can reasonably be expected to be commissioned no later than the Phase 2 Longstop Date;
- (C) a copy of a resolution of the board of directors of Project Company 3 (or an equivalent management committee or body) resolving to:
  - (i) undertake the Phase 3 Project;
  - (ii) approve the total financial commitments required to commission the Phase 3 Project (the **"Total Phase 3 Project Spend"**); and
  - (iii) approve a timetable for undertaking the Phase 3 Project, which demonstrates that the Phase 3 Facility can reasonably be expected to be commissioned no later than the Phase 3 Longstop Date;
- (D) a Directors' Certificate from either:
  - (i) the Generator certifying that:
    - (a) it has, or will have, sufficient financial resources to meet the Total Phase 1 Project Spend;

- (b) any contract entered into by the Generator and provided as Supporting Information pursuant to the Milestone Requirement Notice is, in its reasonable opinion, by reference to the facts and circumstances then existing:
  - (1) legal, valid and binding; and
  - (2) entered into with one or more counterparties each of whom is able to perform its obligations under such contract;
- (c) it has a leasehold or freehold interest in the site where the Facility is based (the "**Facility 1 Site**") or a contract to obtain the same;
- (d) the Facility 1 Site is not subject to any covenants, restrictions, agreements, planning obligations, estate contracts, options, rights of way or other encumbrances which materially inhibit the use of the Facility 1 Site for the purposes of the Project;
- (e) there are available to the Facility 1 Site such rights, easements and services as are necessary to undertake the Project and operate the Facility;
- (f) it has identified all necessary consents and planning permissions to undertake the Project (the "**Phase 1 Necessary Consents**"); and
- (g) there is a credible strategy in place to obtain the Phase 1 Necessary Consents and the Phase 1 Necessary Consents are not subject to any condition for which there does not exist a plan approved by its board of directors to satisfy that condition, such that it is not aware of any necessary consents or planning permissions which cannot be obtained or complied with

((c) to (g), together the "**Phase 1 Facility Requirements**"); and

(ii) Project Company 2 certifying that:

- (a) it has, or will have, sufficient financial resources to meet the Total Phase 2 Project Spend;
- (b) any contract entered into by Project Company 2 and provided as Supporting Information pursuant to the Milestone Requirement Notice, is, in its reasonable opinion, by reference to the facts and circumstances then existing:
  - (1) legal, valid and binding; and
  - (2) entered into with one or more counterparties each of whom is able to perform its obligations under such contract;

- (c) it has a leasehold or freehold interest in the site where the Phase 2 Facility is based ("**Facility 2 Site**") or a contract to obtain the same;
- (d) the Facility 2 Site is not subject to any covenants, restrictions, agreements, planning obligations, estate contracts, options, rights of way or other encumbrances which materially inhibit the use of the Facility 2 Site for the purposes of the Phase 2 Project;
- (e) there are available to the Facility 2 Site such rights, easements and services as are necessary to undertake the Phase 2 Project and operate the Phase 2 Facility;
- (f) it has identified all necessary consents and planning permissions to undertake the Phase 2 Project (the "**Phase 2 Necessary Consents**"); and
- (g) there is a credible strategy in place to obtain the Phase 2 Necessary Consents and the Phase 2 Necessary Consents are not subject to any condition for which there does not exist a plan approved by its board of directors to satisfy that condition, such that it is not aware of any necessary consents or planning permissions which cannot be obtained or complied with;

((c) to (g), together the "**Phase 2 Facility Requirements**"); and

(iii) Project Company 3 certifying that:

- (a) it has, or will have, sufficient financial resources to meet the Total Phase 3 Project Spend;
- (b) any contract entered into by the Project Company 3 and provided as Supporting Information pursuant to the Milestone Requirement Notice, is, in its reasonable opinion, by reference to the facts and circumstances then existing:
  - (1) legal, valid and binding; and
  - (2) entered into with one or more counterparties each of whom is able to perform its obligations under such contract;
- (c) it has a leasehold or freehold interest in the site where the Phase 3 Facility is based (the "**Facility 3 Site**") or a contract to obtain the same;
- (d) the Facility 3 Site is not subject to any covenants, restrictions, agreements, planning obligations, estate contracts, options, rights of way or other encumbrances which materially inhibit the use of the Facility 3 Site for the purposes of the Phase 3 Project;



- (e) there are available to the Facility 3 Site such rights, easements and services as are necessary to undertake the Phase 3 Project and operate the Phase 3 Facility;
- (f) it has identified all necessary consents and planning permissions to undertake the Phase 3 Project (the **"Phase 3 Necessary Consents"**); and
- (g) there is a credible strategy in place to obtain the Phase 3 Necessary Consents and the Phase 3 Necessary Consents are not subject to any condition for which there does not exist a plan approved by its board of directors to satisfy that condition, such that it is not aware of any necessary consents or planning permissions which cannot be obtained or complied with;

((c) to (g), together the **"Phase 3 Facility Requirements"**);

or

- (iv) a Parent Entity certifying the matters described in paragraphs (i),(ii) and (iii) of this paragraph (D) on behalf of the Generator, Project Company 2 and Project 3; and
- (E) Supporting Information evidencing:
  - (i) that:
    - (a) the Generator has, or will have, sufficient financial resources to meet the Total Phase 1 Project Spend;
    - (b) the Phase 2 Company has, or will have, sufficient financial resources to meet the Total Phase 2 Project Spend; and
    - (c) the Phase 3 Company has, or will have, sufficient financial resources to meet the Total Phase 3 Project Spend; and
  - (ii) the Phase 1 Facility Requirements, the Phase 2 Facility Requirements and the Phase 3 Facility Requirements.

#### **Part B: Technology Specific Project Commitments**

Delivery to the CfD Counterparty of Supporting Information evidencing any one of the following:

- (A) entry by each of the Generator, Project Company 2 and Project Company 3 into an engineering, procurement and construction contract providing for the supply and installation of the Material Equipment;

- (B) entry by each of the Generator, Project Company 2 and Project Company 3 into an agreement for the supply of the Material Equipment;
- (C) entry by each of the Generator, Project Company 2 and Project Company 3 into: (i) a framework agreement for the supply of the Material Equipment; and (ii) a binding purchase order for the Material Equipment.

For the purpose of this Part B, "**Material Equipment**" means, in respect of the Facility, the Phase 2 Facility or the Phase 3 Facility all equipment necessary for electricity generation at that facility and includes the wind turbine groups.

**Annex 3**  
**(Milestone Requirement Notice)**

**To:** [●] (the "CfD Counterparty")  
 [Address]

**From:** [[●] ("Project Company 1")  
 [●] ("Project Company 2")  
 [●] ("Project Company 3")]

[OR [●] (the "Parent Entity")]  
 [Unique reference number[s]: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – MILESTONE REQUIREMENT NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and Project Company 1 as the Generator (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 4.
3. This is a Milestone Requirement Notice provided by us on behalf of each of the Generator, Project Company 2 and Project Company 3.
4. *[We enclose invoices, payment receipts and other Supporting Information which we consider to be relevant to evidence expenditure of ten per cent. (10%) or more of the Total Project Pre-Commissioning Costs by Project Company 1, Project Company 2 and/or Project Company 3], being £[●].]*

**OR**

4. *[We enclose such information as is listed as the Project Commitments and the following Supporting Information which we consider relevant to evidence compliance with or fulfilment of the Project Commitments: [●].]*
5. We enclose:
  - [(a) a Directors' Certificate on behalf of Project Company 1 certifying that the information in, and enclosed with, this notice in respect of it is true, complete and accurate in all material respects and is not misleading;
  - (b) a Directors' Certificate on behalf of Project Company 2 certifying that the information in, and enclosed with, this notice in respect of it is true, complete and accurate in all material respects and is not misleading; and

- (c) a Directors' Certificate on behalf of Project Company 3 certifying that the information in, and enclosed with, this notice in respect of it is true, complete and accurate in all material respects and is not misleading.]

OR

[in our capacity as Parent Entity, we enclose a Directors' Certificate certifying that the information in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.]

Yours faithfully,

.....

For and on behalf of  
**[Project Company 1**  
**Project Company 2**  
***Project Company 3]***

**OR [the Parent Entity]**

**Annex 4**  
**(Allocation Adjustment Notice)**

**To:** [●] (the "CfD Counterparty")  
[Address]

**From:** [●] ("Project Company 1")  
[●] ("Project Company 2")  
[●] ("Project Company 3")  
[Unique reference number(s): [●]]

**Date:** [●]

**INVESTMENT CONTRACT – ALLOCATION ADJUSTMENT NOTICE**

Dear Sirs,

1. We refer to the following agreements between you as the CfD Counterparty and us as the Generator (the "**Agreements**"):
  - (A) the agreement between the CfD Counterparty and Project Company 1 dated [●];
  - (B) the agreement between the CfD Counterparty and Project Company 2 dated [●];  
and
  - (C) the agreement between the CfD Counterparty and Project Company 3 dated [●].

Terms and expressions defined in or incorporated into the Agreements have the same meanings when used in this notice.
2. We further refer you to Clause 6.5 of each of the Agreements.
3. This is an Allocation Adjustment Notice.
4. The proposed reallocation of the offshore wind turbines among the Agreements is [●] and the effect of this reallocation is:
  - (A) Phase 1 Installed Capacity Estimate: [     ];
  - (B) Phase 2 Installed Capacity Estimate: [     ]; and
  - (C) Phase 3 Installed Capacity Estimate: [     ].
5. We enclose evidence of a change in the assets comprising the Facility arising in connection with this turbine reallocation.
6. We enclose such Supporting Information as we consider relevant to evidence this reallocation.

Yours faithfully,

.....

For and on behalf of  
**Project Company 1**  
**Project Company 2**  
**Project Company 3**

**Annex 5**  
**(Initial TLM(D) Charges)**

<b>Year</b>	<b>Initial TLM(D) Charge</b>
2010	0.0068
2011	0.0083
2012	0.0083
2013	0.0083
2014	0.0084
2015	0.0085
2016	0.0085
2017	0.0087
2018	0.0088
2019	0.0089
2020	0.0089
2021	0.0090
2022	0.0090
2023	0.0090
2024	0.0090
2025	0.0090
2026	0.0091
2027	0.0091
2028	0.0091
2029	0.0091
2030	0.0092
2031	0.0092
2032	0.0092
2033	0.0093
2034	0.0093
2035 and each calendar year thereafter	0.0093

**Annex 6**  
**(Novation Agreement)**

**THIS NOVATION AGREEMENT** (the "**Agreement**") is dated [●] and made as a deed

**BETWEEN:**

- (1) [insert name and details of the generator] (the "**Transferor**");
- (2) [insert name and details of the transferee] (the "**Transferee**"); and

[(depending on whether the Investment Contract has been transferred from the Secretary of State) **EITHER:**

- (3) **THE SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE** of 3 Whitehall Place, London SW1A 2AW (the "**CfD Counterparty**"),

**OR**

- (3) **CFD COUNTERPARTY COMPANY LIMITED**, a company incorporated under the laws of England and Wales whose registered office is 3 Whitehall Place, London SW1A 2AW and whose company number is 08818711 (the "**CfD Counterparty**"),]

(each a "**Party**" and together the "**Parties**").

**BACKGROUND**

- (A) The CfD Counterparty and the Transferor have entered into an investment contract dated [●] (the "**Investment Contract**").
- (B) The CfD Counterparty has consented to a novation of the Investment Contract and the other IC Documents in favour of the Transferee under clause 11 (*Transfers*) of the Investment Contract.
- (C) The parties to the Investment Contract have therefore agreed that the Investment Contract and the other IC Documents shall be novated to the CfD Counterparty and the Transferee with effect from the Effective Date, subject to the terms of this Agreement.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1** In this Agreement and the recitals:

"**IC Documents**" means the Investment Contract and each of the agreements entered into between the CfD Counterparty and the Transferor which are listed in Annex 1 to this Agreement;

"**Conditions Precedent**" means delivery to the CfD Counterparty of the following:



- (A) a legal opinion addressed to the CfD Counterparty, in form and content reasonably satisfactory to the CfD Counterparty, from the legal advisers to the Transferee confirming that the Transferee:
  - (i) is duly formed and validly existing under the laws of the jurisdiction of formation; and
  - (ii) has the power to enter into and perform, and has taken all necessary action to authorise its entry into and performance of, this Agreement; and
- (B) evidence, in form and content satisfactory to the CfD Counterparty, acting reasonably, of compliance by the Transferee with "know your customer" or similar identification procedures or checks under all applicable laws and regulations pursuant to the transactions contemplated by this Agreement; and
- (C) if the Generator has provided the CfD Counterparty with a Further CP Notice in respect of the Further Condition Precedent listed at Paragraph 2.1(A) of Part B of Schedule 1 (*Conditions Precedent*), the CfD Counterparty having received written confirmation from the CfD Settlement Services Provider that:
  - (i) it has received the CfD Settlement Required Information which is required from the Transferee; and
  - (ii) the Transferee has in place the systems and processes which are necessary for the continued provision of the CfD Settlement Required Information; and

**"Effective Date"** means the date on which the CfD Counterparty notifies the Transferee that the CfD Counterparty considers that the Transferee has fulfilled the Conditions Precedent.

1.2 Unless a contrary indication appears:

- (A) words and expressions defined, or defined by reference, in the Investment Contract have the same meanings in this Agreement and the recitals;
- (B) Conditions 1.3 and 1.4(A) and (B) of the Investment Contract shall apply to this Agreement; and
- (C) any reference in this Agreement to a **"Clause"** is a reference to a Clause of this Agreement.

## 2. CFD COUNTERPARTY RELEASE AND DISCHARGE

With effect from the Effective Date, the CfD Counterparty releases and discharges the Transferor from all liabilities, duties and obligations of every description, whether deriving from contract, common law, statute or otherwise, whether present or future,

actual or contingent, ascertained or disputed, owing to the CfD Counterparty and arising out of or in respect of the IC Documents.

### **3. TRANSFEROR RELEASE AND DISCHARGE**

- 3.1 With effect from the Effective Date, the Transferor releases and discharges the CfD Counterparty from all liabilities, duties and obligations of every description, whether deriving from contract, common law, statute or otherwise, whether present or future, actual or contingent, ascertained or disputed, owing to the Transferor and arising out of or in respect of the IC Documents.
- 3.2 The Transferor's obligations under Condition 70 (*Confidentiality*) of the Investment Contract shall continue in effect notwithstanding any other provision of this Agreement.

### **4. TRANSFeree ASSUMPTION OF LIABILITIES**

With effect from the Effective Date, the Transferee undertakes to assume all the liabilities, duties and obligations of the Transferor of every description contained in the IC Documents, whether deriving from contract, common law, statute or otherwise, whether present or future, actual or contingent, ascertained or unascertained or disputed, and agrees to perform all the duties and to discharge all the liabilities and obligations of the Transferor under the IC Documents and to be bound by their terms and conditions in every way as if the Transferee were named in each IC Document as a party in place of the Transferor from the date of each such IC Document.

### **5. CFD COUNTERPARTY AGREEMENT TO PERFORM**

With effect from the Effective Date, the CfD Counterparty agrees to perform all its duties and to discharge all its obligations under the IC Documents and to be bound by all the terms and conditions of the IC Documents in every way as if the Transferee were named in each IC Document as a party in place of the Transferor from the date of each IC Document.

### **6. REPLACEMENT OF TRANSFEROR BY TRANSFEE**

As from the Effective Date, reference to the Transferor (by whatsoever name known) in each IC Document shall be deleted and replaced by reference to the Transferee.

### **7. TRANSFEE'S REPRESENTATIONS AND WARRANTIES**

The Transferee shall on the Effective Date represent and warrant to the CfD Counterparty that, as at the Effective Date, the representations and warranties set out at Conditions 27.1 and 27.2 of the Investment Contract are, in respect of the Transferee, true, accurate and not misleading on the basis that references to the Generator shall be deemed to be references to the Transferee.

## 8. CONTINUANCE OF THE INVESTMENT CONTRACT

It is hereby agreed and declared that the IC Documents as novated shall continue in full force and effect and that, as from the Effective Date, the terms and conditions of the IC Documents have only changed to the extent set out in this Agreement.

## 9. FURTHER ASSURANCE

With effect from the Effective Date, the Parties shall enter into such further agreements and do all such other things as are necessary to substitute the Transferee for the Transferor in respect of the rights, benefits, obligations or liabilities that are, or are to be, the subject of this Agreement and to give effect to any consequential amendments to the Investment Contract or any other IC Document that are necessary to give effect to this Agreement.

## 10. CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

This Agreement does not create any rights under the Contract (Rights of Third Parties) Act 1999 enforceable by any person who is not a party to it.

## 11. VARIATIONS

No variation of this Agreement shall be effective unless it is in writing and is signed by or on behalf of each of the parties to this Agreement.

## 12. NOTICES

Any notices to be served on the Transferee pursuant to this Agreement or the Investment Contract shall be served in accordance with Condition 78 (*Notices*) of the Investment Contract and to:

Address:	
Email address:	
For the attention of:	

## 13. COUNTERPARTS

This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

**14. GOVERNING LAW AND JURISDICTION**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with the laws of England and the Parties hereby submit to the exclusive jurisdiction of the courts of England.

**IN WITNESS WHEREOF** this Agreement has been executed and delivered as a deed on the date first stated above.

**The TRANSFEROR**

**EXECUTED** and delivered as a **DEED** by )  
**[name of Transferor]** )  
 acting by its director/duly appointed attorney ) .....  
 Director/Attorney

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation: .....

**The TRANSFEREE**

**EXECUTED** and delivered as a **DEED** by )  
**[name of Transferee]** )  
 acting by its director/duly appointed attorney ) .....  
 Director/Attorney

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation: .....

**The CfD COUNTERPARTY**

**EXECUTED** and delivered as a **DEED** by )  
**[name of signatory]** for and on behalf of )  
 the Secretary of State for Energy and Climate ) .....  
 Change

***OR [if post transfer to CfD Counterparty]***

**The CfD COUNTERPARTY**

**EXECUTED** and delivered as a **DEED** by )  
**CFD COUNTERPARTY COMPANY LIMITED** )  
 acting by its director/duly appointed attorney ) .....  
 Director/Attorney

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation: .....

**Annex 1 to Novation Agreement  
IC Documents**

***[List of other IC Documents to be inserted here]***

## EXECUTION PAGE

## The GENERATOR

SIGNED BY SAMUEL LEUPOLD )MARIANNE WIINHOLT )

for and on behalf of )

Heron Wind Limited )

(Signature of named signatory)

## The CfD COUNTERPARTY

SIGNED BY )

HRV Robson )

for and on behalf of )

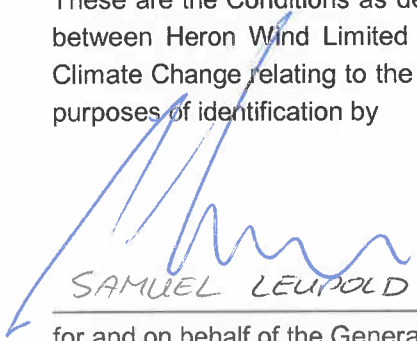
the Secretary of State for Energy  
and Climate Change )


(Signature of named signatory)

521270714



These are the Conditions as defined in the Investment Contract dated 9 MAY, 2014 between Heron Wind Limited (the "**Generator**") and the Secretary of State for Energy and Climate Change relating to the Hornsea Offshore Wind Farm Project (Phase 1). Signed for the purposes of identification by

  
SAMUEL LEUPOLD  
for and on behalf of the Generator

  
MARIANNE WINHOLT

  
for and on behalf of the Secretary of State for  
Energy and Climate Change

---

**INVESTMENT CONTRACT  
STANDARD TERMS AND CONDITIONS**

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May, 2014

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## **PRELIMINARY**

- (A) These are the standard terms and conditions applicable to Investment Contracts (the “**Conditions**”).
- (B) These Conditions are to be read in conjunction with the IC Agreement into which they are incorporated.

## Part 1 Introduction

### 1. DEFINITIONS AND INTERPRETATION

#### *Definitions*

##### 1.1 In these Conditions:

**“Acceptable Collateral”** means: (i) a Letter of Credit; and/or (ii) a cash amount in pounds transferred to the credit of a Reserve Account;

**“Actual Balancing System Charge”** has the meaning given to that term in Condition 44.2(E);

**“Actual TLM(D) Charge”** has the meaning given to that term in Condition 45.2(E);

**“Additional CP Response Notice”** has the meaning given to that term in Condition 3.15(B)(ii);

**“Adjusted Output Period”** means a period of reduced or increased generation output by the Facility occurring during the Term as a direct result of a Qualifying Change in Law or a Qualifying CPC Event;

**“Affected Operational CP”** has the meaning given to that term in Condition 3.16;

**“Affected Person”** means any direct or indirect shareholder of the Generator who is able to evidence to the satisfaction of the CfD Counterparty that if it (or an agent or security trustee on its behalf) has or had the benefit of a Direct Agreement, it is or would be:

- (A) contractually obliged to exercise rights under the relevant Direct Agreement in accordance with the instructions of one or more Lenders (or an agent or security trustee on its or their behalf); or
- (B) party to an agreement regarding the exercise of rights under such Direct Agreement with a person falling within paragraph (A) above;

**“Aggregate Difference Amount”** has the meaning given to that term in Condition 21.4(I);

**“Agreement Date”** has the meaning given to that term in the IC Agreement;

**“Amendment Notification”** has the meaning given to that term in paragraph 2.1 of Annex 2 (*Change Control Procedure*);

**“Annual Balancing System Charge”** means, in respect of any Strike Price Adjustment Calculation Period, the amount (expressed in £/MWh) equal to:



- (A) the total net BSUoS Charges payable by electricity generators in Great Britain in respect of the relevant Balancing System Charge Review Period less (where they are receivable) the total net RCRC Credits receivable or plus (where they are payable) the total net RCRC Credits payable, in each case by electricity generators in Great Britain in respect of such Balancing System Charge Review Period; divided by
- (B) the total metered generation (expressed in MWh) of those electricity generators in Great Britain (not being Embedded Generators) in such year;

**“Annual QCPC Report”** has the meaning given to that term in Condition 46.10;

**“Annual TLM(D) Charges”** means, in respect of any calendar year, the TLM(D) Charges for the relevant calendar year expressed as a percentage of the total electricity generation (in MWh) of electricity generators in Great Britain (excluding Embedded Generators) in such calendar year;

**“AOP Estimate”** means a good faith estimate of an Adjusted Output Period (including a good faith estimate of the date on which such Adjusted Output Period will commence and end);

**“Application Material”** means:

- (A) all information relating to the Project submitted by the Generator pursuant to paragraph 52 of Update 1 (Annex B), as resubmitted in accordance with paragraph 60 of Update 2;
- (B) all information contained in the Generator’s Phase 2 Response submitted pursuant to, and as defined in paragraph 64 of, Update 2 (including all material accompanying the Phase 2 Response); and
- (C) all information contained in the Binding Application;

**“Arbitral Award”** has the meaning given to that term in Condition 58.2;

**“Arbitral Tribunal”** has the meaning given to that term in the LCIA Arbitration Rules;

**“Arbitration Dispute”** means any Dispute other than an Expert Dispute;

**“Arbitration Procedure”** means the rules, obligations and procedures set out in Condition 58 (*Arbitration Procedure*);

**“Arbitrator”** means any person to whom a Dispute is referred in accordance with the Arbitration Procedure;

**“Assumed Load Factor”** means the assumed load factor in respect of the Facility Generation Technology, as published by DECC and used to set the Initial Strike Price, and as specified in the IC Agreement;

**“Assumed RQM”** has the meaning given to that term in the IC Agreement (but only if the Renewable Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement);

**“Authority”** means the Gas and Electricity Markets Authority established pursuant to section 1 of the Utilities Act 2000;

**“Balancing Mechanism”** means the balancing mechanism operated at the Agreement Date by the Transmission System Operator and designed to balance supply and demand for electricity in real time on the national electricity transmission system, and shall include any substitute or equivalent mechanism or arrangements;

**“Balancing System Charge”** means BSUoS Charges net of RCRC Credits;

**“Balancing System Charge Difference”** has the meaning given to that term in Condition 44.2(G);

**“Balancing System Charge Report”** has the meaning given to that term in Condition 44.2;

**“Balancing System Charge Report Year”** has the meaning given to that term in Condition 44.2;

**“Balancing System Charge Review Period”** has the meaning given to that term in Condition 44.2(E);

**“Balancing System Charge Strike Price Adjustment”** has the meaning given to that term in Condition 44.3;

**“Base Rate”** means the rate of interest published from time to time by the Bank of England as its base rate;

**“Base Year”** has the meaning given to that term in the IC Agreement;

**“Base Year CPI”** means the value of the CPI for October in the calendar year immediately preceding the Base Year;

**“Base Year Terms”** means, for any Strike Price Adjustment initially expressed in a price period (x), with (x) being a calendar year other than the Base Year, the Strike Price Adjustment in respect of the Base Year ( $ADJ_{base}$ ), calculated in accordance with the following formula:

$$ADJ_{base} = ADJ_x \times \frac{CPI_{base}}{CPI_x}$$

where:

$ADJ_x$  is the Strike Price Adjustment (expressed in £/MWh) in any year (x);

$CPI_{base}$  denotes the Base Year CPI; and

$CPI_x$  denotes the arithmetic mean of the monthly CPI over the year (x);

**“Billing Period”** means the period starting at 00:00 on a day and ending at 00:00 on the following day;

**“Billing Statement”** has the meaning given to that term in Condition 21.1;

**“Billing Statement Dispute Notice”** has the meaning given to that term in Condition 22.3;

**“Binding Application”** means the application made by the Generator to enter into the Investment Contract, in which the Generator specified certain project-specific information applicable to the Investment Contract;

**“Black Start”** has the meaning given to that term in the Grid Code;

**“BSC”** means the Balancing and Settlement Code that is provided for in Standard Condition C3 (Balancing and Settlement Code (BSC)) of the Transmission Licence;

**“BSUoS Charges”** means:

- (A) balancing services use of system charges which, at the Agreement Date, are levied by the GB System Operator pursuant to the CUSC; and
- (B) any new or substitute payments or credits which are in the nature of, or similar to, balancing services use of system charges, whether or not levied by the GB System Operator or pursuant to the CUSC,

in each case, payable or receivable by electricity generators in Great Britain and expressed in £/MWh;

**“Business Day”** means a day (other than a Saturday or a Sunday) on which banks are open for general business in London;

**“CCP Affected Parties”** means, in respect of a General Amendment, the generators which are party to those FiT Contracts for Difference to which the General Amendment is proposed to be made;

**“CfD Counterparty”** means:

- (A) until a transfer of the Investment Contract shall have taken place in accordance with Condition 77.2 or the rights and liabilities of the Secretary of State under it are otherwise transferred or assigned to another person, the Secretary of State; and

- (B) thereafter such person to whom the rights and liabilities of the CfD Counterparty under the Investment Contract shall have been transferred or assigned in accordance with Condition 77.2 or otherwise;

**“CfD Counterparty Confidential Information”** means:

- (A) all Information which is confidential or proprietary in nature and which relates (directly or indirectly) to the CfD Counterparty or a Government Entity (including any such Information relating to the policy of Her Majesty’s Government of the United Kingdom with respect to matters pertinent to FiT Contracts for Difference or the Investment Contract) which the Generator (or its Representatives) receives or has received from the CfD Counterparty (or its Representatives) or from any third party who receives or has received such Information from the CfD Counterparty (or its Representatives) in respect of the Investment Contract (including any Information which the Generator prepares which contains or makes explicit reference to such Information or from which such Information is readily ascertainable);
- (B) without prejudice to the generality of paragraph (A), all Information relating to any QCiL Compensation or QCiL True-Up Compensation, including all Information relating to or arising from negotiations, discussions and correspondence in connection with any such QCiL Compensation or QCiL True-Up Compensation; and
- (C) all Information which relates to or arises from negotiations, discussions and correspondence in connection with the Investment Contract,

but excluding in each case all Excluded Information;

**“CfD Counterparty GT Notice”** has the meaning given to that term in Condition 41.7;

**“CfD Counterparty Permitted Purposes”** means:

- (A) complying with the CfD Counterparty’s responsibilities and obligations, and exercising the CfD Counterparty’s rights, powers and discretions, under or in connection with the Investment Contract, any other IC Document or any other FiT Contract for Difference;
- (B) complying with the CfD Counterparty’s responsibilities and obligations under or by virtue of the EA 2013 or any other Law or European Union law, policy or guidance; and
- (C) reporting on the establishment, administration, performance or operation of, or compliance or non-compliance with, the obligations and arrangements contemplated by, or provided for in, the Investment Contract and FiT Contracts for Difference;

**“CfD Counterparty QCiL Notice”** has the meaning given to that term in Condition 32.1;

**“CfD Counterparty QCiL True-Up Notice”** has the meaning given to that term in Condition 35.1;

**“CfD Generators”** means, at the relevant time, all parties (other than the CfD Counterparty) to FiT Contracts for Difference, provided that, where there are two (2) or more parties to any FiT Contract for Difference other than the CfD Counterparty, only one (1) of them shall be counted for the purposes of this definition;

**“CfD Settlement Activities”** means:

- (A) the calculation, invoicing, reconciliation and settlement of payments to be made pursuant to the Investment Contract; and
- (B) the calculation of collateral requirements and the provision of collateral in accordance with Part 13 (*Credit Support*);

**“CfD Settlement Required Information”** means all the Information required by the CfD Counterparty, or the CfD Settlement Services Provider on its behalf, relating to the Investment Contract and required by it to carry out the CfD Settlement Activities;

**“CfD Settlement Services Provider”** means any person appointed for the time being and from time to time by the CfD Counterparty to carry out any of the CfD Settlement Activities, or who is designated by the Secretary of State to carry out the CfD Settlement Activities;

**“CfD Standard Terms”** means the first standard terms issued or to be issued by the Secretary of State pursuant to section 11 of the EA 2013;

**“Change Control Procedure”** means the rules, obligations and procedures set out in Annex 2 (*Change Control Procedure*);

**“Change in Applicable Law”** means:

- (A) the coming into effect, amendment, supplement, termination, repeal, replacement or withdrawal of or to: (i) any Law or Directive; or (ii) any Industry Document; or
- (B) a change in the interpretation or application of any Law, Directive or Industry Document by any Competent Authority;

**“Change in Applicable Law Dispute”** has the meaning given to that term in Condition 39.1;

**“Change in Applicable Law Dispute Generator”** has the meaning given to that term in Condition 39.1;

**“Change in Applicable Law Dispute Notice”** has the meaning given to that term in Condition 39.1;

**“Change in Applicable Law Dispute Threshold Criterion”** has the meaning given to that term in Condition 39.9;

**“Change in Applicable Law Dispute Validity Notice”** has the meaning given to that term in Condition 39.3;

**“Change in Applicable Law Request Criterion”** has the meaning given to that term in Condition 38.3;

**“Change in Applicable Law Request Notice”** has the meaning given to that term in Condition 38.2;

**“Change in Applicable Law Request Validity Notice”** has the meaning given to that term in Condition 38.5;

**“Change in Applicable Law Review”** means a review conducted by the CfD Counterparty pursuant to Condition 38.1 as to whether:

- (A) a Change in Applicable Law: (i) has been implemented, has occurred or has become effective; or (ii) is expected to be implemented, to occur or to become effective and as a direct result of which one or more of the Required CiL Amendment Objectives will cease to be met; and
- (B) as a consequence, Required CiL Amendments are necessary;

**“Change in Applicable Law Review Notice”** has the meaning given to that term in Condition 38.6;

**“Change in Applicable Law Review Outcome Notice”** has the meaning given to that term in Condition 38.9;

**“Change in Applicable Law Review Response Deadline”** has the meaning given to that term in Condition 38.6(C);

**“Change in Applicable Law Review Response Notice”** has the meaning given to that term in Condition 38.7;

**“Change in Applicable Law Review Trigger”** has the meaning given to that term in Condition 38.1;

**“Change in Law”** means:

- (A) the coming into effect, amendment, supplement, termination, repeal, replacement or withdrawal of or to: (i) any Law or Directive; (ii) any Industry Document; or (iii) any Required Authorisation; or
- (B) a change in the interpretation or application of any Law, Directive, Industry Document or Required Authorisation by any Competent Authority,

in each case after the Agreement Date and save (in each case) to the extent that the Change in Law:

- (i) arises out of, or in connection with, a breach of or default under or with respect to, that Law, Directive, Industry Document or Required Authorisation by the Generator or any of its Representatives;
- (ii) arises out of, or in connection with, a failure by the Generator or any of its Representatives to act in accordance with a Reasonable and Prudent Standard; or
- (iii) represents no more than a continuous improvement or development of good practice which would be complied with in respect of a generating facility deploying the Facility Generation Technology by a generator acting in accordance with a Reasonable and Prudent Standard;

**"CHPQA"** means the Combined Heat and Power Quality Assurance Standard, as published by DECC (Issue 5, dated November 2013) (as such standard may be amended, supplemented, restated or replaced from time to time) (but only if the CHP Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement);

**"CHPQA Certificate"** means a certificate issued in relation to the Facility pursuant to the CHPQA (but only if the CHP Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement);

**"CHPQA Guidance Note 44"** means "Guidance Note 44", as published by DECC at the Agreement Date in relation to the CHPQA (but only if the CHP Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement);

**"CHPQA Guidance Note 44 Certificate"** means a certificate issued in relation to the Facility pursuant to CHPQA Guidance Note 44 (but only if the CHP Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement);

**"CHPQM Calculation Methodology"** means the methodology for calculating the CHP Qualifying Multiplier as set out in Annex 6 (*CHPQM Calculation Methodology*) (but only if the CHP Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement);

**"CHP Qualifying Multiplier"** shall have the meaning given to that term in paragraph 2.1 of Annex 6 (*CHPQM Calculation Methodology*) (but only if the CHP Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement);

**"CJA"** means the Criminal Justice Act 1993;

**"Claimant"** has the meaning given to that term in Condition 57.3;

**"Classification Objection"** has the meaning given to that term in paragraph 2.6(B)(ii)(a) of Annex 2 (*Change Control Procedure*);

**“Collateral Amount”** means an amount (expressed in pounds) calculated by the CfD Counterparty in accordance with Condition 53.4;

**“Collateral Correction Notice”** has the meaning given to that term in Condition 54.5;

**“Collateral Posting Date”** means the date by which the Generator is required to transfer or deliver Acceptable Collateral, being no less than ten (10) Business Days after a Collateral Posting Notice is given (or deemed to have been given);

**“Collateral Posting Notice”** has the meaning given to that term in Condition 53.2;

**“Collateral Repayment Date”** means an Initial Collateral Repayment Date or (if applicable) a Replacement Collateral Repayment Date;

**“Commissioned”** means that all of the Commissioning Tests have been successfully completed, followed or passed (as appropriate) in relation to the Facility (or a part of the Facility), and grammatical variations thereof shall be construed accordingly;

**“Commissioning Tests”** means all of the procedures and tests which, in accordance with the Reasonable and Prudent Standard and in compliance with industry guidelines, practices and standards, are:

- (A) relevant to generating facilities which are the same as, or of a similar type to, the Facility (including those which are relevant to the Facility Generation Technology); and
- (B) required to be completed, followed or passed (as appropriate): (i) in order for a generating facility to generate electricity; or (ii) to demonstrate that a generating facility is fit for commercial operation;

**“Compensatory Interest”** means the interest that is due and payable at the Compensatory Interest Rate in accordance with Condition 21.6;

**“Compensatory Interest Amount”** has the meaning given to that term in Condition 21.6;

**“Compensatory Interest Rate”** has the meaning given to that term in Condition 21.6;

**“Competent Authority”** means:

- (A) any national, federal, regional, state, local, European Union or other court, arbitral tribunal, administrative agency or commission or other governmental, administrative or regulatory body, authority, agency or instrumentality;
- (B) any private body to the extent it carries out one (1) or more public functions; or
- (C) any other body which has jurisdiction in respect of the Facility, the Project, the Investment Contract or any other IC Document,



and includes the Authority, the Environment Agencies and the Secretary of State but excludes (except for such time as the Secretary of State is the CfD Counterparty) the CfD Counterparty;

**“Conditions”** means the standard terms and conditions of Investment Contracts;

**“Conditions Precedent”** means the Effective Date Condition Precedent, the Initial Condition Precedent and the Further Conditions Precedent and **“Condition Precedent”** shall be construed accordingly;

**“Confidential Information”** means CfD Counterparty Confidential Information and Generator Confidential Information;

**“Connected Dispute”** has the meaning given to that term in Condition 59.1;

**“Consolidation Notice”** has the meaning given to that term in Condition 59.2;

**“Construction Event”** means a geological condition or physical constraint affecting the Facility (including the presence of new or unknown fauna or flora, unexploded ordnance, mudstone, archaeological remains, antiquities or hazardous materials);

**“Contract Year”** means each twelve (12) month period during the Term which begins on 01 January and ends on the immediately following 31 December, provided that:

- (A) the first (1<sup>st</sup>) Contract Year shall be the period from and including the Start Date to and including the immediately following 31 December; and
- (B) the final Contract Year shall be the period from and including 01 January in the last calendar year of the Term and ending on the last day of the Term;

**“Contractor”** means any contractor, sub-contractor, consultant or adviser of or to the Generator but excludes any Transmission System Operator, Transmission Licensee, Licensed Distributor or OFTO;

**“CP Response Notice”** has the meaning given to that term in Condition 3.14;

**“CPC Compensation Shortfall”** means: (i) a Curtailment Compensation Shortfall; or (ii) a Partial Curtailment Compensation Shortfall;

**“CPI”** means: (i) the all items index of consumer price inflation published each month by the Office for National Statistics; (ii) if that index in respect of any month has not been published, such index as the CfD Counterparty may reasonably determine to be appropriate in the circumstances; or (iii) if there is a material change to the basis of that index, such other index as the CfD Counterparty may reasonably determine to be appropriate in the circumstances;

**“C(RTP) Act”** means the Contracts (Rights of Third Parties) Act 1999;

**“Curtailement”** means, in respect of any period, the prevention or restriction by, or on the instruction of, the NETSO of the export from the Facility to the national electricity

transmission system of all (but not less than all) of the electricity which the Facility is otherwise able to generate and export during the relevant period, and the period of any Curtailment shall include, subject as provided below, the minimum period of time (determined by reference to a Reasonable and Prudent Standard) that the Facility takes to ramp up and down in response to the relevant prevention, restriction or instruction, as the case may be, provided that:

- (A) the Facility shall not be considered to be otherwise able to generate and export electricity in circumstances where the Facility has been prevented from generating or has been restricted in its generation due to the exercise of powers by a Competent Authority as a result of any matter relating to non-compliance with any Required Authorisation; and
- (B) there shall be no Curtailment during any period in which the export of electricity from the Facility is prevented or restricted as a result of:
  - (i) any unplanned Transmission System outage or Black Start or any Emergency Deenergisation Instruction;
  - (ii) a breach or default by the Generator or any of its Representatives of the Investment Contract, any Law or Directive, any Industry Document or any Required Authorisation;
  - (iii) a failure by the Generator or any of its Representatives to act in accordance with a Reasonable and Prudent Standard; or
  - (iv) any matter relating to health, safety, security or environment at or with respect to the Facility (but not as a result of any such matter at or with respect to the national electricity transmission system),

and "**Curtailed**" shall be construed accordingly;

"**Curtailment Compensation**" means, in respect of any Qualifying Curtailment, the amount actually received or receivable by the Generator (or its nominee) in respect of such Qualifying Curtailment;

"**Curtailment Compensation Anniversary**" has the meaning given to that term in Condition 47.5(A);

"**Curtailment Compensation Excess**" means, in respect of any Qualifying Curtailment, where the Curtailment Compensation is greater than the Defined Curtailment Compensation in respect of such Qualifying Curtailment, the amount of the excess;

"**Curtailment Compensation Shortfall**" means, in respect of any Qualifying Curtailment, where the Curtailment Compensation is less than the Defined Curtailment Compensation in respect of such Qualifying Curtailment, the amount of the shortfall;

"**CUSC**" means the Connection and Use of System Code that is provided for in Standard Condition C10 (Connection and Use of System Code (CUSC)) of the Transmission Licence;

**“Daily Discount Rate”** means an amount calculated in accordance with Condition 33.33;

**“DECC”** means the Department of Energy and Climate Change;

**“Default”** means:

- (A) a Termination Event; or
- (B) an event or a circumstance which would (with the passage of time, the giving of notice, the making of any determination pursuant to the Investment Contract or any combination of any of the foregoing) be a Termination Event;

**“Default Interest”** has the meaning given to that term in Condition 23.1;

**“Default Termination Notice”** has the meaning given to that term in Condition 49.9;

**“Deferral Period”** means a period equal to the number of days elapsed between the commencement of the first Generator Pre-Start Date Termination Period and the date on which the State Aid Condition Precedent is fulfilled;

**“Deficient Collateral Amount”** has the meaning given to that term in Condition 54.5(B)(ii);

**“Defined Curtailment Compensation”** means, in respect of any Curtailment, the amount calculated as:

- (A) the revenues foregone during the Adjusted Output Period, and efficient additional costs (including costs associated with ramp up and down) incurred, by the Generator (acting to a Reasonable and Prudent Standard) as a direct result of the Curtailment (including any Difference Amounts that would, but for the Curtailment, have been payable to the Generator pursuant to the Investment Contract), calculated over the minimum period of time for which the export of electricity from the Facility is Curtailed,

less the aggregate of:

- (B) the efficient additional costs (including costs associated with ramp up and down) saved or avoided by the Generator as a direct result of such Curtailment; and
- (C) any other income or gains received or made by the Generator relating to such Curtailment other than any Curtailment Compensation,

plus (to the extent not already included):

- (D) the reasonable costs of meeting any shortfall in the Generator’s Credited Energy Volume as a direct result of such Curtailment,

provided that Defined Curtailment Compensation shall exclude:

- (i) any Imbalance Charges save to the extent that the Generator has incurred the same in meeting any such shortfall as is referred to in (D); and
- (ii) any charges or costs incurred by the Generator under any third party power sale, purchase or similar arrangements (whether actual, virtual, derivative or synthetic);

**“Defined Partial Curtailment Compensation”** means, in respect of any Partial Curtailment, the amount calculated as:

- (A) the revenues foregone during the Adjusted Output Period, and efficient additional costs (including costs associated with ramp up and down) incurred, by the Generator (acting to a Reasonable and Prudent Standard) as a direct result of the Partial Curtailment (including any Difference Amounts that would, but for the Partial Curtailment, have been payable to the Generator pursuant to the Investment Contract), calculated over the minimum period of time for which the export of electricity from the Facility is Partially Curtailed,

less the aggregate of:

- (B) the efficient additional costs (including costs associated with ramp up and down) saved or avoided by the Generator as a direct result of such Partial Curtailment; and
- (C) any other income or gains received or made by the Generator relating to such Partial Curtailment other than any Curtailment Compensation,

plus (to the extent not already included):

- (D) the reasonable costs of meeting any shortfall in the Generator’s Credited Energy Volume as a direct result of such Partial Curtailment,

provided that Defined Partial Curtailment Compensation shall exclude:

- (i) any Imbalance Charges save to the extent that the Generator has incurred the same in meeting any such shortfall as is referred to in (D); and
- (ii) any charges or costs incurred by the Generator under any third party power sale, purchase or similar arrangements (whether actual, virtual, derivative or synthetic);

**“Delivery Body”** means the national system operator as defined for the purposes of Chapter 2 of the EA 2013;

**“Designated Termination Date”** has the meaning given to that term in Condition 49.9(B)(i);

**“Difference”** means, in respect of a Settlement Unit, an amount (expressed in pounds) calculated in accordance with the following formula:

$$\text{Difference} = \text{MIN}(SP_t - MRP_t, SP_t)$$

where:

$SP_t$  is the Strike Price in Settlement Unit (t); and

$MRP_t$  is the Market Reference Price applicable to Settlement Unit (t);

**“Difference Amount”** means:

- (A) the Baseload Difference Amount, as such term is defined in Part 5A (*Payment calculations: Baseload Technologies*) (but only if Part 5A (*Payment calculations: Baseload Technologies*) is expressed to apply to the Investment Contract in the IC Agreement); or
- (B) the Intermittent Difference Amount, as such term is defined in Part 5B (*Payment calculations: Intermittent Technologies*) (but only if Part 5B (*Payment calculations: Intermittent Technologies*) is expressed to apply to the Investment Contract in the IC Agreement);

**“Direct Agreement”** means an agreement in substantially the form set out in Annex 3 (*Form of Direct Agreement*), or in such other form as may be agreed by the CfD Counterparty (in its sole discretion);

**“Directive”** means, in relation to any Party, any ordinance, code, decision, directive, order, decree, regulation, determination, award, standard or rule of any Competent Authority:

- (A) which is legally binding upon that Party or, if not legally binding upon that Party, with which that Party would ordinarily comply, acting (in the case of the Generator), in accordance with the Reasonable and Prudent Standard; and
- (B) in circumstances in which the Generator is seeking to invoke the provisions of Condition 34 (*Qualifying Change in Law: Effective date and payment*) with which the Generator does comply;

**“Directors’ Certificate”** means a certificate in the form set out in Part A of Annex 9 (*Pro forma notices*) signed by two (2) directors of the Generator or one (1) director of the Generator in the presence of a witness who attests the signature, such directors or director (as applicable) having made, and confirmed in the certificate as having made, all due and careful enquiries in relation to the matters set out in, or enclosed with or appended to, such certificate;

**“Discriminatory Change in Law”** means a Change in Law the terms of which specifically (and not merely indirectly or consequentially or by virtue of the disproportionate effect of any Change in Law that is of general application) apply to:

- (A) the Project and not to the design, development, construction, conversion, installation, completion, testing, commissioning, operation, maintenance and decommissioning of any other project;
- (B) the Facility and not to any other generating facility; or
- (C) the Generator and not to any other person;

**“Dispute”** means any dispute or claim in any way relating to or arising out of the Investment Contract or any other IC Document, whether contractual or non-contractual (and including any dispute or claim regarding: (i) their existence, negotiation, validity or enforceability; (ii) the performance or non-performance of a Party’s obligations pursuant to them; or (iii) breach or termination of any of them), but excluding any Metering Dispute;

**“Dispute Information”** has the meaning given to that term in Condition 55.7;

**“Dispute Notice”** has the meaning given to that term in Condition 55.3;

**“Dispute Resolution Procedure”** means the rules, obligations and procedures set out in Part 14 (*Dispute Resolution*) including the Arbitration Procedure and the Expert Determination Procedure but excluding the provisions of Condition 61 (*Metering Disputes*);

**“Distribution Code”** means the distribution code that a Licensed Distributor is required to prepare or maintain in force in a form approved by the Authority pursuant to Standard Condition 21 (Distribution Code) of a Distribution Licence;

**“Distribution Connection and Use of System Agreement”** means the agreement that a Licensed Distributor is required to prepare or maintain in force in a form approved by the Authority under Standard Condition 22 (Distribution Connection and Use of System Agreement) of a Distribution Licence;

**“Distribution Licence”** means a licence granted or treated as granted pursuant to section 6(1)(c) of the EA 1989;

**“Dual Scheme Facility”** means a Facility that is stated to be a Dual Scheme Facility in the IC Agreement;

**“EA 1989”** means the Electricity Act 1989;

**“EA 2013”** means the Energy Act 2013;

**“EA 2013 Regulations”** means any statutory instruments made pursuant to any of Chapters 2, 4 and 5 (including the associated schedules to any of those chapters) of Part 2 of the EA 2013;

**“EC Conditional Decision”** has the meaning given to that term in paragraph 1(C) of Part B of Schedule 1;

**“Effective Date”** has the meaning given to that term in Condition 3.3;

**“Effective Date Condition Precedent”** has the meaning given to that term in Condition 3.2;

**“Effective Date Provisions”** means Part 1 (*Introduction*), Part 2 (*Term*), Part 3 (*Conditions Precedent and Milestone Requirement*), Condition 8 (*Application*), Condition 9 (*Definitions: Part 5A*), Condition 14 (*Strike Price Adjustments*), Condition 16 (*Application*), Condition 17 (*Definitions: Part 5B*), Condition 19 (*Strike Price*), Condition 23 (*Default Interest*), Condition 24 (*Set-off*), Condition 25 (*Deductions and withholdings*), Condition 26 (*Payment accounts*), Condition 27 (*Generator representations and warranties*), Condition 28 (*CfD Counterparty warranties*), Condition 29 (*Generator undertakings: General*), Condition 31 (*Generator undertakings: Information provision*), Part 12 (*Termination*), Part 14 (*Dispute Resolution*) to Part 17 (*Miscellaneous*) (inclusive), Schedule 1 (*Conditions Precedent*), Annex 1 (*Calculation of Termination Amount*), Annex 2 (*Change Control Procedure*), Annex 3 (*Form of Direct Agreement*), Annex 7 (*FMS arrangements and RQM Calculation Methodology*) and Annex 9 (*Pro forma notices*);

**“Effective Projected Generation”** has the meaning given to that term in Condition 33.31;

**“EIR”** means the Environmental Information Regulations 2004;

**“Electrical Schematic Obligation”** has the meaning given to that term in Condition 30.7;

**“Electricity Supplier”** has the meaning given to that term in section 9(10) of the EA 2013;

**“Embedded Generator”** means an exemptable electricity generator whose electricity generating station is not directly connected to the Transmission System;

**“Emergency Deenergisation Instruction”** means an instruction issued by the NETSO requiring the Generator to de-energise the Facility from the national electricity transmission system in a controlled manner in circumstances where, in the reasonable opinion of the NETSO: (i) the condition or manner of operation of any transmission plant or apparatus may cause damage or injury to any person or the national electricity transmission system; (ii) if the Facility connected to such transmission plant or apparatus is not so de-energised then it is likely that the transmission plant or apparatus would automatically trip; and (iii) if such transmission plant or apparatus had tripped automatically then the Facility would, solely as a consequence of such trip, have been de-energised;

**“Energy Consultant”** means an internationally recognised, leading energy market consultancy firm (not being an affiliate of either Party or any other CfD Generator) experienced in advising clients in the UK electricity generation sector;

**“Environment Agencies”** means: (i) the Environment Agency in England; (ii) Natural Resources Wales; and (iii) the Scottish Environment Protection Agency;

**“Estimated Facility Generation”** has the meaning given to that term in Condition 33.32 or Annex 1 (*Calculation of Termination Amount*) (as the context requires);

**“Estimated Metered Output”** has the meaning given to that term in:

- (A) Condition 10.3 (but only if Part 5A (*Payment calculations: Baseload Technologies*) is expressed to apply to the Investment Contract in the IC Agreement); or
- (B) Condition 18.3 (but only if Part 5B (*Payment calculations: Intermittent Technologies*) is expressed to apply to the Investment Contract in the IC Agreement);

**“Estimated Output Billing Period”** has the meaning given to that term in:

- (A) Condition 10.2 (but only if Part 5A (*Payment calculations: Baseload Technologies*) is expressed to apply to the Investment Contract in the IC Agreement); or
- (B) Condition 18.2 (but only if Part 5B (*Payment calculations: Intermittent Technologies*) is expressed to apply to the Investment Contract in the IC Agreement);

**“European Union”** or **“EU”** means the European Union, established by the Treaty of the European Union signed at Maastricht on 07 February 1992 (as amended, supplemented or replaced by any later treaty);

**“Excluded Change in Law”** means a Change in Law which is not a Qualifying Change in Law;

**“Excluded Information”** means Information:

- (A) in, or which enters, the public domain otherwise than as a consequence of a breach of any provision of the Investment Contract; or
- (B) properly in the possession of the recipient on a non-confidential basis and not, to the knowledge of the recipient, as a result of a breach by it, its Representatives or any third party of any duty of confidentiality attaching thereto prior to such Information being acquired by or provided to it;

**“Expected QCiL Effective Date”** means the date on which a Notified Change in Law is expected to be implemented, occur or become effective;

**“Expert”** means any person appointed in accordance with the Expert Determination Procedure to determine an Expert Dispute;



**“Expert Appointment Date”** means the date on which an Expert is appointed to determine an Expert Dispute by means of an appointment letter entered into by such Expert and each of the Parties;

**“Expert Appointment Threshold”** has the meaning given to that term in Condition 39.7;

**“Expert Determination Notice”** has the meaning given to that term in Condition 57.1;

**“Expert Determination Procedure”** means the rules, obligations and procedures set out in Condition 57 (*Expert Determination Procedure*);

**“Expert Determination Response Notice”** has the meaning given to that term in Condition 57.3;

**“Expert Dispute”** means a Dispute which is referred for determination in accordance with the Expert Determination Procedure;

**“Expert Referral Date”** has the meaning given to that term in Condition 57.6(A);

**“Facility”** has the meaning given to that term in the IC Agreement;

**“Facility Generation Technology”** means the generation technology deployed by the Facility, as specified in the IC Agreement;

**“Facility Metering Equipment”** means the Metering Equipment measuring the flows of electricity associated with the Facility, its Metering System and its associated BM Unit(s) and, in the case of a Dual Scheme Facility, the Metering Equipment used to measure the Imported Input Electricity of the Generating Station;

**“Final Generation Tax Report”** means the report of the Energy Consultant referred to in Condition 41.15(B);

**“Final Installed Capacity”** has the meaning given to that term in Condition 7.1(B);

**“Final Installed Capacity Notice”** has the meaning given to that term in Condition 7.1;

**“Final Installed Capacity Response Notice”** has the meaning given to that term in Condition 7.3;

**“Final Installed Capacity Supporting Information”** has the meaning given to that term in Condition 7.3(B)(ii);

**“First Submission”** has the meaning given to that term in Condition 57.6(B);

**“First Submission Deadline”** has the meaning given to that term in Condition 57.6(B);

**“FiT Contract for Difference”** means:

- (A) a contract for difference (as such term is defined in section 6(2) of the EA 2013); or
- (B) an investment contract (as such term is defined in Schedule 2 to the EA 2013);

**“FiT Market Reference Price”** means:

- (A) the Baseload Market Reference Price, as such term is defined in Part 5A (*Payment calculations: Baseload Technologies*); and
- (B) the Intermittent Market Reference Price, as such term is defined in Part 5B (*Payment calculations: Intermittent Technologies*);

**“Fitch Ratings”** means Fitch Ratings Limited, an English corporation, and any successor thereto;

**“FM Affected Party”** has the meaning given to that term in Condition 67.1;

**“FMS Procedures”** has the meaning given to that term in Annex 7 (*FMS arrangements and RQM Calculation Methodology*) (but only if the Renewable Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement);

**“FMS Report”** has the meaning given to that term in Annex 7 (*FMS arrangements and RQM Calculation Methodology*) (but only if the Renewable Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement);

**“FoIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act, together with (where the context requires) any guidance and codes of practice issued by the Information Commissioner in relation to such legislation;

**“Force Majeure”** means any event or circumstance (including any event or circumstance resulting from any action or omission by or of any CfD Settlement Services Provider, any BSC Agent or a BSC Company) that is beyond the reasonable control of the FM Affected Party or, if relevant, its Representatives (in the case of the Generator and its Representatives, acting and having acted to a Reasonable and Prudent Standard) which the FM Affected Party or its Representative (as appropriate) could not reasonably have avoided or overcome and which is not due to the FM Affected Party’s fault or negligence (or that of its Representatives), provided always that for the purposes of this definition:

- (A) for such time as the Secretary of State is the CfD Counterparty, in determining what is beyond the reasonable control of the CfD Counterparty or what could reasonably have been avoided or overcome by the CfD Counterparty, the CfD Counterparty shall be deemed not to be the Secretary of State but to be a limited liability company owned by the UK Government; and
- (B) neither non-availability of funds nor the lack of funds shall ever constitute Force Majeure;

**“Foreseeable Change in Law”** means, in respect of a Change in Law, that the relevant change:

- (A) was published on or after 01 January 2000 but before the Agreement Date:
- (i) in a draft Bill;
  - (ii) in a Bill;
  - (iii) in an Act of Parliament which had been enacted but which had not (in whole or in part) come into effect;
  - (iv) in draft subordinate legislation;
  - (v) in subordinate legislation which had not (as regards that Change in Law) come into effect;
  - (vi) in any European Union law which had not (as regards that Change in Law) come into effect;
  - (vii) in a draft Required Authorisation or Required Authorisation which had been made but which had not (as regards that Change in Law) come into effect;
  - (viii) in a draft Directive or in a Directive which had been made but which had not (as regards that Change in Law) come into effect;
  - (ix) in a draft treaty (as such term is defined in Article 2(1)(a) of the Vienna Convention on the Law of Treaties 1969 (a “**Treaty**”)) in relation to which Her Majesty’s Government of the United Kingdom had made a public statement (from which it had not prior to the Agreement Date publicly resiled) that it would be a signatory; or
  - (x) in a Treaty to which the United Kingdom was a signatory but which had not (as regards that Change in Law) come into effect,

but only to the extent that the change has substantially the same effect as that which was published;

- (B) is contemplated in a proposal or option(s) which was (or were) published on or after 01 January 2000 but before the Agreement Date:
- (i) in the Official Journal of the European Union;
  - (ii) in a consultation document of a Competent Authority and which is the stated preferred proposal (or, if only one (1) proposal was made, that proposal) of the Competent Authority (whether or not the Competent Authority is at the Agreement Date consulting (or has completed consulting) or considering (or has considered any) responses to the consultation), unless that proposal has been superseded by another

stated preferred proposal or formally withdrawn, or the Competent Authority has formally indicated that it does not intend to proceed with it; or

- (iii) in a final modification report in respect of a relevant Industry Document, but only to the extent that the change has substantially the same effect as that which was contemplated in such publication;
- (C) results from the enactment and implementation of any part of Chapters 2, 4 and 5 (including the associated Schedules to any of those Chapters) of Part 2 of the EA 2013 (or any part thereof);
- (D) occurs as a result of the amendment, supplement, termination, repeal, replacement or withdrawal of all or part of any document which is referred to in any Law, Directive, Industry Document or Required Authorisation in existence at the Agreement Date, provided that:
  - (i) a document setting out the nature of such amendment, supplement, termination, repeal, replacement or withdrawal (whether or not in draft) had been published on or before the Agreement Date; and
  - (ii) such amendment, supplement, termination, repeal, replacement or withdrawal has substantially the same effect as that so published;
- (E) constitutes the re-enactment, re-making or similar of (in whole or in part) any Law, Directive, Industry Document or Required Authorisation, provided that the re-enacted, re-made or similar Law, Directive, Industry Document or Required Authorisation, as the case may be, has substantially the same effect as that of which it is a re-enactment, re-making or similar;
- (F) implements or gives effect to (the whole or part of) any European Union law (or draft thereof) or (the whole or part of) any Treaty which has been published on or after 01 January 2000 but before the Agreement Date (and notwithstanding that implementation proposals and/or related sanctions for any part of the United Kingdom have not been published or have not (in whole or in part) come into effect on the Agreement Date), provided that the implementation proposals and/or related sanctions which come into effect in the United Kingdom (or relevant part thereof) have substantially the same application as the provision in the European Union law (or draft thereof) or Treaty which it implements;
- (G) results from any Required Authorisation or Directive obtained or made pursuant to or for the purposes of another Required Authorisation or Directive which has been made prior to or is in force on the Agreement Date (the “**First Required Authorisation or Directive**”) unless the Generator is obliged to obtain such a Required Authorisation or Directive because of an unforeseeable amendment to the First Required Authorisation or Directive made after the Agreement Date;

- (H) results from any exercise of the Royal Prerogative where such exercise has the same, or substantially the same effect, as that which was proposed on or after 01 January 2000 but before the Agreement Date;
- (I) constitutes a change in the interpretation or application of a Law, Directive, Industry Document or Required Authorisation by any Competent Authority if such interpretation or application is in accordance with a proposal set out in a document (whether or not in draft) which was published on or after 01 January 2000 but before the Agreement Date and the change has substantially the same effect as that which was proposed in the document; or
- (J) results from legal proceedings commenced or threatened against the Facility or the Generator on or prior to the Agreement Date,

provided always that a Change in Law which imposes a requirement that the Facility permanently ceases operation shall not be a Foreseeable Change in Law;

**“FSMA”** means the Financial Services and Markets Act 2000;

**“Fuelling Criteria”** has the meaning given to that term in Annex 7 (*FMS arrangements and RQM Calculation Methodology*) (but only if the Renewable Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement);

**“Further Conditions Precedent”** means the conditions precedent set out in Part B of Schedule 1 (*Conditions Precedent*) and any additional conditions precedent stated in the IC Agreement to apply in respect of the Investment Contract, and **“Further Condition Precedent”** shall be construed accordingly;

**“Further CP Provisions”** means all of the provisions of the Investment Contract other than the Effective Date Provisions and the Initial CP Provisions;

**“Further Milestone Assessment Response Notice”** has the meaning given to that term in Condition 4.4(B)(ii);

**“GB System Operator”** means the operator of the GB Transmission System;

**“GB Transmission System”** means the system consisting (wholly or mainly) of high voltage electric lines owned by Transmission Licensees within Great Britain that is used for the transmission of electricity from one (1) generating station to a substation or to another generating station or between substations or to or from any interconnector;

**“General Amendment”** means any Proposed Amendment which:

- (A) is a Technical Amendment; and
- (B) the CfD Counterparty proposes be effected in respect of either:
  - (i) all FiT Contracts for Difference to which the CfD Counterparty is a party at the time the Amendment Notification in respect of the Proposed Amendment is given; or

- (ii) all FiT Contracts for Difference of a particular category to which the CfD Counterparty is a party at the time the Amendment Notification in respect of the Proposed Amendment is given

in each case, other than any FiT Contract for Difference to which Annex 2 (*Change Control Procedure*) is expressed not to apply;

**“Generating Station”** means an installation comprising the Facility and one (1) or more other Generating Units (other than an interconnector and even where those Generating Units are situated separately) which the CfD Counterparty considers (acting reasonably) as being managed as, or comprising, one (1) power station or one (1) power generating site;

**“Generating Unit”** means any Apparatus which produces electricity;

**“Generation Licence”** means an electricity generation licence granted or treated as granted pursuant to section 6(1)(a) of the EA 1989 that authorises a person to generate electricity;

**“Generation Tax”** means a tax or a levy, duty or impost in the nature of tax that is imposed by Her Majesty’s Government of the United Kingdom (or which Her Majesty’s Government of the United Kingdom has formally required a UK Competent Authority to charge) specifically and directly on electricity generators;

**“Generation Tax Change in Law”** means:

- (A) the coming into effect, amendment, supplement, termination, repeal, replacement or withdrawal of or to any Generation Tax; or
- (B) a change in the interpretation or application of any Generation Tax by any UK Competent Authority,

in each case after the Agreement Date and which is not a Foreseeable Change in Law, but shall exclude any general taxes, levies, duties or imposts on gross or net Income, Profits or Gains or any indirect taxes, levies, duties or imposts;

**“Generation Tax Effective Date”** means, in respect of a Generation Tax Change in Law, the date from which the Generation Tax Liability or, as the case may be, increase in the Generation Tax Liability resulting from such Generation Tax Change in Law is incurred by the Generator;

**“Generation Tax Information Request”** has the meaning given to that term in Condition 41.12(A);

**“Generation Tax Liability”** means:

- (A) the liability of the Generator to make actual payments of Generation Tax in respect of the Facility, in which event the amount of the relevant Generation Tax Liability shall be the actual amount paid;

- (B) the loss to the Generator of, or a reduction to the Generator in the amount of, a right to repayment of Tax to which it would otherwise have been entitled but for such amount being set off against any liability of the Generator to make an actual payment of Generation Tax in respect of the Facility, in which event the amount of the relevant Generation Tax Liability shall be the amount of the repayment which would otherwise have been received but for such set-off; and
- (C) the loss of, or a reduction in the amount of, any Tax Relief of the Generator by reason of the use of that Tax Relief to reduce or eliminate what would otherwise have been a liability of the Generator to make an actual payment of Generation Tax in respect of the Facility, where the use of that Tax Relief by the Generator is either automatic or required by law, in which event the amount of the relevant Generation Tax Liability shall be the value of such Tax Relief as determined by the CfD Counterparty, acting reasonably and having regard to the amount of Tax which could have been saved by the Generator if the Tax Relief had not been lost or reduced and the time at which such saving would have been realised;

**“Generation Tax Mitigation Obligation”** means the obligation of the Generator in Condition 43.1;

**“Generation Tax Preliminary Matters”** means, in respect of an alleged Generation Tax Change in Law, whether such Generation Tax Change in Law has occurred and, if so, the applicable Generation Tax Effective Date;

**“Generation Tax Report”** means in respect of a Generation Tax Change in Law:

- (A) the Preliminary Generation Tax Report; and/or
- (B) the Final Generation Tax Report,

in each case, commissioned by the CfD Counterparty in respect of such Generation Tax Change in Law pursuant to Part 9 (*Generation Tax*) and, where the context so requires or admits, includes any similar report of an energy consultant under any other FiT Contract for Difference in respect of such Generation Tax Change in Law;

**“Generation Technology”** means a generation technology deployed by a generating facility;

**“Generator”** has the meaning given to that term in the IC Agreement;

**“Generator Confidential Information”** means:

- (A) all Information which is confidential or proprietary in nature and which relates (directly or indirectly) to the Generator, the Facility or the Project which the CfD Counterparty (or its Representatives) receives or has received from the Generator (or its Representatives) or any third party who receives or has received such Information from the Generator (or its Representatives) in connection with the Investment Contract (including any Information which the CfD Counterparty prepares which contains or makes explicit reference to such Information or from which such Information is readily ascertainable);

- (B) without prejudice to the generality of paragraph (A), all Information relating to any QCiL Compensation or QCiL True-Up Compensation, including all Information relating to or arising from negotiations, discussions and correspondence in respect of any such QCiL Compensation or QCiL True-Up Compensation; and
- (C) any Information which relates to or arises from negotiations, discussions and correspondence in connection with the Investment Contract,

but excluding in each case all Excluded Information;

**“Generator GT Claim Notice”** has the meaning given to that term in Condition 42.3;

**“Generator GT Notice”** has the meaning given to that term in Condition 41.1;

**“Generator Permitted Purpose”** means:

- (A) complying with the Generator’s responsibilities and obligations, and exercising the Generator’s rights, powers and discretions, under or in connection with the Investment Contract or any other IC Document; and
- (B) complying with the Generator’s obligations under or by virtue of the EA 2013 or any other Law or European law, policy or guidance;

**“Generator Pre-Start Date Termination Period”** means each of the months of August, 2014 and August, 2015;

**“Generator QCiL Notice”** has the meaning given to that term in Condition 32.5;

**“Generator QCiL Response Notice”** has the meaning given to that term in Condition 32.2;

**“Generator QCiL True-Up Notice”** has the meaning given to that term in Condition 35.5;

**“Generator Repeating Representations”** means each of the representations and warranties set out in Condition 27.1 (other than in Conditions 27.1(H), 27.1(J) and 27.1(K));

**“Government Entity”** means:

- (A) any department, non-departmental public body, authority or agency of Her Majesty’s Government of the United Kingdom or the Crown;
- (B) any of Her Majesty’s Secretaries of State and any other Minister of the Crown;
- (C) any body corporate established by statute, some or all of the members of which are appointed by a Secretary of State or Minister of the Crown; and



(D) any other entity or person directly or indirectly wholly owned by, or held on trust for, any of the foregoing;

**“Grid Code”** means the grid code that is required to be prepared by the GB System Operator and approved by the Authority pursuant to Standard Condition C14 (Grid Code) of the Transmission Licence;

**“Group”** means, in respect of any Party, its subsidiaries, subsidiary undertakings, associated undertakings and any holding company of the Party and all other subsidiaries, subsidiary undertakings and associated undertakings of any such holding company from time to time;

**“GT Dispute Determination”** has the meaning given to that term in Condition 41.8(C);

**“GT Strike Price Adjustment”** has the meaning given to that term in Condition 42.1;

**“IC Agreement”** means the agreement between the CfD Counterparty and an electricity generator into which these Conditions are (on and subject to the terms of that agreement) incorporated;

**“IC Documents”** means the Investment Contract and each of the agreements entered into between the Parties pursuant to it and **“IC Document”** shall be construed accordingly;

**“ICE Adjustment Deadline”** has the meaning given to that term in Condition 6.1;

**“ICE Adjustment Notice”** has the meaning given to that term in Condition 6.1;

**“Imbalance Charges”** means costs and charges incurred by or for the account of the Generator pursuant to the Balancing Mechanism by reason of its contracted volumes not matching its metered volumes in relation to electrical output from the Facility, and at the Agreement Date includes the Daily Party Energy Imbalance Cashflows Charge (as determined in accordance with the BSC);

**“Imported Allowance Adjustment Amount”** has the meaning given to that term in Condition 13.6(B);

**“Imported Electricity Allowance”** means, in respect of a Dual Scheme Facility, an amount of electricity (expressed in MWh) calculated by the CfD Counterparty in accordance with Condition 13 (*Dual Scheme Facilities*);

**“Imported Input Electricity”** means, in respect of a Generating Station, all electricity imported from the Transmission System or from a Distribution System to that Generating Station;

**“Income, Profits or Gains”** includes any income, profits or gains which are deemed to be earned, accrued or received by the Generator for the purposes of any Tax;

**“Indexation Adjustment”** has the meaning given to that term in:

- (A) Condition 14.2 (but only if Part 5A (*Payment calculations: Baseload Technologies*) is expressed to apply to the Investment Contract in the IC Agreement); or
- (B) Condition 19.2 (but only if Part 5B (*Payment calculations: Intermittent Technologies*) is expressed to apply to the Investment Contract in the IC Agreement);

**“Indexation Anniversary”** has the meaning given to that term in:

- (A) Condition 14.3 (but only if Part 5A (*Payment calculations: Baseload Technologies*) is expressed to apply to the Investment Contract in the IC Agreement); or
- (B) Condition 19.3 (but only if Part 5B (*Payment calculations: Intermittent Technologies*) is expressed to apply to the Investment Contract in the IC Agreement);

**“Indexed Base Year Strike Price”** means an amount (expressed in £/MWh) calculated in accordance with the following formula:

$$SP_{IB} = \Pi_t \times SP_{base}$$

where:

$SP_{IB}$  is the Indexed Base Year Strike Price;

$\Pi_t$  is the Inflation Factor applied to calculate the TLM(D) Charges Difference; and

$SP_{base}$  is the Initial Strike Price;

**“Indexed Initial Balancing System Charge”** has the meaning given to that term in Condition 44.2(F);

**“Industry Documents”** means all agreements, codes, standards and instruments regulating the generation, transmission, distribution, supply or trading of electricity in Great Britain, including the Grid Code, the SOTO Code, the BSC, the Code Subsidiary Documents, the CUSC, the Master Registration Agreement, any Distribution Code, any Distribution Connection and Use of System Agreement and any other connection or use of system agreement with a Transmission Licensee or Licensed Distributor and **“Industry Document”** shall be construed accordingly;

**“Inflation Factor”** means:

- (A) in the absence of any re-basing of the CPI which has taken effect prior to the relevant Indexation Anniversary in respect of each Settlement Unit (t):

$$\Pi_t = \frac{CPI_t}{CPI_{base}}$$

where:

$\Pi_t$  is the Inflation Factor;

$CPI_t$  denotes the CPI for January of the relevant calendar year or, where the CPI for January is not published by the first (1<sup>st</sup>) day of the Summer Season in such calendar year, the Reference CPI, which is applicable to the Settlement Unit (t); and

$CPI_{base}$  denotes the Base Year CPI; or

- (B) if the CPI is re-based and such re-basing has taken effect prior to the Indexation Anniversary, in respect of each Settlement Unit (t):

$$\Pi_t = \frac{CPI_t^{new}}{CPI_{base}^{old}} \times \frac{CPI_b^{old}}{CPI_b^{new}}$$

where:

$\Pi_t$  is the Inflation Factor;

$CPI_t^{new}$  is the CPI applicable to Settlement Unit (t), using the new (re-based) index;

$CPI_{base}^{old}$  is the Base Year CPI, using the original index;

$CPI_b^{old}$  is the CPI in the month in which the re-basing has occurred, using the original index; and

$CPI_b^{new}$  is the CPI in the month in which the re-basing has occurred, using the new (re-based) index;

**“Information”** means any information of whatever nature and in whatever form, including written, oral and electronic and in visual or machine-readable form (including CD-ROM, magnetic and digital form) and, in relation to any obligation of any person to provide information pursuant to the Investment Contract or any other IC Document, shall be limited to such information that is within the control of that person, and for these purposes information shall be deemed to be within the control of a person if: (i) it is within the possession of such person; (ii) such person has a right to possession of it; or (iii) such person has a right to inspect or take copies of it;

**“Information Commissioner”** has the meaning given to that term in the FOIA;

**“Initial Balancing System Charge”** means the arithmetic mean of the Balancing System Charges payable by electricity generators in Great Britain over the Initial Balancing System Charge Window, as set out in the IC Agreement;

**“Initial Balancing System Charge Window”** has the meaning given to that term in the IC Agreement;

**“Initial Collateral Repayment Date”** means, in respect of any Collateral Posting Notice, the date falling twelve (12) months after the Collateral Posting Date specified in such notice;

**“Initial Condition Precedent”** means the condition precedent set out in Part A of Schedule 1 (*Conditions Precedent*);

**“Initial CP Provisions”** means Part 4 (*Adjustments to Installed Capacity Estimate*), Part 8 (*Changes in Law*), Part 9 (*Generation Tax*), Part 10 (*Balancing System (BSUoS/RCRC) and TLM(D)*), Part 11 (*Curtailment*), Annex 4 (*BMRP*) and Annex 5 (*IMRP*);

**“Initial Installed Capacity Estimate”** has the meaning given to that term in the IC Agreement;

**“Initial Milestone Delivery Date”** has the meaning given to that term in the IC Agreement;

**“Initial Strike Price”** has the meaning given to that term in the IC Agreement;

**“Initial Target Commissioning Window”** has the meaning given to that term in the IC Agreement;

**“Initial TLM(D) Charge”** means the assumed profile of the TLM(D) Charges as at the Agreement Date, as set out in the IC Agreement;

**“Inside Information”** means Generator Confidential Information which is “inside information” within the meaning of section 118C of FSMA or section 56 of the CJA in relation to the Generator or any member of its Group;

**“Installed Capacity”** means the capacity of the Facility (expressed in MW) were it to be operated on a continual basis at the maximum capacity possible without causing damage to it (assuming any source of power used by it to generate electricity was available to it without interruption);

**“Installed Capacity Estimate”** means the Generator’s estimate of the Installed Capacity from time to time, being the Initial Installed Capacity Estimate as may be adjusted pursuant to Condition 5 (*Adjustment to Installed Capacity Estimate: Relevant Construction Event*) and Condition 6 (*Adjustment to Installed Capacity Estimate: Permitted reduction*);

**“Intellectual Property Rights”** means:

- (A) all intellectual property rights, including patents, trade marks, rights in designs, know-how, copyrights and database rights and topography rights (whether or not any of these is registered and including applications for registration of any such thing) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world; and
- (B) all data and Information (whether or not Confidential Information);

**“Investment Contract”** means the IC Agreement incorporating these Conditions;

**“Law”** means any Act of Parliament, any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, any enforceable EU right within the meaning of section 2 of the European Communities Act 1972, in each case in the United Kingdom and (to the extent directly binding on and/or enforceable against private persons within the United Kingdom) any obligations arising from a treaty or international convention to which the United Kingdom is a signatory;

**“LCIA”** means the London Court of International Arbitration;

**“LCIA Arbitration Rules”** means the arbitration rules published under that name by the LCIA;

**“Legal Reservations”** means: (i) the principle that equitable remedies may be granted or refused at the discretion of a court; (ii) the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors; (iii) the time barring of claims pursuant to applicable limitation laws; (iv) defences of set-off or counterclaim; and (v) similar principles, rights and defences available at law;

**“Lender”** means any bank or financial institution (excluding any affiliate of the Generator) which provides debt financing or refinancing in relation to the Facility;

**“Letter of Credit”** means an unconditional, irrevocable standby letter of credit denominated in pounds in form and content reasonably satisfactory to the CfD Counterparty which is issued by a Qualifying Issuer and which shall be available for payment at a UK branch of such Qualifying Issuer in favour of the CfD Counterparty or its designee;

**“Letter of Credit Details Notice”** has the meaning given to that term in Condition 54.3(B);

**“Licensed Distributor”** means a person who is authorised pursuant to a Distribution Licence to distribute electricity;

**“Longstop Date”** means the last day of the Longstop Period following the final day of the Target Commissioning Window, as such date may be extended day for day for each day of delay to the Project by reason of:

- (A) Force Majeure in respect of which the Generator is the FM Affected Party; or
- (B) any failure by any Transmission System Operator, Transmission Licensee, Licensed Distributor or OFTO to carry out in a timely manner any required system reinforcement or connection works specified in the construction agreement attributable to the Facility and to which any Transmission System Operator, Transmission Licensee, Licensed Distributor or OFTO is a party (except to the extent that such failure is due to the fault or negligence of the Generator or its Representatives);

**“Longstop Period”** has the meaning given to that term in the IC Agreement;

**“Loss Adjusted Metered Output”** means:

- (A) in respect of any Facility which is not a Dual Scheme Facility, the BM Unit Metered Volume for the Facility in respect of a Settlement Unit as measured by the Facility Metering Equipment, adjusted for: (i) the transmission loss multiplier allocated in accordance with the BSC; or (ii) any new or substituted multiplier or factor which is in the nature of, or similar to, a transmission loss multiplier; or
- (B) in respect of any Facility which is a Dual Scheme Facility, the BM Unit Metered Volume for the Facility in respect of a Settlement Unit as measured by the Facility Metering Equipment less the Imported Electricity Allowance of the Facility in respect of such Settlement Unit (as determined in accordance with Condition 13 (*Dual Scheme Facilities*)), such net amount being adjusted for: (i) the transmission loss multiplier allocated in accordance with the BSC; or (ii) any new or substituted multiplier or factor which is in the nature of, or similar to, a transmission loss multiplier;

**“Market Reference Price”** means:

- (A) the Baseload Market Reference Price, as such term is defined in Part 5A (*Payment calculations: Baseload Technologies*) (but only if Part 5A (*Payment calculations: Baseload Technologies*) is expressed to apply to the Investment Contract in the IC Agreement); or
- (B) the Intermittent Market Reference Price, as such term is defined in Part 5B (*Payment calculations: Intermittent Technologies*) (but only if Part 5B (*Payment calculations: Intermittent Technologies*) is expressed to apply to the Investment Contract in the IC Agreement);

**“Market Supply Agreement”** means an agreement between the Generator and a counterparty in relation to the Facility pursuant to which the counterparty agrees to purchase electricity output by the Facility for a defined period;

**“Master Registration Agreement”** means the agreement that a Licensed Distributor is required to maintain in force in a form approved by the Authority pursuant to Standard Condition 23 (Master Registration Agreement) of a Distribution Licence;

**“Material Adverse Effect”** means, in respect of any Party, a material adverse effect on the ability of that Party to perform or comply with its obligations under the Investment Contract or any other IC Document;

**“Material Amendment”** means any Proposed Amendment which would (taking into account, in the case of a Proposed Amendment providing for more than one (1) amendment, the net aggregate effect of all the Proposed Amendments contained within the relevant Amendment Notification) have an adverse effect on: (i) the revenues and/or costs of the Generator which are not fully compensated; or (ii) the overall balance of risks, benefits and liabilities of the Generator, in each case, pursuant to the Investment Contract;

**“Material Amendment Agreement”** has the meaning given to that term in paragraph 2.5 of Annex 2 (*Change Control Procedure*);

**“Material Amendment Response Notification”** has the meaning given to that term in paragraph 2.2(B) of Annex 2 (*Change Control Procedure*);

**“Material Generation Technologies”** means a Generation Technology that accounts from time to time for at least one per cent. (1%) of all installed generation capacity (expressed in MW) in the United Kingdom;

**“Maximum Contract Capacity”** means the Installed Capacity Estimate and, subject to and in accordance with the provisions of Condition 7 (*Final Installed Capacity; Maximum Contract Capacity*), the Final Installed Capacity;

**“Metered Output”** has the meaning given to that term in:

- (A) Condition 10.1 (but only if Part 5A (*Payment calculations: Baseload Technologies*) is expressed to apply to the Investment Contract in the IC Agreement); or
- (B) Condition 18.1 (but only if Part 5B (*Payment calculations: Intermittent Technologies*) is expressed to apply to the Investment Contract in the IC Agreement);

**“Metering Access Right”** has the meaning given to that term in Condition 30.11;

**“Metering Access Termination Event”** means an event as set out in Condition 30.17;

**“Metering Breach Notice”** has the meaning given to that term in Condition 30.2;

**“Metering Breach Response Notice”** has the meaning given to that term in Condition 30.3;

**“Metering Change”** has the meaning given to that term in Condition 30.7;

**“Metering Compliance Obligation(s)”** has the meaning given to that term in Condition 30.1;

**“Metering Dispute”** has the meaning given to that term in Condition 22.5;

**“Metering Inspection Notice”** has the meaning given to that term in Condition 30.12;

**“Metering Remediation Plan”** means a plan developed by the Generator setting out the appropriate milestones and actions to be taken in order to remedy a breach of its Metering Compliance Obligation which: (i) is consistent with its obligations pursuant to the BSC; and (ii) has been approved, signed and dated by a BSC Company;

**“Milestone Assessment Response Notice”** has the meaning given to that term in Condition 4.3;

**“Milestone Delivery Date”** means the Initial Milestone Delivery Date, as such date may be extended:

- (A) day for day for each day of delay to the Project by reason of Force Majeure in respect of which the Generator is the FM Affected Party;
- (B) day for day for each day of delay to the Project by reason of any failure by any Transmission System Operator, Transmission Licensee, Licensed Distributor or OFTO to carry out in a timely manner any required system reinforcement or connection works specified in the construction agreement attributable to the Facility and to which any Transmission System Operator, Transmission Licensee, Licensed Distributor or OFTO is a party (except to the extent that such failure is due to the fault or negligence of the Generator or its Representatives);
- (C) under Condition 3.22; or
- (D) under any express provision of the IC Agreement;

**“Milestone Requirement”** has the meaning given to that term in Condition 4.1(B);

**“Milestone Requirement Notice”** has the meaning given to that term in Condition 4.1;

**“Minimum Evaluation Criteria”** means the minimum thresholds described in paragraph 45 and Annex B of Update 2;

**“Moody’s”** means Moody’s Investors Service, Inc., a Delaware corporation and any successor thereto;

**“Mutual Appointment Decision”** has the meaning given to that term in Condition 58.4;

**“Net Payable Amount”** means, in respect of a Billing Period, the amount calculated in accordance with Condition 21.7;



**“NETSO”** means the person who at the relevant time has the power and authority both to co-ordinate and direct the flow of electricity onto and over the national electricity transmission system;

**“Notified Arrangements”** has the meaning given to it in paragraph 1 of Part B of Schedule 1;

**“Non-NPA Payment Cure Period”** has the meaning given to that term in Condition 51.1(B)(ii);

**“Notified Change in Law”** means a Change in Law which constitutes a Qualifying Change in Law and to which a CfD Counterparty QCiL Notice, a Generator QCiL Notice or a Generator QCiL Response Notice relates;

**“NPA Payment Cure Period”** has the meaning given to that term in Condition 51.1(B)(i);

**“OFTO”** means the holder of an offshore transmission licence granted or treated as granted pursuant to section 6(1)(b) of the EA 1989;

**“Operational Conditions Precedent”** means the Further Conditions Precedent set out in paragraph 2 of Part B of Schedule 1;

**“Operational Condition Precedent Evidence”** has the meaning given to that term in Condition 3.14(B)(ii);

**“Operational CP Non-Compliance Notice”** has the meaning given to that term in Condition 3.16;

**“Operational CP Notice”** has the meaning given to that term in Condition 3.12(B);

**“Other Change in Law”** means a Change in Law made by Her Majesty’s Government of the United Kingdom or which Her Majesty’s Government of the United Kingdom has formally required a Competent Authority to make and which in either such case has an undue (being not objectively justifiable) discriminatory effect on the out-of-pocket costs incurred or saved by the Generator or the Project when compared with the out-of-pocket costs incurred or saved as a result of such Change in Law by:

- (A) all generators which operate generating facilities deploying one (1) or more Material Generation Technologies;
- (B) all other generators which operate generating facilities deploying the same Generation Technology as the Facility Generation Technology;
- (C) all generators which operate generating facilities deploying a Generation Technology other than the Facility Generation Technology; or
- (D) all generators which operate generating facilities the generation output of which is not subject to a FiT Contract for Difference,

in each case in the United Kingdom, provided that the fact that a Change in Law has a disproportionate effect shall not, of itself, mean that it is discriminatory;

**“Partial Curtailment”** means, in respect of any period, the prevention, restriction or reduction by, or on the instruction of, the NETSO of the export from the Facility to the national electricity transmission system of some (but not all) of the electricity which the Facility is otherwise able to generate and export during the relevant period, and the period of any Partial Curtailment shall include, subject as provided below, the minimum period of time (determined by reference to a Reasonable and Prudent Standard) that the Facility takes to ramp up and down in response to the relevant prevention, restriction, reduction or instruction, as the case may be, provided that:

- (A) the Facility shall not be considered to be otherwise able to generate and export electricity in circumstances where the Facility has been prevented from generating or has been restricted in its generation due to the exercise of powers by a relevant Competent Authority as a result of any matter relating to non-compliance with any Required Authorisation; and
- (B) there shall be no Partial Curtailment during any period in which the export of electricity from the Facility is prevented, restricted or reduced as a result of:
  - (i) any unplanned Transmission System outage or Black Start or any Emergency Deenergisation Instruction;
  - (ii) a breach or default by the Generator or any of its Representatives of the Investment Contract, any Law or Directive, any Industry Document or any Required Authorisation;
  - (iii) a failure by the Generator or any of its Representatives to act in accordance with a Reasonable and Prudent Standard; or
  - (iv) any matter relating to health, safety, security or environment at or with respect to the Facility (but not as a result of any such matter at or with respect to the national electricity transmission system),

and **“Partially Curtailed”** shall be construed accordingly;

**“Partial Curtailment Compensation”** means, in respect of any Qualifying Partial Curtailment, the amount actually received or receivable by the Generator (or its nominee) in respect of such Qualifying Partial Curtailment;

**“Partial Curtailment Compensation Excess”** means, in respect of any Qualifying Partial Curtailment, where the Partial Curtailment Compensation is greater than the Defined Partial Curtailment Compensation in respect of such Qualifying Partial Curtailment, the amount of the excess;

**“Partial Curtailment Compensation Shortfall”** means, in respect of any Qualifying Partial Curtailment, where the Partial Curtailment Compensation is less than the Defined Partial Curtailment Compensation in respect of such Qualifying Partial Curtailment, the amount of the shortfall;

**“Party”** means a party to the Investment Contract;

**“Payment Disruption Event”** means a material disruption to those payment systems or to those financial markets which are, in each case, required to operate in order for payments or transfers of money to be made pursuant to the Investment Contract which the PDE Affected Party (or, if relevant, its Representatives) could not reasonably have overcome and which is not due to the PDE Affected Party’s fault or negligence (or that of its Representatives);

**“Payment Failure”** means a failure by the Generator to pay a Net Payable Amount in accordance with Condition 22.1 (except to the extent that such failure is due to the occurrence of a Payment Disruption Event and the Generator, as the PDE Affected Party, has complied with Condition 66.2 but irrespective of whether or not the Generator has paid any such Net Payable Amount within the applicable NPA Payment Cure Period);

**“PDE Affected Party”** has the meaning given to that term in Condition 66.1;

**“PDE Obligations”** has the meaning given to that term in Condition 66.1;

**“Post-Tax Real Discount Rate”** means the discount rate published by DECC and set out in the IC Agreement;

**“Posted Collateral”** means the aggregate amount of all Acceptable Collateral transferred or delivered by or on behalf of the Generator in accordance with the Investment Contract from time to time to the extent that the same has not been: (i) returned to the Generator by or on behalf of the CfD Counterparty pursuant to the provisions of Part 13 (*Credit Support*); or (ii) subject to a Posted Collateral Demand;

**“Posted Collateral Demand”** has the meaning given to that term in Condition 54.10;

**“Pre-Start Date Termination Date”** has the meaning given to that term in Condition 49.1(E)(ii)(a);

**“Pre-Start Date Termination Notice”** has the meaning given to that term in Condition 49.1;

**“Preliminary Annual QCPC Report”** has the meaning given to that term in Condition 46.1;

**“Preliminary Generation Tax Report”** means the report of the Energy Consultant referred to in Condition 41.15(A);

**“Proceedings”** means any proceeding, suit or action relating to or arising out of a Dispute, the Investment Contract or any other IC Document but excluding any Metering Dispute;

**“Project”** means the design, development, construction, conversion, installation, completion, testing, commissioning, operation, maintenance and decommissioning of the Facility;

**“Project Commitments”** has the meaning given to that term in the IC Agreement;

**“Proposed Amendment”** has the meaning given to that term in paragraph 2.1(B) of Annex 2 (*Change Control Procedure*);

**“Proposed Amendment Effective Date”** has the meaning given to that term in paragraph 2.1(C) of Annex 2 (*Change Control Procedure*);

**“Proposed Change in Applicable Law Expert”** has the meaning given to that term in Condition 39.3(B);

**“QCiL Adjusted Revenues Payment”** has the meaning given to that term in Condition 33.1(C);

**“QCiL Capex Payment”** has the meaning given to that term in Condition 33.1(B);

**“QCiL Capital Costs”** means any QCiL Costs that relate to the acquisition, modification or construction of any asset in respect of the Project (including costs of site preparation, initial delivery and handling costs, installation and assembly costs, costs incurred in testing whether the asset is functioning properly and professional fees, in each case which are directly associated with the acquisition, modification or construction of the relevant asset);

**“QCiL Capital Savings”** means any QCiL Savings that relate to the acquisition, modification or construction of any asset in respect of the Project (including costs of site preparation, initial delivery and handling costs, installation and assembly costs, costs incurred in testing whether the asset is functioning properly and professional fees, in each case which are directly associated with the acquisition, modification or construction of the relevant asset);

**“QCiL Compensation”** means any of: (i) a QCiL Opex Payment; (ii) a QCiL Capex Payment; (iii) a QCiL Adjusted Revenues Payment; (iv) a QCiL Construction Event Payment; and (v) a QCiL Operations Cessation Event Payment (and any combination of any of the foregoing);

**“QCiL Compensation Date”** has the meaning given to that term in Condition 34.1;

**“QCiL Construction Event”** means a Qualifying Change in Law which is implemented, occurs or becomes effective after the Agreement Date and before the Start Date and which will permanently prevent the Generator, acting in accordance with a Reasonable and Prudent Standard, from Commissioning the whole of the Facility by virtue of the necessary construction, conversion, installation, testing, completion or commissioning of the Facility becoming illegal;

**“QCiL Construction Event Costs”** means, in relation to a QCiL Construction Event, all irrecoverable and unavoidable out-of-pocket costs (including QCiL Tax Liabilities) which have been, will or are reasonably likely to be incurred in respect of the Project by the Generator arising directly from such QCiL Construction Event occurring, if and to the extent that such costs constitute:

- (A) development and pre-development costs in respect of the Facility (including: (i) the costs of surveys and environmental impact assessments in respect of the Facility; and (ii) costs incurred in obtaining planning permission for the Facility);
- (B) decommissioning costs in respect of the Facility;
- (C) break costs associated with the Generator's contractual or financing arrangements in respect of the Facility; or
- (D) costs which are wholly attributable to the construction, conversion, installation, testing, completion or commissioning of the Facility,

(but excluding any other compensation payable by the Generator in connection with such QCiL Construction Event and any costs associated with the Generator's financing arrangements in respect of the Project (including any interest incurred in respect of such financing arrangements) except where expressly specified in any of paragraphs (A) to (D);

**"QCIL Construction Event Savings"** means, in relation to a Qualifying Change in Law which constitutes a QCiL Construction Event, all savings (including avoided out-of-pocket costs, reliefs from or reductions in a QCiL Tax Liability, insurance proceeds and other compensation) which have been, will or are reasonably likely to be made or received in respect of the Project by the Generator arising directly from such QCiL Construction Event occurring;

**"QCIL Construction Event Payment"** has the meaning given to that term in Condition 33.1(D);

**"QCIL Costs"** means, in relation to a Qualifying Change in Law, all out-of-pocket costs (including QCiL Tax Liabilities) which have been, will or are reasonably likely to be incurred in respect of the Project by the Generator arising directly as a result or in anticipation of such Qualifying Change in Law being implemented, occurring or becoming effective, but excluding any Termination Amount, any costs incurred in respect of the agreement or determination of the amount of the Termination Amount and any costs associated with the Generator's financing arrangements in respect of the Project (including any interest incurred in respect of such financing arrangements);

**"QCIL Directors' Certificate"** means a Directors' Certificate given to the CfD Counterparty pursuant to Condition 32.4 or Condition 32.6;

**"QCIL Effective Date"** means the date on which a Notified Change in Law has been implemented, has occurred or has become effective;

**"QCIL Mitigation Obligation"** means the obligation of the Generator in Condition 37.3;

**"QCIL Net Capital Costs"** means, if QCiL Capital Costs exceed QCiL Capital Savings in respect of a Qualifying Change in Law, the QCiL Capital Costs less the QCiL Capital Savings;

**“QCiL Net Capital Savings”** means, if QCiL Capital Savings exceed QCiL Capital Costs in respect of a Qualifying Change in Law, the QCiL Capital Savings less the QCiL Capital Costs;

**“QCiL Net Operating Costs”** means, if QCiL Operating Costs exceed QCiL Operating Savings in respect of a Qualifying Change in Law, the QCiL Operating Costs less the QCiL Operating Savings;

**“QCiL Net Operating Savings”** means, if QCiL Operating Savings exceed QCiL Operating Costs in respect of a Qualifying Change in Law, the QCiL Operating Savings less the QCiL Operating Costs;

**“QCiL Operating Costs”** means all QCiL Costs other than QCiL Capital Costs;

**“QCiL Operating Savings”** means all QCiL Savings other than QCiL Capital Savings;

**“QCiL Operations Cessation Event”** means:

- (A) a Qualifying Change in Law which is implemented, occurs or becomes effective after the Start Date and which will permanently prevent the Generator, acting in accordance with a Reasonable and Prudent Standard, from operating the whole of the Facility by virtue of such operation becoming illegal; or
- (B) a Qualifying Shutdown Event which occurs after the Start Date;

**“QCiL Operations Cessation Event Costs”** means, in relation to a QCiL Operations Cessation Event, any irrecoverable and unavoidable out-of-pocket costs which have been, will or are reasonably likely to be incurred in respect of the Project by the Generator arising directly from such QCiL Operations Cessation Event occurring:

- (A) including QCiL Tax Liabilities and break costs associated with the Generator’s contractual or financing arrangements in respect of the Facility; but
- (B) excluding any other compensation payable by the Generator in connection with such QCiL Operations Cessation Event and any costs associated with the Generator’s financing arrangements in respect of the Project (including any interest incurred in respect of such financing arrangements);

**“QCiL Operations Cessation Event Payment”** has the meaning given to that term in Condition 33.1(E);

**“QCiL Operations Cessation Event Savings”** means, in relation to a QCiL Operations Cessation Event, all savings (including avoided out-of-pocket costs, reliefs from or reductions in a QCiL Tax Liability, insurance proceeds and other compensation) which have been, will or are reasonably likely to be made or received in respect of the Project by the Generator arising directly from such QCiL Operations Cessation Event occurring;

**“QCiL Opex Payment”** has the meaning given to that term in Condition 33.1(A);

**“QCiL Response Information”** means, in relation to a Generator QCiL Response Notice, the information specified in Conditions 32.2(B) to 32.2(E) (inclusive);

**“QCiL Savings”** means, in relation to a Qualifying Change in Law, all savings (including avoided out-of-pocket costs, reliefs from or reductions in a QCiL Tax Liability, insurance proceeds and other compensation) which have been, will or are reasonably likely to be made or received in respect of the Project by the Generator arising directly as a result or in anticipation of such Qualifying Change in Law being implemented, occurring or becoming effective;

**“QCiL Strike Price Adjustment”** means any QCiL Compensation which has been, or will be, made by way of a Strike Price Adjustment;

**“QCiL Supporting Information”** means, in relation to a Generator QCiL Notice, the information specified in Conditions 32.5(B) to 32.5(F) (inclusive);

**“QCiL Tax”** means any Tax other than any tax on gross or net Income, Profits or Gains, save to the extent that the rate at which such Tax is chargeable has been introduced or amended by a Qualifying Change in Law or a Qualifying Shutdown Event, as the case may be;

**“QCiL Tax Liability”** means:

- (A) a liability of the Generator to make an actual payment of a QCiL Tax to a tax authority; and
- (B) the loss to the Generator of, or a reduction to the Generator in the amount of, a right to repayment of Tax to which it would otherwise be entitled but for such amount being set off against any liability of the Generator to make an actual payment of QCiL Tax;

**“QCiL Termination Date”** has the meaning given to that term in Condition 49.11(B);

**“QCiL Termination Notice”** has the meaning given to that term in Condition 49.11;

**“QCiL True-Up Compensation”** means the requisite adjustment to the QCiL Compensation which is necessary to reflect the QCiL True-Up Information;

**“QCiL True-Up Information”** has the meaning given to that term in Condition 35.1;

**“QCiL True-Up Response Notice”** has the meaning given to that term in Condition 35.3;

**“QCiL True-Up Strike Price Adjustment”** means any QCiL True-Up Compensation which has been, or will be, made by way of a Strike Price Adjustment;

**“QSE Notice”** has the meaning given to that term in Condition 36.1;

**“Qualification Criteria”** means the criteria set out in paragraph 30 of Update1;

**“Qualifying Change in Law”** means: (i) a Discriminatory Change in Law; (ii) a Specific Change in Law; or (iii) an Other Change in Law, which, in each case, is not a Foreseeable Change in Law and, provided that no decision by the European Commission or other Competent Authority in respect of the application of the State Aid Rules to the Investment Contract or FiT Contracts for Difference (including the annulment, invalidation, suspension, revocation, modification or replacement of any prior decision pursuant to such rules) shall constitute a Qualifying Change in Law;

**“Qualifying CPC Event”** means: (i) a Qualifying Curtailment; or (ii) a Qualifying Partial Curtailment;

**“Qualifying Curtailment”** means, in relation to any Contract Year, a Curtailment in respect of which the following conditions are satisfied:

- (A) a change in the Law is made by the UK Government after the Agreement Date (whether or not in the relevant Contract Year) such that the co-ordination and direction of electricity onto and over the national electricity transmission system by the NETSO is no longer required to be conducted in a manner designed to ensure that the costs of such co-ordination and direction are minimised on a national or wider basis having regard (but not limited) to:
  - (i) the overall physical constraints applicable to the national electricity transmission system; and
  - (ii) the technical operating characteristics and parameters of electricity generating plant connected to the national electricity transmission system,
- (B) in the relevant Contract Year:
  - (i) the Generator is prevented by the rules or regulations applicable to the Balancing Mechanism from making a bid (howsoever described) under the Balancing Mechanism to restrict the Facility’s output in an amount or at a level which would result in it (or its nominee) receiving an amount at least equal to the Defined Curtailment Compensation in respect of such Curtailment;
  - (ii) the Generator has made a bid (howsoever described) under the Balancing Mechanism to restrict the Facility’s output in an amount or at a level which would result in it (or its nominee) receiving an amount at least equal to the Defined Curtailment Compensation in respect of such Curtailment but the operation of the bid-offer regime (howsoever described) under the Balancing Mechanism is such that, if the bid is accepted, the Generator (or its nominee) would not receive an amount at least equal to the Defined Curtailment Compensation in respect of such Curtailment;
  - (iii) there is no Balancing Mechanism pursuant to which bids (howsoever described) to restrict an electricity generating plant’s output may be made, in respect of such Curtailment; or



- (iv) the Generator is prevented by Law or regulation from making a bid (howsoever described) under the Balancing Mechanism to restrict the Facility's output in an amount or at a level which would result in it (or its nominee) receiving an amount at least equal to the Defined Curtailment Compensation, in respect of such Curtailment,

and the relevant event or circumstance would not have occurred but for the relevant change in the Law referred to in paragraph (A);

- (C) the Curtailment in such Contract Year would not have occurred but for the change in the Law referred to in paragraph (A); and
- (D) the Generator (or its nominee) in relation to the Facility receives an amount less than the Defined Curtailment Compensation in respect of the relevant Curtailment, and this would not have occurred but for the relevant change in the Law referred to in paragraph (A);

**"Qualifying Issuer"** means: (i) a bank or financial institution having a minimum short-term rating of A-1 with Standard and Poor's, P-1 with Moody's or F1 with Fitch Ratings; or (ii) such other bank or financial institution, having a minimum rating, as the CfD Counterparty may approve or specify from time to time;

**"Qualifying Partial Curtailment"** means, in relation to any Contract Year, a Partial Curtailment in respect of which the following conditions are satisfied:

- (A) a change in the Law is made by the UK Government after the Agreement Date (whether or not in the relevant Contract Year) such that the co-ordination and direction of electricity onto and over the national electricity transmission system by the NETSO is no longer required to be conducted in a manner designed to ensure that the costs of such co-ordination and direction are minimised on a national or wider basis having regard (but not limited) to:
  - (i) the overall physical constraints applicable to the national electricity transmission system; and
  - (ii) the technical operating characteristics and parameters of electricity generating plant connected to the national electricity transmission system,
- (B) in the relevant Contract Year:
  - (i) the Generator is prevented by the rules or regulations applicable to the Balancing Mechanism from making a bid (howsoever described) under the Balancing Mechanism to reduce the Facility's output in an amount or at a level which would result in it (or its nominee) receiving an amount at least equal to the Defined Partial Curtailment Compensation in respect of such Partial Curtailment;
  - (ii) the Generator has made a bid (howsoever described) under the Balancing Mechanism to reduce the Facility's output in an amount or at

a level which would result in it (or its nominee) receiving an amount at least equal to the Defined Partial Curtailment Compensation in respect of such Partial Curtailment but the operation of the bid-offer regime (howsoever described) under the Balancing Mechanism is such that, if the bid is accepted, the Generator (or its nominee) would not receive an amount at least equal to the Defined Partial Curtailment Compensation in respect of such Partial Curtailment;

- (iii) there is no Balancing Mechanism pursuant to which bids (howsoever described) to reduce an electricity generating plant's output may be made in respect of such Partial Curtailment; or
- (iv) the Generator is prevented by Law or regulation from making a bid (howsoever described) under the Balancing Mechanism to reduce the Facility's output in an amount or at a level which would result in it (or its nominee) receiving an amount at least equal to the Defined Partial Curtailment Compensation in respect of such Partial Curtailment,

and the relevant event or circumstance would not have occurred but for the relevant change in the Law referred to in paragraph (A);

- (C) the Partial Curtailment in such Contract Year would not have occurred but for the change in the Law referred to in paragraph (A) and there is no voluntary agreement relating to Partial Curtailment in place with the Generator; and
- (D) the Generator (or its nominee) in relation to the Facility receives an amount less than the Defined Partial Curtailment Compensation in respect of the relevant Partial Curtailment, and this would not have occurred but for the relevant change in the Law referred to in paragraph (A);

**“Qualifying Shutdown Event”** means:

- (A) Her Majesty's Government of the United Kingdom or the Secretary of State or any other Minister of the Crown or any department of Her Majesty's Government of the United Kingdom (each a **“Government Authority”**):
  - (i) applying, implementing or changing the Law which is in force from time to time;
  - (ii) applying or exercising its powers under such Law; or
  - (iii) applying, implementing and/or changing policy or guidance which has effect from time to time;
- (B) the exercise of powers by a UK Competent Authority, where such exercise of powers was required by a direction made under statutory powers by a Government Authority; or

- (C) the exercise of powers by a UK Competent Authority, where the UK Competent Authority has not acted independently of a Government Authority in such exercise of powers, and for this purpose a UK Competent Authority shall be deemed to have acted independently of a Government Authority unless such exercise of powers was procured by the Government Authority,

other than any application, implementation, change, exercise of powers or other action required by, or necessary for compliance with, international or EU policy or guidance (provided such international or EU policy or guidance was not promoted by such Government Authority and, in relation to any international or EU law, policy or guidance proposed after the Agreement Date, such Government Authority has used its reasonable endeavours to prevent the adoption of such international or EU law, policy or guidance (such reasonable endeavours not to include an obligation on any Government Authority to take legal proceedings to challenge such adoption)), and which the Generator is able to demonstrate to the satisfaction of an English court of competent jurisdiction:

- (i) imposes a requirement that permanently prevents the whole of the Facility from operating; or
- (ii) is the refusal or the failure to give approval, for a period in excess of twenty-four (24) months, to a request for consent to any re-start of the whole of the Facility;

(each a “**Shutdown Event**”) unless, in any such case, the Shutdown Event was for reasons:

- (a) relating to or in connection with matters of health, safety, security, environment, transport or damage to property (the “**Relevant Matters**”) affecting (directly or indirectly): (1) the Facility or the generation of electricity therefrom; (2) the Generator; (3) the land on which the Facility is situated; (4) the management of any of (1) to (3); or (5) the generation of electricity using the same Generation Technology as the Facility (whether in the UK or elsewhere), but in this case, provided the Relevant Matters also relate or apply to one (1) or more of (1) to (4), where at the time of the Shutdown Event it was justifiable in the circumstances as they related or applied to the relevant one(s) of (1) to (5) to prevent the operation, or refuse to consent to any re-start, of the whole of the Facility;
- (b) arising out of, in connection with, or resulting from the negligence, breach or fault of, or a failure to act to a Reasonable and Prudent Standard by, the Generator or any of its Representatives where at the time of the Shutdown Event it was justifiable in the circumstances to prevent the operation, or refuse to consent to any re-start, of the whole of the Facility; or
- (c) relating to any decision by the European Commission or other Competent Authority in respect of the application of the State Aid Rules in the Investment Contract or FiT Contracts for Difference (including the annulment, invalidation, revocation, modification, suspension or replacement of any prior decision pursuant to such rules);

**“RCE-Adjusted Installed Capacity Estimate”** has the meaning given to that term in Condition 5.1(B)(ii);

**“RCE Deadline”** has the meaning given to that term in Condition 5.1;

**“RCE Notice”** has the meaning given to that term in Condition 5.1;

**“RCE Response Notice”** has the meaning given to that term in Condition 5.3;

**“RCE Supporting Information”** has the meaning given to that term in Condition 5.3(B)(iii);

**“RCRC Credits”** means:

- (A) Residual Cashflow Reallocation Cashflow; and
- (B) any new or substitute payments or credits which are in the nature of, or similar to, Residual Cashflow Reallocation Cashflow,

in each case, receivable or payable by electricity generators in Great Britain;

**“Reasonable and Prudent Standard”** means the standard of a person seeking in good faith to comply with its contractual obligations and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person complying with all applicable Laws, Directives, Industry Documents and Required Authorisations and engaged in the same type of undertaking under the same or similar circumstances and conditions;

**“Reconciliation Amount”** has the meaning given to that term in Condition 21.5;

**“Reconciliation Billing Period”** has the meaning given to that term in Condition 21.6;

**“Reference CPI”** means the most recently published CPI;

**“Relevant Construction Event”** means a Construction Event:

- (A) of which no generator acting to a Reasonable and Prudent Standard and having made all due and careful enquiries would have been aware, and of which the Generator was not aware, at the date of the Binding Application; and
- (B) which renders the development, completion, construction, conversion, installation or commissioning of the Facility to meet the Installed Capacity Estimate uneconomic;

**“Renewable Qualifying Multiplier”** has the meaning given to that term in paragraph 1.1 of Part B of Annex 7 (*FMS arrangements and RQM Calculation Methodology*);

**“Replacement Collateral Notice”** has the meaning given to that term in Condition 53.3;

**“Replacement Collateral Repayment Date”** means, in circumstances in which any Payment Failure occurs after the date of a Collateral Posting Notice but before the Initial Collateral Repayment Date specified in such notice, the date falling twelve (12) months after the last day of the NPA Payment Cure Period applicable to the Net Payable Amount to which such Payment Failure relates;

**“Representatives”** means:

- (A) in respect of the CfD Counterparty:
  - (i) its directors, officials, officers, employees, agents, consultants and advisers; and
  - (ii) the CfD Settlement Services Provider and its directors, officers, employees, agents, consultants and advisers;
- (B) in respect of the Generator:
  - (i) its directors, officers or employees;
  - (ii) any of its Contractors, agents, consultants and advisers which are engaged in connection with the Project, the Investment Contract or any other IC Document; and
  - (iii) the directors, officers, employees, agents, consultants and advisers of any of its Contractors which are engaged in connection with the Project, the Investment Contract or any other IC Document;
- (C) in respect of any Government Entity (including the Secretary of State in its capacity as CfD Counterparty), its directors, officials, officers, employees, agents, consultants and advisers; or
- (D) in respect of any other body corporate, its directors, officers, employees, agents, consultants and advisers;

**“Request for Information”** means:

- (A) a request for information (as such term is defined in section 8 of the FoIA);
- (B) a request that environmental information (as such term is defined in the EIR) be made available pursuant to the EIR; or
- (C) any apparent request for information under the FOIA or the EIR;

**“Requested Milestone Supporting Information”** has the meaning given to that term in Condition 4.3(B)(ii);

**“Required Authorisation”** means, in relation to the Generator, each authorisation, licence, accreditation, permit, consent, certificate, resolution, clearance, exemption,

order confirmation, permission or other approval of or from any Competent Authority required to enable the Generator:

- (A) to perform and comply with its obligations under the Investment Contract and the other IC Documents; and
- (B) (other than for the purposes of Condition 27.1(E) and 29.1(B)) to design, develop, construct, convert, install, complete, test, commission, operate, maintain and decommission the Facility;

**“Required CiL Amendment”** means any such amendment or supplement to the Investment Contract which is, as a direct result of a Change in Applicable Law being implemented, occurring or becoming effective, necessary to ensure that the Required CiL Amendment Objectives are met (provided that any such amendment or supplement shall not affect either:

- (A) the commercial intent of the Investment Contract; or
- (B) the overall balance of risk, rights and obligations between the Parties,

in each case as provided for in the Investment Contract);

**“Required CiL Amendment Objectives”** means that:

- (A) the Investment Contract continues in force; and
- (B) no provision of the Investment Contract is rendered illegal, invalid, unenforceable or inoperable;

**“Required Installed Capacity”** has the meaning given to that term in the IC Agreement;

**“Reserve Account”** means a bank account in the United Kingdom specified by the CfD Counterparty in a Collateral Posting Notice and to which Acceptable Collateral (in the form of cash) is to be transferred;

**“Resolution Period”** has the meaning given to that term in Condition 56.1(A);

**“Respondent”** has the meaning given to that term in Condition 57.3;

**“Response Submission”** has the meaning given to that term in Condition 57.6(C);

**“Revised ICE”** has the meaning given to that term in Condition 6.1(B)(ii);

**“RQM Adjustment Amount”** means an amount (expressed in pounds) calculated by the CfD Counterparty in accordance with Condition 11.3 (but only if Part 5A (*Payment calculations: Baseload Technologies*) is expressed to apply to the Investment Contract in the IC Agreement);

**“RQM Calculation Methodology”** means the methodology for calculating the Renewable Qualifying Multiplier as set out in Part B of Annex 7 (*FMS arrangements and*

*RQM Calculation Methodology*) (but only if the Renewable Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement);

**“RQM Calculation Month”** has the meaning given to that term in Annex 7 (*FMS arrangements and RQM Calculation Methodology*);

**“Season”** means a period of six (6) consecutive months commencing on either 01 April or 01 October;

**“Second Payment Failure Notice”** has the meaning given to that term in Condition 53.1;

**“Secretary of State”** means, unless otherwise expressly stated or the context otherwise requires, the Secretary of State for Energy and Climate Change;

**“Section C (system operator standard conditions) Direction”** means a direction issued by the Authority or any Secretary of State, where appropriate, in accordance with Standard Condition A2 (Application of Section C) of the Transmission Licence;

**“Senior Representative”** means one (1) or more senior employees or officers selected by a Party to represent it in relation to Condition 56 (*Resolution by Senior Representatives*);

**“Senior Representatives Settlement”** has the meaning given to that term in Condition 56.1(A);

**“Service Agent”** has the meaning given to that term in the IC Agreement (but only if Condition 85 (*Agent for service of process*) is expressed to apply to the Investment Contract in the IC Agreement);

**“Service Document”** means a claim form, application notice, order, judgment or other document relating to any Proceedings;

**“Settlement Unit”** has the meaning given to that term in the IC Agreement;

**“SOTO Code”** means the System Operator – Transmission Owner Code required to be in place pursuant to Standard Condition B12 (System Operator – Transmission Owner Code) of the Transmission Licence;

**“Specific Change in Law”** means a Change in Law the terms of which specifically (and not merely indirectly or consequentially or by virtue of the disproportionate effect of any Change in Law that is of general application) apply to:

- (A) generating facilities which deploy the same Generation Technology as the Facility Generation Technology, or the generation from, or generation-related processes carried out at, such generating facilities, and not to other generating facilities, or the generation from, or generation-related processes carried out at, other generating facilities;

- (B) generating facilities the generation output of which is subject to a FiT Contract for Difference, or the generation from, or any generation-related processes carried out at, such generating facilities, and not in respect of any generating facilities which are not subject to a FiT Contract for Difference, or the generation from, or generation-related processes carried out at, any such generating facilities;
- (C) generating facilities which deploy the same Generation Technology as the Facility Generation Technology and the generation output of which is subject to a FiT Contract for Difference, or the generation from, or any generation-related processes carried out at, such generating facilities, and not to any generating facilities which are not of the same or similar type to the Facility but which are subject to a FiT Contract for Difference, or the generation from, or generation-related processes carried out at, such other generating facilities; or
- (D) the holding of shares in companies, the membership of partnerships, limited partnerships or limited liability partnerships, the participation in joint ventures (whether or not incorporated) or the holding of any other economic interest in an undertaking whose main business is the development, construction, operation and maintenance of generating facilities referred to in paragraph (A), (B) or (C) and not other generating facilities;

**“Specified Expiry Date”** has the meaning given to that term in the IC Agreement;

**“Standard and Poor's”** means Standard & Poor's Ratings Service, a division of the McGraw-Hill Companies, Inc., and any successor thereto;

**“Start Date”** has the meaning given to that term in Condition 3.26(B);

**“Start Date Notice”** has the meaning given to that term in Condition 3.24;

**“State Aid Condition Compliance”** has the meaning given to it in Condition 3.20;

**“State Aid Condition Precedent”** means the Condition Precedent set out in paragraph 1 of Part B of Schedule 1;

**“State Aid Conditions”** has the meaning given to it in paragraph 1(C) of Part B of Schedule 1;

**“State Aid CP Longstop Date”** means 1 September, 2017;

**“State Aid Rules”** means:

- (A) the State aid provisions of the Treaty on the Functioning of the European Union;
- (B) any associated European Union legislation in relation to such State aid provisions including Council Regulation 659/1999; and



- (C) any relevant decisions or judgments of the European Commission, the Court of Justice of the European Union or any other Competent Authority in relation to such State aid provisions;

**“State Aid Termination Notice”** has the meaning given to that term in Condition 49.3;

**“Strike Price”** means the Initial Strike Price, as may be amended from time to time in accordance with the Investment Contract;

**“Strike Price Adjustment”** means any adjustment to the Strike Price effected pursuant to and in accordance with the Investment Contract, including:

- (A) a QCiL Strike Price Adjustment;
- (B) a QCiL True-Up Strike Price Adjustment;
- (C) an Indexation Adjustment;
- (D) a GT Strike Price Adjustment;
- (E) a Balancing System Charge Strike Price Adjustment; or
- (F) a TLM(D) Strike Price Adjustment;

**“Strike Price Adjustment Calculation Period”** means, in respect of any calendar year, the period from the date the CPI for January in the relevant calendar year is published (or, where the Reference CPI is used, the fifth (5<sup>th</sup>) Business Day prior to the end of March in the relevant calendar year) to and including the first (1<sup>st</sup>) day of the Summer Season in that calendar year;

**“Summer Season”** in any year, means the Season commencing on 01 April in that year;

**“Supplier Obligation Consultation Document”** has the meaning given to that term in Condition 49.5;

**“Supplier Obligation Regulations”** means regulations made pursuant to the EA 2013 which make provision for Electricity Suppliers to pay the CfD Counterparty for the purpose of enabling the CfD Counterparty to make payments pursuant to FiT Contracts for Difference;

**“Supplier Obligation Termination Notice”** has the meaning given to that term in Condition 49.5;

**“Supporting Information”** means any and all calculations, confirmations, data, documentation, evidence (including expert’s reports), explanations, Information, measurements, readings, reports (including expert’s reports), representations and statements (whether in written or documentary form);

**“Target Commissioning Window”** means the Initial Target Commissioning Window for the Facility as specified in the IC Agreement, as such period may be extended:

- (A) day for day for each day of delay to the Project by reason of Force Majeure in respect of which the Generator is the FM Affected Party;
- (B) day for day for each day of delay to the Project by reason of any failure by any Transmission System Operator, Transmission Licensee, Licensed Distributor or OFTO, to carry out in a timely manner any required system reinforcement or connection works specified in the construction agreement attributable to the Facility and to which any Transmission System Operator, Transmission Licensee, Licensed Distributor or OFTO is a party (except to the extent that such failure is due to the fault or negligence of the Generator or its Representatives);
- (C) under Condition 3.22; or
- (D) under any express provision of the IC Agreement;

**“Tax”** means any taxes, levies, duties, imposts and any charges, deductions or withholdings in the nature of tax including taxes on gross or net Income, Profits or Gains and taxes on receipts, sales, use, occupation, development, franchise, employment, value added and personal property, together with any penalties, charges and interest relating to any of them;

**“Tax Relief”** means any loss, relief, allowance or credit in respect of any Tax other than Generation Tax;

**“Technical Amendment”** means any Proposed Amendment which is:

- (A) not a Material Amendment; or
- (B) required to correct a manifest error;

**“Technical Amendment Agreement”** has the meaning given to that term in paragraph 2.10 of Annex 2 (*Change Control Procedure*);

**“Technical Amendment Response Notification”** has the meaning given to that term in paragraph 2.6(B)(ii) of Annex 2 (*Change Control Procedure*);

**“Technical Amendment Response Period”** has the meaning given to that term in paragraph 2.6 of Annex 2 (*Change Control Procedure*);

**“Technical Compliance Termination Event”** means an event as set out in Condition 30.6;

**“Term”** has the meaning given to that term in Condition 2.1;

**“Termination Amount”** means an amount (expressed in pounds) calculated in accordance with the formula set out in paragraph 2.1 of Annex 1 (*Calculation of Termination Amount*);

**“Termination Amount Notice”** has the meaning given to that term in Condition 50.3(B);

**“Termination Date”** means the day designated as an early termination date in respect of and in accordance these Conditions;

**“Termination Event”** has the meaning given to that term in Condition 51.1;

**“Third Party”** has the meaning given to that term in Condition 81.1;

**“Third Party Provisions”** has the meaning given to that term in Condition 81.1;

**“TLM(D)”** means:

- (A) the transmission loss multiplier allocated in accordance with the BSC for BM Units belonging to delivering Trading Units; and
- (B) any new or substitute multiplier or factor which is in the nature of, or similar to, the transmission loss multiplier allocated in accordance with the BSC for BM Units belonging to delivering Trading Units;

**“TLM(D) Charges”** means the arithmetic mean of the charges (as a percentage) to electricity generators in Great Britain on account of the application of the TLM(D) to their electricity generation output;

**“TLM(D) Charges Difference”** has the meaning given to that term in Condition 45.2(G);

**“TLM(D) Charges Report”** has the meaning given to that term in Condition 45.2;

**“TLM(D) Charges Report Year”** has the meaning given to that term in Condition 45.2;

**“TLM(D) Charges Review Period”** has the meaning given to that term in Condition 45.2(E);

**“TLM(D) Strike Price Adjustment”** has the meaning given to that term in Condition 45.3;

**“Total Project Pre-Commissioning Costs”** has the meaning given to that term in the IC Agreement;

**“Transfer”** has the meaning given to that term in Condition 77.1;

**“Transfer Scheme”** means a transfer scheme made under paragraph 1(1) of Schedule 1 or paragraph 16 of Schedule 2 to the EA 2013;

**“Transferee”** has the meaning given to that term in Condition 77.1;

**“Transferring Rights and Obligations”** has the meaning given to that term in Condition 77.6;

**“Transmission Licence”** means an electricity transmission licence granted or treated as granted pursuant to section 6(1)(b) of the EA 1989 that authorises a person to transmit electricity;

**“Transmission Licensee”** means any person who is authorised by a Transmission Licence to transmit electricity;

**“Transmission System”** means those parts of the GB Transmission System that are owned by a Transmission Licensee within the transmission area specified in its Transmission Licence;

**“Transmission System Operator”** means the holder of a Transmission Licence in relation to which licence the Authority or any Secretary of State, where appropriate, has issued a Section C (system operator standard conditions) Direction in accordance with such licence and where that direction remains in effect;

**“UK Competent Authority”** means a Competent Authority of the United Kingdom;

**“Update 1”** means the document entitled “Final Investment Decision Enabling for Renewables – Update 1: Invitation to Participate” published by DECC on 14 March 2013; and

**“Update 2”** means the document entitled “Final Investment Decision Enabling for Renewables – Update 2: Investment Contract Allocation” published by DECC on 27 June 2013; and

**“Working Hours”** means 09:00 to 17:00 on a Business Day.

### ***BSC definitions***

- 1.2 References in these Conditions to **“Additional BM Units”**, **“Apparatus”**, **“BM Unit”**, **“BM Unit Metered Volume”**, **“BSC Agent”**, **“BSC Company”**, **“Clock Change Day”**, **“Code Subsidiary Documents”**, **“Communications Equipment”**, **“Credited Energy Volume”**, **“Distribution System”**, **“Material Change”**, **“Metering Equipment”**, **“Metering System”**, **“MSID”**, **“Offshore Transmission System”**, **“Registrant”**, **“Residual Cashflow Reallocation Cashflow”**, **“Settlement Run”**, **“Trading Disputes”** and **“Trading Units”** have the meanings given to such terms in the BSC, save that references to Metering Equipment within the definition of “Material Change” shall be replaced by references to Facility Metering Equipment.

### ***Interpretation***

- 1.3 Any reference in the Investment Contract to:
- (A) a Law, Directive or other similar enactment or instrument (including any European Union instrument) (each, an **“enactment”**) includes references to:
    - (i) that enactment as amended, supplemented or applied by or pursuant to any other enactment before, on or after the Agreement Date;
    - (ii) any enactment which re-enacts, restates or replaces (in each case with or without modification) that enactment; and

- (iii) any subordinate legislation made (before, on or after the Agreement Date) pursuant to any enactment, including an enactment falling within Condition 1.3(A)(i) or 1.3(A)(ii); or

- (B) an Industry Document includes references to such Industry Document as amended, supplemented, restated, novated or replaced from time to time,

except, in each case, for the purposes of Part 8 (*Changes in Law*) or where otherwise expressly specified.

1.4 Unless otherwise expressly specified:

- (A) any reference in the Investment Contract or any other IC Document (or in any certificate or other document made or delivered pursuant to the Investment Contract or any other IC Document) to:

- (i) these Conditions shall be deemed to include the Schedules and the Annexes;
- (ii) the IC Agreement shall be deemed to include any schedules or annexes to the IC Agreement;
- (iii) a “**company**” shall be construed as including any corporation or other body corporate, wherever and however incorporated or established;
- (iv) the expressions “**holding company**” and “**subsidiary**” shall have the meanings respectively ascribed to them by section 1159 of the Companies Act 2006, the expressions “**parent undertaking**” and “**subsidiary undertaking**” shall have the meanings respectively ascribed to them by section 1162 of the Companies Act 2006 and the expression “**associated undertaking**” shall have the meaning ascribed to it in Schedule 6 to The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2013 (but for this purpose ignoring paragraph 19(1)(b) of those regulations);
- (v) a “**person**” shall be construed as including any individual, firm, company, unincorporated organisation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or any other entity;
- (vi) a person shall be construed as including its successors, permitted assignees and permitted transferees and, where a person ceases to exist, any other person to which some or all of its duties, functions, liabilities, obligations, powers or responsibilities may from time to time be transferred;
- (vii) an “**agreement**” shall be construed as including any commitment or arrangement, whether legally binding or not, and references to being party to an agreement or having agreed to do anything shall be construed accordingly;

- (viii) any agreement or document shall be construed as a reference to that agreement or document as amended, supplement, restated, novated or replaced from time to time;
  - (ix) any Generation Technology shall have the meaning given to that Generation Technology:
    - (a) following EA 2013 Regulations relating to the allocation of FiT Contracts for Difference coming into effect, in those EA 2013 Regulations; and
    - (b) pending those EA 2013 Regulations coming into effect, in the draft of those EA 2013 Regulations most recently published prior to the Agreement Date;
  - (x) any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be treated as including what most nearly approximates in that jurisdiction to the English legal term;
  - (xi) time shall be a reference to time in London, England;
  - (xii) words in the singular shall be interpreted as include the plural and vice versa; and
  - (xiii) any gender includes the other genders;
- (B) in construing the Investment Contract or any other IC Document (or any certificate or other document made or delivered pursuant to the Investment Contract or any other IC Document):
- (i) the rule of interpretation known as the *ejusdem generis* rule shall not apply and, accordingly, general words introduced by the word “other” shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things; and
  - (ii) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words;
- (C) any reference in these Conditions to a “**paragraph**”, “**Condition**”, “**Part**”, “**Annex**” or “**Schedule**” is a reference to a paragraph, Condition or Part of, or Annex or Schedule to, these Conditions; and
- (D) any reference in the IC Agreement to a “**paragraph**”, “**clause**”, “**Annex**” or “**Schedule**” is a reference to a paragraph or clause of, or Annex or Schedule to, the IC Agreement.

- 1.5 These Conditions form part of the Investment Contract and shall have the same force and effect as if expressly set out in the body of the Investment Contract, and any reference to the Investment Contract shall include the Schedules and the Annexes.
- 1.6 Headings and sub-headings used in the Investment Contract are for ease of reference only and shall not affect the interpretation of the Investment Contract.
- 1.7 If there is a conflict between:
- (A) the main body of these Conditions and any Annex or Schedule, the main body of these Conditions shall prevail; or
  - (B) these Conditions and the IC Agreement, the IC Agreement shall prevail.
- 1.8 Condition 1.4(A)(vi) shall apply (without limitation) to any references in the Investment Contract to the Authority, DECC, the Environment Agencies and the Secretary of State.

***Symbols and currency***

- 1.9 Any reference in these Conditions to “£” or “pounds” is to the lawful currency of the United Kingdom.
- 1.10 Any reference in these Conditions to “MW” is to megawatts and to “MWh” is to megawatt hours.

***No interest in the Facility***

- 1.11 Nothing in the Investment Contract is intended to create, or shall create, a legal or beneficial interest in the Facility, the Generating Station (where the Facility is a Dual Scheme Facility) or the Project in favour of any person other than the Generator.

**Part 2**  
**Term**

**2. TERM**

***Term and duration***

- 2.1 (A) Subject to Condition 3 (*Conditions Precedent*), the provisions of, and the rights and obligations of the Parties under, the Investment Contract shall become effective and binding on the Agreement Date; and
- (B) (except in circumstances in which the Investment Contract is terminated pursuant to Conditions 49.1, 49.3, 49.6, 49.9 or 49.11) the Investment Contract shall continue in full force and effect until the Specified Expiry Date,
- (such period, the “**Term**”).

***Consequences of expiry***

- 2.2 Subject to Condition 2.3: (i) the Investment Contract shall expire automatically on the Specified Expiry Date; and (ii) upon expiry of the Investment Contract:
- (A) no termination payment shall be payable by either Party to the other Party;
- (B) all rights and obligations of the Parties under the Investment Contract shall end; and
- (C) neither Party shall be entitled to make any claim against the other Party pursuant to the Investment Contract.
- 2.3 Expiry of the Investment Contract:
- (A) shall not affect, and shall be without prejudice to, accrued rights and liabilities and rights and liabilities arising as a result of:
- (i) any antecedent breach of any provision of the Investment Contract; and
- (ii) any breach of any provisions of the Investment Contract which are expressed to survive expiry pursuant to Condition 52 (*Survival*); and
- (B) shall be subject to Condition 52 (*Survival*).



**Part 3**  
**Conditions Precedent and Milestone Requirement**

**3. CONDITIONS PRECEDENT**

***Provisions effective and binding from Effective Date***

- 3.1 The provisions of, and the rights and obligations of the Parties pursuant to, the Effective Date Provisions shall become effective and binding on the Effective Date.

***Effective Date Condition Precedent***

- 3.2 The rights and obligations of the Parties under the Investment Contract (other than those set out in this Condition 3.2 and Condition 27.1) are conditional upon the Investment Contract being laid before Parliament in accordance with paragraph 1(5) of Schedule 2 to the EA 2013 (the “**Effective Date Condition Precedent**”).
- 3.3 The CfD Counterparty shall notify the Generator in writing no later than ten (10) Business Days after fulfilment of the Effective Date Condition Precedent, the date of such notice being the “**Effective Date**” for the purposes of the Investment Contract.
- 3.4 If the Effective Date Condition Precedent is not satisfied by 31 December 2014 (or such later date as the Parties may agree) the Investment Contract shall expire automatically and without compensation unless the Parties agree otherwise.

***Initial Condition Precedent***

- 3.5 The provisions of, and the rights and obligations of the Parties pursuant to, the Initial CP Provisions are conditional upon the Initial Condition Precedent being:
- (A) fulfilled by the Generator; or
  - (B) waived by the CfD Counterparty in accordance with Condition 3.31.
- 3.6 The Generator shall use reasonable endeavours to fulfil or procure the fulfilment of the Initial Condition Precedent as soon as reasonably practicable, and in any event within ten (10) Business Days of the Effective Date.
- 3.7 The CfD Counterparty shall notify the Generator as soon as reasonably practicable after the CfD Counterparty considers that the Initial Condition Precedent has been fulfilled.

***Further Conditions Precedent***

- 3.8 The provisions of, and the rights and obligations of the Parties pursuant to, the Further CP Provisions are conditional upon:
- (A) the Initial Condition Precedent and Operational Conditions Precedent being:

- (i) fulfilled by the Generator; or
    - (ii) waived by the CfD Counterparty in accordance with Condition 3.31; and
  - (B) the State Aid Condition Precedent being fulfilled.
- 3.9 The Generator shall use reasonable endeavours to fulfil or procure the fulfilment of the Operational Conditions Precedent as soon as reasonably practicable, and in any event before the Longstop Date.
- 3.10 The CfD Counterparty shall use reasonable endeavours to fulfil or procure the fulfilment of the State Aid Condition Precedent as soon as reasonably practicable and in any event before the State Aid CP Longstop Date.
- 3.11 The Generator shall promptly provide the Secretary of State with such information as it may reasonably require, and shall cooperate in good faith with the Secretary of State, in each case for the purpose of procuring the fulfilment of the State Aid Condition Precedent.
- 3.12 The Generator shall keep the CfD Counterparty reasonably informed as to progress towards fulfilment of the Operational Conditions Precedent and, in particular, shall:
- (A) provide the CfD Counterparty with reports (in form and content reasonably satisfactory to the CfD Counterparty and in accordance with the reasonable requirements of the CfD Counterparty as to the timing and frequency of such reports) of the progress made in or towards fulfilment of the Operational Conditions Precedent; and
  - (B) give the CfD Counterparty a notice each time the Generator considers an Operational Condition Precedent has been fulfilled (an “**Operational CP Notice**”). Each Operational CP Notice shall:
    - (i) be substantially in the form set out in Part B of Annex 9 (*Pro forma notices*);
    - (ii) identify the Operational Condition Precedent which the Generator considers to have been fulfilled; and
    - (iii) include such Supporting Information as the Generator considers to be relevant to evidence the fulfilment of the relevant Operational Condition Precedent.
- 3.13 Each Operational CP Notice shall be accompanied by a Directors’ Certificate certifying that the information contained in, and enclosed with, the Operational CP Notice is true, complete and accurate in all material respects and is not misleading, in each case by reference to the facts and circumstances then existing.
- 3.14 The CfD Counterparty shall, within ten (10) Business Days of receipt of an Operational CP Notice, give a notice to the Generator (a “**CP Response Notice**”). A CP Response Notice shall:

- (A) be substantially in the form set out in Part C of Annex 9 (*Pro forma notices*); and
- (B) specify whether the CfD Counterparty considers that:
  - (i) the Generator has or has not fulfilled the Operational Condition Precedent to which the Operational CP Notice relates; or
  - (ii) it has not been provided with sufficient Supporting Information to determine whether the Generator has fulfilled the Operational Condition Precedent to which the Operational CP Notice relates and, if so, details of the additional Supporting Information which the CfD Counterparty requires to determine whether the Generator has fulfilled the Operational Condition Precedent (the “**Operational Condition Precedent Evidence**”).

3.15 If the CfD Counterparty states in the CP Response Notice that:

- (A) the Generator has fulfilled the Operational Condition Precedent, then the Operational Condition Precedent will be deemed to have been fulfilled for the purposes of the Investment Contract; or
- (B) the Generator has not provided the CfD Counterparty with sufficient Supporting Information to determine whether the Generator has fulfilled the Operational Condition Precedent:
  - (i) the Generator shall provide the Operational Condition Precedent Evidence as soon as reasonably practicable, and in any event within ten (10) Business Days of receipt of the CP Response Notice, or such longer period as is specified by the CfD Counterparty; and
  - (ii) upon receipt of the Operational Condition Precedent Evidence, the CfD Counterparty shall as soon as reasonably practicable, and in any event within ten (10) Business Days of receipt of such Operational Condition Precedent Evidence, give an additional CP Response Notice to the Generator (the “**Additional CP Response Notice**”). An Additional CP Response Notice shall:
    - (a) be substantially in the form set out in Part D of Annex 9 (*Pro forma notices*); and
    - (b) specify whether the CfD Counterparty considers that the Generator has or has not fulfilled the Operational Condition Precedent.

3.16 The Generator shall give the CfD Counterparty a notice promptly upon the Generator becoming aware:

- (A) of any fact, matter or circumstance which will or is reasonably likely to prevent any of the Operational Conditions Precedent from being fulfilled by the Longstop Date; or

- (B) that any of the Operational Conditions Precedent which had previously been notified to the CfD Counterparty as fulfilled pursuant to Condition 3.12(B) is no longer fulfilled at any time prior to the Start Date,

(any such notice, an “**Operational CP Non-Compliance Notice**” and the Operational Condition Precedent referenced in such notice, an “**Affected Operational CP**”). Each such Operational CP Non-Compliance Notice shall:

- (i) be substantially in the form set out in Part E of Annex 9 (*Pro forma notices*);
- (ii) identify the Affected Operational CP;
- (iii) include such Supporting Information as the Generator considers to be relevant to the content of the Operational CP Non-Compliance Notice; and
- (iv) include details of any remedial action that the Generator is taking or proposes to take,

provided that no Operational CP Non-Compliance Notice need be given by the Generator to the CfD Counterparty if the Affected Operational CP has been waived by the CfD Counterparty in accordance with Condition 3.31.

- 3.17 Each Operational CP Non-Compliance Notice shall be accompanied by a Directors’ Certificate certifying that the information contained in, and enclosed with, the Operational CP Non-Compliance Notice is true, complete and accurate in all material respects and is not misleading, in each case by reference to the facts and circumstances then existing.
- 3.18 Nothing in this Condition 3 (*Conditions Precedent*) shall require the CfD Counterparty to specify in any CP Response Notice or Additional CP Response Notice that the CfD Counterparty accepts that an Operational Condition Precedent has been fulfilled unless the CfD Counterparty is satisfied of the same.

### **State Aid**

- 3.19 Condition 3.20 shall apply where the European Commission issues an EC Conditional Decision and either the Generator or the CfD Counterparty notifies the other in writing, within twenty (20) Business Days of the Generator being notified of the State Aid Conditions to which that decision is subject, that it is not willing to accept those State Aid Conditions on the grounds that:
- (A) in the case of the CfD Counterparty, compliance with all or any of the State Aid Conditions would (a) materially increase the cost of Electricity Market Reform to the Secretary of State, electricity suppliers, electricity consumers or taxpayers in the United Kingdom (disregarding the Generator) as compared to the cost of Electricity Market Reform in the absence of such compliance, or (b) would materially disrupt, obstruct, limit or impair the implementation or operation of, or require a material change or addition to, Government policy; and

- (B) in the case of the Generator, compliance with the State Aid Conditions would materially worsen the balance of benefits and burdens for the Generator or its shareholders envisaged in the Notified Arrangements.

For the avoidance of doubt (and without limitation to what other factors may or may not be material) an obligation to appoint a monitoring trustee or an obligation to report data to the European Commission shall not be material for the purpose of this Condition 3.19.

- 3.20 Where this Condition 3.20 applies the Generator and the CfD Counterparty shall use their respective reasonable endeavours to negotiate a mutually satisfactory arrangement to comply with the State Aid Conditions to which an EC Conditional Decision is subject ("**State Aid Condition Compliance**"). In the course of such negotiations:

- (A) the CfD Counterparty shall not object to an arrangement which (a) requires the minimum changes to the Notified Arrangements necessary to achieve State Aid Condition Compliance, (b) would not materially increase the cost of Electricity Market Reform to the Secretary of State, electricity suppliers, electricity consumers or taxpayers in the United Kingdom (disregarding the Generator) as compared to the cost of Electricity Market Reform in the absence of such compliance, and (c) would not materially disrupt, obstruct, limit or impair the implementation or operation of, or require a material change or addition to, Government policy; and
- (B) the Generator shall not object to an arrangement which (a) requires the minimum changes to the Notified Arrangements necessary to achieve State Aid Condition Compliance, and (b) would not materially worsen the balance of benefits and burdens for the Generator or its shareholders envisaged in the Notified Arrangements.

- 3.21 Nothing in Condition 3.20 shall impose any obligation on the Secretary of State to the extent that such an obligation would, but for this Condition 3.21, either (a) constitute an unlawful fetter on the exercise by the Secretary of State of any power or (b) prevent the Secretary of State from taking proper account of representations received in the course of any consultation which it is necessary or appropriate for him to conduct before exercising any power.

- 3.22 If by the commencement of the first Generator Pre-Start Date Termination Period the State Aid Condition Precedent shall not have been fulfilled then each of:

- (A) the final day of the Target Commissioning Window; and
- (B) the Milestone Delivery Date,

shall automatically be deferred by a period equal to the Deferral Period.

- 3.23 Where any provision of the Investment Contract would, but for this Condition 3.23, require the CfD Counterparty to make any payment or otherwise do anything (including, without limitation, the making of any adjustment payment under any Initial CP Provision)

which would amount to the giving of State Aid, no such payment or thing shall be required to be made or done unless and until the State Aid Condition Precedent shall have been satisfied. Where any provision of the Investment Contract would, but for this Condition 3.23, require any payment to be made by the CfD Counterparty on a date falling prior to the satisfaction of the State Aid Condition Precedent, such payment shall not fall due for payment until the date falling ten (10) Business Days following the satisfaction of the State Aid Condition Precedent (and, for the avoidance of doubt, shall not be payable in the event of termination of the Investment Contract under Condition 49.1, 49.3 or 49.5). No interest shall accrue in respect of any such payment.

### ***Notification of Start Date***

- 3.24 If the State Aid Condition Precedent shall have been fulfilled prior to the delivery by the Generator of the Operational CP Notice relating to the fulfilment of the final Operational Condition Precedent then the Generator shall, following the delivery of such Operational CP Notice, and in any event no later than ten (10) Business Days following receipt of the CP Response Notice or the Additional CP Response Notice relating to such final Operational Condition Precedent give a notice to the CfD Counterparty (a “**Start Date Notice**”).
- 3.25 If the Generator delivers the Operational CP Notice relating to the fulfilment of the final Operational Condition Precedent prior to the fulfilment of the State Aid Condition Precedent then the Generator shall, following the fulfilment of the State Aid Condition Precedent, and in any event no later than ten (10) Business Days following the later of:
- (A) the date on which the State Aid Condition Precedent is fulfilled; and
  - (B) receipt of the CP Response Notice or the Additional CP Response Notice relating to such final Operational Condition Precedent,
- give a Start Date Notice to the CfD Counterparty.
- 3.26 A Start Date Notice shall:
- (A) be substantially in the form set out in Part F of Annex 9 (Pro forma notices); and
  - (B) specify the date that the Generator proposes to be the Start Date for the purposes of the Investment Contract, such date being:
    - (i) no earlier than the date on which the Operational CP Notice relating to the fulfilment of the final Further Condition Precedent was given;
    - (ii) no earlier than the date on which the State Aid Condition Precedent is fulfilled;
    - (iii) no earlier than the first (1<sup>st</sup>) day of the Target Commissioning Window;
    - (iv) no later than the Longstop Date; and
    - (v) no earlier than 01 April 2015,

(the date so notified being, subject to Condition 3.29, the “**Start Date**”).

- 3.27 Each Start Date Notice shall be accompanied by a Directors’ Certificate certifying that the matters provided for in Condition 3.29(C) are, as at the date of such notice, true, complete and accurate in all material respects and are not misleading, in each case by reference to the facts and circumstances then existing.
- 3.28 On the Start Date (unless the date of the Start Date Notice is the same as the Start Date), the Generator shall deliver to the CfD Counterparty a Directors’ Certificate certifying that the information specified in Condition 3.29(C) is, as at that date, true, complete and accurate in all material respects and is not misleading, in each case by reference to the facts and circumstances then existing.
- 3.29 A Start Date Notice shall be effective in determining the Start Date only if:
- (A) the Generator complies with its obligation pursuant to Condition 3.28;
  - (B) the CfD Counterparty specifies in a CP Response Notice or an Additional CP Response Notice (as relevant) that it has determined that all of the Operational Conditions Precedent have been satisfied or waived in accordance with Condition 3.31; and
  - (C) on the date such Start Date Notice is given and on the proposed Start Date specified in the Start Date Notice:
    - (i) the Generator Repeating Representations are true, accurate and not misleading by reference to the facts and circumstances then existing;
    - (ii) the representations set out in Conditions 27.1(J) and 27.2 are true, accurate and not misleading by reference to the facts and circumstances then existing;
    - (iii) no Default has occurred which is continuing unremedied and which has not been waived by the CfD Counterparty in accordance with Condition 3.31; and
    - (iv) all Conditions Precedent (except those waived by the CfD Counterparty in accordance with Condition 3.31) continue to be fulfilled.
- 3.30 If the Generator gives a Start Date Notice to the CfD Counterparty and such notice is, pursuant to Condition 3.29, ineffective, this shall not, subject to Part 12 (*Termination*), preclude the Generator from giving a further Start Date Notice to the CfD Counterparty. Conditions 3.24 to 3.29 (inclusive) shall apply, *mutatis mutandis*, to any such further Start Date Notice.

### ***Waiver of Conditions Precedent and Default***

- 3.31 The CfD Counterparty may agree by notice to the Generator to waive:
- (A) the fulfilment of any of the Conditions Precedent other than the State Aid Condition Precedent; and
  - (B) any Default which is continuing unremedied and which would otherwise prevent the Start Date Notice from being effective in determining the Start Date.
- 3.32 Conditions 63 (*No waiver*) and 64 (*Consents*) shall apply to any waiver given by the CfD Counterparty pursuant to Condition 3.31.

## **4. MILESTONE REQUIREMENT**

### ***Milestone Requirement Notice***

- 4.1 No later than the Milestone Delivery Date, the Generator shall give a notice to the CfD Counterparty (the “**Milestone Requirement Notice**”) that the Generator considers that it has complied with and fulfilled a Milestone Requirement. The Milestone Requirement Notice shall:
- (A) be substantially in the form set out in Part G of Annex 9 (*Pro forma notices*); and
  - (B) include either:
    - (i) such invoices, payment receipts and other Supporting Information with respect to the Project as the Generator considers relevant to evidence that it and its direct shareholders have in aggregate spent ten per cent. (10%) or more of the Total Project Pre-Commissioning Costs on the Project; or
    - (ii) such Information as is listed as the Project Commitments and such Supporting Information as the Generator considers relevant to evidence compliance with or fulfilment of the Project Commitments,
- (each, a “**Milestone Requirement**”).

For the purposes of Condition 4.1(B)(i), money spent by a direct shareholder of the Generator to acquire an interest in the Generator may be taken into account but only to the extent that the consideration paid for the acquisition exceeds the amount spent on the Project by the Generator and its direct shareholders in the period prior to the time at which such acquisition took place.

- 4.2 A Milestone Requirement Notice shall be accompanied by a Directors’ Certificate certifying that the information contained in, and enclosed with, the Milestone Requirement Notice is true, complete and accurate in all material respects and is not misleading, in each case by reference to the facts and circumstances then existing.



4.3 The CfD Counterparty shall, within twenty (20) Business Days of receipt of a Milestone Requirement Notice, give a notice to the Generator (a “**Milestone Assessment Response Notice**”). A Milestone Assessment Response Notice shall:

- (A) be substantially in the form set out in Part H of Annex 9 (*Pro forma notices*); and
- (B) specify whether the CfD Counterparty considers that:
  - (i) the Generator has or has not complied with and fulfilled a Milestone Requirement; or
  - (ii) it has not been provided with sufficient Supporting Information to determine whether the Generator has complied with and fulfilled a Milestone Requirement and, if so, details of the additional Supporting Information which the CfD Counterparty requires to determine whether the Generator has complied with and fulfilled a Milestone Requirement (the “**Requested Milestone Supporting Information**”).

4.4 If the CfD Counterparty states in the Milestone Assessment Response Notice that:

- (A) the Generator has complied with and fulfilled a Milestone Requirement, then the Milestone Requirement will be deemed to have been complied with and fulfilled for the purposes of the Investment Contract; or
- (B) the Generator has not provided the CfD Counterparty with sufficient Supporting Information to determine whether the Generator has complied with and fulfilled a Milestone Requirement:
  - (i) the Generator shall provide the Requested Milestone Supporting Information as soon as reasonably practicable, and in any event within ten (10) Business Days of receipt of the Milestone Assessment Response Notice, or such longer period as is specified by the CfD Counterparty; and
  - (ii) upon receipt of the Requested Milestone Supporting Information, the CfD Counterparty shall as soon as reasonably practicable, and in any event within twenty (20) Business Days of receipt of such Requested Milestone Supporting Information, give a further Milestone Assessment Response Notice to the Generator (the “**Further Milestone Assessment Response Notice**”). A Further Milestone Assessment Response Notice shall:
    - (a) be substantially in the form set out in Part I of Annex 9 (*Pro forma notices*); and
    - (b) specify whether the CfD Counterparty considers that the Generator has or has not complied with and fulfilled a Milestone Requirement.

- 4.5 Nothing in this Condition 4 (*Milestone Requirement*) shall require the CfD Counterparty to specify in any Milestone Assessment Response Notice or Further Milestone Assessment Response Notice that the CfD Counterparty accepts that a Milestone Requirement has been complied with and fulfilled unless the CfD Counterparty is satisfied of the same.

***Waiver of Milestone Requirement***

- 4.6 The CfD Counterparty may agree by notice to the Generator to waive any Milestone Requirement.
- 4.7 Conditions 63 (*No waiver*) and 64 (*Consents*) shall apply to any waiver given by the CfD Counterparty pursuant to Condition 4.6.

**Part 4**  
**Adjustments to Installed Capacity Estimate**

**5. ADJUSTMENT TO INSTALLED CAPACITY ESTIMATE: RELEVANT CONSTRUCTION EVENT**

5.1 The Generator may, if it considers that a Relevant Construction Event has occurred, give a notice to the CfD Counterparty (an “**RCE Notice**”). An RCE Notice must be given to the CfD Counterparty no later than three (3) months prior to the Longstop Date (the “**RCE Deadline**”) and shall:

- (A) be substantially in the form set out in Part J of Annex 9 (*Pro forma notices*);
- (B) specify:
  - (i) the reduction to the Installed Capacity Estimate which the Generator considers to be necessary to take into account the Relevant Construction Event; and
  - (ii) the Installed Capacity Estimate which will apply if such reduction is made (an “**RCE-Adjusted Installed Capacity Estimate**”); and
- (C) include such Supporting Information as the Generator considers to be relevant to evidence:
  - (i) the existence or occurrence of the Construction Event and the basis for the Generator having concluded that the Construction Event constitutes a Relevant Construction Event;
  - (ii) the basis for the Generator having concluded that, as a result of the existence or occurrence of the Relevant Construction Event, the Installed Capacity Estimate is required to be reduced to the RCE-Adjusted Installed Capacity Estimate; and
  - (iii) details of any changes in assets comprising the Facility.

5.2 Each RCE Notice shall be accompanied by a Directors’ Certificate certifying that the information contained in, and enclosed with, the RCE Notice is true, complete and accurate in all material respects and is not misleading, in each case by reference to the facts and circumstances then existing.

5.3 If the Generator gives an RCE Notice to the CfD Counterparty, the CfD Counterparty shall, within twenty (20) Business Days of receipt of such RCE Notice, give a notice to the Generator (an “**RCE Response Notice**”). An RCE Response Notice shall:

- (A) be substantially in the form set out in Part K of Annex 9 (*Pro forma notices*); and
- (B) specify whether the CfD Counterparty considers that:

- (i) a Relevant Construction Event has or has not occurred;
- (ii) it accepts or does not accept the RCE-Adjusted Installed Capacity Estimate; or
- (iii) the CfD Counterparty has not been provided with sufficient Supporting Information to determine:
  - (a) whether a Relevant Construction Event has occurred;
  - (b) whether it will accept the RCE-Adjusted Installed Capacity Estimate; or
  - (c) the change to the assets which comprise the Facility,

in which case the CfD Counterparty shall provide details of the additional Supporting Information which the CfD Counterparty requires to determine whether a Relevant Construction Event has occurred, whether to accept the RCE-Adjusted Installed Capacity Estimate or the change to the assets which comprise the Facility (the “**RCE Supporting Information**”).

5.4 If the CfD Counterparty specifies in an RCE Response Notice that:

- (A) the CfD Counterparty considers that a Relevant Construction Event has occurred, then (except where it has requested RCE Supporting Information relating to the RCE-Adjusted Installed Capacity Estimate) the RCE Response Notice shall:
  - (i) include a confirmation that the CfD Counterparty agrees with the RCE-Adjusted Installed Capacity Estimate specified in the RCE Notice, in which case the RCE-Adjusted Installed Capacity Estimate shall constitute the Installed Capacity Estimate with effect from the date of the RCE Response Notice; or
  - (ii) state that the CfD Counterparty does not agree with the RCE-Adjusted Installed Capacity Estimate specified in the RCE Notice, in which case the Installed Capacity Estimate shall remain unadjusted for the purposes of the Investment Contract, unless and until it is varied in accordance with Condition 55 (*Dispute Resolution Procedure: General provisions*);
- (B) the CfD Counterparty considers that a Relevant Construction Event has not occurred, the Installed Capacity Estimate shall remain unadjusted for the purposes of the Investment Contract, unless and until it is varied in accordance with Condition 55 (*Dispute Resolution Procedure: General provisions*); or
- (C) the CfD Counterparty requires the Generator to provide RCE Supporting Information:

- (i) the Generator shall provide the RCE Supporting Information as soon as reasonably practicable and in any event within ten (10) Business Days of receipt of the RCE Response Notice, or such longer period as is specified by the CfD Counterparty; and
  - (ii) upon receipt of the RCE Supporting Information, the CfD Counterparty shall, within ten (10) Business Days of receipt of the RCE Supporting Information, give a further RCE Response Notice to the Generator.
- 5.5 Nothing in this Condition 5 (*Adjustment to Installed Capacity Estimate: Relevant Construction Event*) shall require the CfD Counterparty to specify in any RCE Response Notice that a Relevant Construction Event has occurred or that the CfD Counterparty accepts any RCE-Adjusted Installed Capacity Estimate unless and until the CfD Counterparty is satisfied of the same.
- 5.6 Any RCE Notice shall be irrevocable and, if the Installed Capacity Estimate is reduced pursuant to this Condition 5 (*Adjustment to Installed Capacity Estimate: Relevant Construction Event*), the Generator may not subsequently increase the Installed Capacity Estimate.
- 5.7 The Generator may give an RCE Notice on only one (1) occasion prior to the RCE Deadline. Any RCE Notice given to the CfD Counterparty after the RCE Deadline shall be invalid and of no effect.
- 5.8 No adjustment to the Strike Price shall be made solely as a result of a reduction to the Installed Capacity Estimate pursuant to this Condition 5 (*Adjustment to Installed Capacity Estimate: Relevant Construction Event*).
- 6. ADJUSTMENT TO INSTALLED CAPACITY ESTIMATE: PERMITTED REDUCTION**
- 6.1 The Generator may, if it considers that the Installed Capacity will be lower than the Installed Capacity Estimate, give a notice to the CfD Counterparty (an “**ICE Adjustment Notice**”). An ICE Adjustment Notice must be given to the CfD Counterparty no later than the Milestone Delivery Date (the “**ICE Adjustment Deadline**”) and shall:
  - (A) be substantially in the form set out in Part L of Annex 9 (*Pro forma notices*);
  - (B) specify:
    - (i) the amount by which the Installed Capacity will be lower than the Installed Capacity Estimate;
    - (ii) the new Installed Capacity Estimate which is to apply to the Facility as a result of such reduction (the “**Revised ICE**”); and
  - (C) include details of any change in assets comprising the Facility.
- 6.2 The Revised ICE shall constitute the Installed Capacity Estimate with effect from the date of the ICE Adjustment Notice, provided that if an ICE Adjustment Notice specifies a Revised ICE which is less than seventy-five per cent. (75%) of the Initial Installed

Capacity Estimate (or, if relevant, the RCE-Adjusted Installed Capacity Estimate), such ICE Adjustment Notice shall be invalid and of no effect.

- 6.3 Any ICE Adjustment Notice shall be irrevocable and the Generator may not subsequently increase the Installed Capacity Estimate.
- 6.4 The Generator may give an ICE Adjustment Notice on only one (1) occasion prior to the ICE Adjustment Deadline. Any ICE Adjustment Notice given to the CfD Counterparty after the ICE Adjustment Deadline shall be invalid and of no effect.
- 6.5 No adjustment to the Strike Price shall be made solely as a result of an adjustment to the Installed Capacity Estimate pursuant to this Condition 6 (*Adjustment to Installed Capacity Estimate: Permitted reduction*).

## 7. FINAL INSTALLED CAPACITY; MAXIMUM CONTRACT CAPACITY

- 7.1 The Generator shall, following the Start Date, and in any event no later than ten (10) Business Days after the Longstop Date, give a notice to the CfD Counterparty (a “**Final Installed Capacity Notice**”). A Final Installed Capacity Notice shall:
  - (A) be substantially in the form set out in Part M of Annex 9 (*Pro forma notices*);
  - (B) specify the Installed Capacity which has been Commissioned as at the date of such notice which shall not, in any event, exceed the Installed Capacity Estimate (the “**Final Installed Capacity**”) together with such Supporting Information, in reasonable detail, as the Generator considers to be relevant to and supportive of its conclusion, and including details of the assets comprising the Facility at the Longstop Date.
- 7.2 The Generator shall not give to the CfD Counterparty more than one (1) Final Installed Capacity Notice.
- 7.3 The CfD Counterparty shall, within twenty (20) Business Days after receipt of the Final Installed Capacity Notice, give a notice to the Generator (a “**Final Installed Capacity Response Notice**”). A Final Installed Capacity Response Notice shall:
  - (A) be substantially in the form set out in Part N of Annex 9 (*Pro forma notices*); and
  - (B) specify that either:
    - (i) the CfD Counterparty agrees with the Final Installed Capacity as specified in the Final Installed Capacity Notice; or
    - (ii) the CfD Counterparty has not been provided with sufficient Supporting Information to determine the Final Installed Capacity or the assets comprising the Facility as at the date of the Final Installed Capacity Notice, in which case the Final Installed Capacity Response Notice shall provide details of the additional Supporting Information which the CfD Counterparty requires to determine the Final Installed Capacity or the

assets comprising the Facility as at the date of the Final Installed Capacity Notice ("**Final Installed Capacity Supporting Information**").

7.4 If the CfD Counterparty:

- (A) gives a Final Installed Capacity Response Notice pursuant to Condition 7.3(B)(i), the Final Installed Capacity shall be the amount so specified in the Final Installed Capacity Notice with effect from the date of the Final Installed Capacity Notice; or
- (B) gives a Final Installed Capacity Response Notice pursuant to Condition 7.3(B)(ii):
  - (i) the Generator shall provide the Final Installed Capacity Supporting Information as soon as reasonably practicable and in any event within ten (10) Business Days of receipt of the Final Installed Capacity Response Notice, or such longer period as is specified by the CfD Counterparty; and
  - (ii) upon receipt of the Final Installed Capacity Supporting Information, the CfD Counterparty shall, within twenty (20) Business Days of receipt of the Final Installed Capacity Supporting Information, give a further Final Installed Capacity Response Notice to the Generator.

7.5 Nothing in this Condition 7 (*Final Installed Capacity; Maximum Contract Capacity*) shall require the CfD Counterparty to specify in any Final Installed Capacity Response Notice that the CfD Counterparty accepts the Final Installed Capacity notified to it by the Generator unless and until the CfD Counterparty is satisfied of the same.

7.6 Without prejudice to the CfD Counterparty's right to terminate the Investment Contract pursuant to Condition 49.9 on the occurrence of a Termination Event falling within Condition 51.1(D), if the Generator does not give the CfD Counterparty a Final Installed Capacity Notice within ten (10) Business Days of the later of:

- (A) the Longstop Date; and
- (B) the expiry of ten (10) Business Days following notice having been given by the CfD Counterparty to the Generator (on or at any time after the date falling ten (10) Business Days prior to the Longstop Date) reminding the Generator of the requirement to give a Final Installed Capacity Notice,

the Final Installed Capacity shall, with effect from the Longstop Date, be deemed to be eighty per cent. (80%) of the Installed Capacity Estimate.

**Part 5A**  
**Payment calculations: Baseload Technologies**

**8. APPLICATION**

This Part 5A (*Payment calculations: Baseload Technologies*) shall apply to the Investment Contract only if it is expressed to apply to the Investment Contract in the IC Agreement.

**9. DEFINITIONS: PART 5A**

In this Part 5A (*Payment calculations: Baseload Technologies*):

**“Baseload Difference Amount”** means, in respect of a Settlement Unit, an amount (expressed in pounds) calculated in accordance with the following formula:

$$\text{Baseload Difference Amount} = \text{Difference} \times \text{MAX}(\text{MIN}(Q_t \times h_t \times RQM \times \text{CHPQM} \times TLM_t, M_t), 0)$$

where:

$Q_t$  is the Maximum Contract Capacity applicable to Settlement Unit (t);

$h_t$  is the number of hours in Settlement Unit (t);

$RQM$  is the Renewable Qualifying Multiplier in Settlement Unit (t) (but only if the Renewable Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement) or, otherwise, one (1);

$\text{CHPQM}$  is the CHP Qualifying Multiplier in Settlement Unit (t) (but only if the CHP Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement) or, otherwise, one (1);

$TLM_t$  is the transmission loss multiplier allocated in accordance with the BSC, or any new or substituted multiplier or factor which is in the nature of, or similar to, a transmission loss multiplier, in Settlement Unit (t); and

$M_t$  is the Metered Output during Settlement Unit (t);

**“Baseload Forward Season Contract”** means a contract relating to the delivery of a firm volume of energy in each Settlement Unit within the Season immediately following the Season in which such contract is entered into (whether physically or cash settled);

**“Baseload Forward Season Index”** means an index or other source of prices of Baseload Forward Season Contracts from which the Baseload Forward Season Trading Day Price can be calculated and **“Baseload Forward Season Indices”** shall be construed accordingly;



**“Baseload Forward Season Trading Day Price”** means the volume weighted average price for all Baseload Forward Season Contracts reported by a Baseload Price Source in respect of Trading Day (i) calculated subject to Condition 15.3 (where applicable), in accordance with the following formula:

$$\text{Baseload Forward Season Trading Day Price} = \frac{\sum_{n=1}^t (P_t \times V_t)}{\sum_{n=1}^t (V_t)}$$

where:

$n$  is a whole number integer representing a Baseload Forward Season Contract on the relevant Trading Day (i);

$t$  is the total number of Baseload Forward Season Contracts entered into on the relevant Trading Day (i), as reported by the relevant Baseload Price Source;

$P_t$  is the price (£/MWh) of Baseload Forward Season Contract (t); and

$V_t$  is the volume (MWh) of Baseload Forward Season Contract (t);

**“Baseload Market Reference Price”** has the meaning given to that term in Condition 15.2;

**“Baseload Price Sources”** means the Baseload Forward Season Indices to be used in the calculation of the Baseload Market Reference Price, being the Initial BMRP Indices or such other replacement or supplementary Baseload Forward Season Indices which are required to be so used as a result of the operation of the provisions of Part A of Annex 4 (*BMRP*), and **“Baseload Price Source”** shall be construed accordingly;

**“Calculation Season”** means a Season for which the Baseload Market Reference Price is calculated;

**“Energy Content”** has the meaning given to that term in Annex 7 (*FMS arrangements and RQM Calculation Methodology*);

**“Estimated Output Billing Statement”** has the meaning given to that term in Condition 10.2;

**“Estimated Output Settlement Unit”** has the meaning given to that term in Condition 10.2;

**“Fallback Baseload Price”** has the meaning given to that term in Annex 4 (*BMRP*);

**“Initial BMRP Indices”** means the LEBA Baseload Index and the NASDAQ Baseload Index;

**“LEBA Baseload Index”** means the Baseload Forward Season Index reported by the London Energy Brokers’ Association;

**“Metered Output Cut-Off Time”** means, in relation to each Billing Period, 14:00 on the sixth (6<sup>th</sup>) Business Day following such Billing Period;

**“NASDAQ Baseload Index”** means the Baseload Forward Season Index reported by NASDAQ OMX Commodities A.S.;

**“Reference Price Sample Period”** means each Trading Day falling within the Season before the Calculation Season;

**“Replicated Trades”** has the meaning given to that term in Condition 15.3;

**“Trading Day”** means any day on which trading on the markets from which the Baseload Price Sources are derived ordinarily takes place; and

**“Volume Comparison Metric”** has the meaning given to that term in Condition 15.3(A).

## 10. METERED OUTPUT

### *Metered Output calculation*

10.1 The CfD Counterparty shall calculate the Metered Output in respect of each Settlement Unit. The **“Metered Output”** in respect of each Settlement Unit shall be:

- (A) (subject to Conditions 10.2 to 10.4) the Loss Adjusted Metered Output for such Settlement Unit as reported by a BSC Company or a BSC Agent to the CfD Counterparty; multiplied by
- (B) the Renewable Qualifying Multiplier in relation to such Settlement Unit (but only if the Renewable Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement) or, otherwise, one (1); multiplied by
- (C) the CHP Qualifying Multiplier in relation to such Settlement Unit (but only if the CHP Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement) or, otherwise, one (1).

### *Estimates of Loss Adjusted Metered Output*

10.2 If the CfD Counterparty has not received notification from a BSC Company or a BSC Agent of the Loss Adjusted Metered Output for any Settlement Unit (an **“Estimated Output Settlement Unit”**) within a Billing Period (an **“Estimated Output Billing Period”**) on or prior to the Metered Output Cut-Off Time, the Loss Adjusted Metered Output for the Estimated Output Settlement Unit, as set out in the Billing Statement relating to such Estimated Output Billing Period (an **“Estimated Output Billing Statement”**), shall be calculated by the CfD Counterparty in accordance with Condition 10.3.

10.3 The estimated Loss Adjusted Metered Output for each Estimated Output Settlement Unit comprised within an Estimated Output Billing Period (the **“Estimated Metered Output”**) shall be calculated by the CfD Counterparty as being the Loss Adjusted Metered Output in the most recent Settlement Unit prior to the Estimated Output

Settlement Unit for which the CfD Counterparty has received notification of the Loss Adjusted Metered Output from a BSC Company or a BSC Agent.

***Reconciliations of Estimated Metered Output***

- 10.4 If a BSC Company or a BSC Agent subsequently notifies the CfD Counterparty of the Loss Adjusted Metered Output for an Estimated Output Settlement Unit:
- (A) the CfD Counterparty shall recalculate the Metered Output for such Settlement Unit using such Loss Adjusted Metered Output; and
  - (B) if the calculation performed by the CfD Counterparty pursuant to Condition 10.4(A) results in a different Metered Output than that calculated by the CfD Counterparty in relation to the Estimated Output Settlement Unit and reflected in the relevant Estimated Output Billing Statement, then:
    - (i) the recalculated Metered Output shall be used by the CfD Counterparty to recalculate:
      - (a) the Baseload Difference Amount for the relevant Estimated Output Settlement Unit; and
      - (b) the Aggregate Difference Amount for the Estimated Output Billing Period;
    - (ii) any adjustment to the Aggregate Difference Amount for the Estimated Output Billing Period shall be treated as and will constitute a Reconciliation Amount; and
    - (iii) such Reconciliation Amount shall be included as such in the Billing Statement which is next issued by the CfD Counterparty.

**11. RENEWABLE QUALIFYING MULTIPLIER**

***Application***

- 11.1 This Condition 11 (*Renewable Qualifying Multiplier*) shall apply to the Investment Contract only if the Renewable Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement.

***Calculation of Renewable Qualifying Multiplier***

- 11.2 The CfD Counterparty shall calculate the Renewable Qualifying Multiplier in respect of each RQM Calculation Month. The Renewable Qualifying Multiplier shall, in respect of each Settlement Unit within an RQM Calculation Month, be the amount so calculated by the CfD Counterparty in accordance with the RQM Calculation Methodology.

### ***Calculation of RQM Adjustment Amounts***

- 11.3 If, pursuant to the RQM Calculation Methodology, an adjustment to the Renewable Qualifying Multiplier for any Settlement Unit is calculated by the CfD Counterparty:
- (A) the CfD Counterparty shall recalculate the Metered Output for each Settlement Unit to which the adjusted Renewable Qualifying Multiplier applies;
  - (B) the difference between the original and the recalculated amount shall be used by the CfD Counterparty to recalculate:
    - (i) the Baseload Difference Amount for each relevant Settlement Unit; and
    - (ii) the Aggregate Difference Amount for each Billing Period to which such Settlement Units relate;
  - (C) any adjustment to the Aggregate Difference Amount shall be treated as and constitute an RQM Adjustment Amount; and
  - (D) such RQM Adjustment Amount shall be included as such in the Billing Statement which is next issued by the CfD Counterparty.

## **12. CHP QUALIFYING MULTIPLIER**

### ***Application***

- 12.1 This Condition 12 (*CHP Qualifying Multiplier*) shall apply to the Investment Contract only if the CHP Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement.

### ***Calculation of CHP Qualifying Multiplier***

- 12.2 The CfD Counterparty shall calculate the CHP Qualifying Multiplier in respect of each Settlement Unit. The CHP Qualifying Multiplier shall, in respect of each Settlement Unit, be the amount so calculated by the CfD Counterparty in accordance with the CHPQM Calculation Methodology.

## **13. DUAL SCHEME FACILITIES**

### ***Application***

- 13.1 This Condition 13 (*Dual Scheme Facilities*) shall apply to the Investment Contract only if the Facility is a Dual Scheme Facility.

### ***Imported Electricity Allowance calculation***

- 13.2 For the purposes of calculating the Loss Adjusted Metered Output of a Dual Scheme Facility in respect of any Settlement Unit, the Imported Electricity Allowance in respect of that Dual Scheme Facility shall be estimated in accordance with Condition 13.3,

subject to recalculation in accordance with Conditions 13.4 and 13.5 and reconciliation in accordance with Condition 13.6.

***Estimated Imported Electricity Allowance***

- 13.3 The estimated Imported Electricity Allowance in respect of each Settlement Unit shall be calculated by the CfD Counterparty in accordance with the following formula:

$$\text{estimated Imported Electricity Allowance} = A \times \frac{B}{C}$$

where:

*A* is the total Imported Input Electricity (expressed in MWh) used by the Generating Station in that Settlement Unit;

*B* is the lesser of:

- (i) the Installed Capacity (expressed in MW) which has been Commissioned as at such Settlement Unit; and
- (ii) the Maximum Contract Capacity (expressed in MW) of the Facility as at such Settlement Unit; and

*C* is the aggregate capacity (expressed in MW) of all Generating Units comprising the Generating Station as at such Settlement Unit (on the assumption that all such generating facilities are operated on a continual basis at the maximum capacity possible without causing damage to them and assuming any source of power used by them to generate electricity is available to them without interruption);

***Reconciliation of Imported Electricity Allowance***

- 13.4 If:

- (A) the Imported Electricity Allowance in respect of a Settlement Unit has been estimated pursuant to Condition 13.3; and
- (B) the CfD Counterparty receives an FMS Report in relation to the RQM Calculation Month in which such Settlement Unit falls,

the CfD Counterparty shall recalculate the Imported Electricity Allowance in accordance with Conditions 13.5 and 13.6.

- 13.5 The recalculated Imported Electricity Allowance in respect of any Settlement Unit shall be:

$$\text{recalculated Imported Electricity Allowance} = D \times \frac{E}{F}$$

where:

- D* is the total Imported Input Electricity (expressed in MWh) used by the Generating Station in that Settlement Unit;
- E* is the Energy Content (expressed in megajoules) of all of the fuels used in generating that Facility's gross output during the RQM Calculation Month in which that Settlement Unit falls, as set out in the FMS Report referred to in Condition 13.4(B); and
- F* is the Energy Content (expressed in megajoules) of all of the fuels used in generating that Generating Station's gross output during the RQM Calculation Month in which that Settlement Unit falls, as set out in the FMS Report referred to in Condition 13.4(B).

13.6 Where an Imported Electricity Allowance has been recalculated pursuant to Condition 13.5 in respect of a RQM Calculation Month then:

- (A) the difference between the estimated Imported Electricity Allowance calculated pursuant to Condition 13.3 and the recalculated Imported Electricity Allowance calculated pursuant to Condition 13.5 shall be used by the CfD Counterparty to recalculate the Baseload Difference Amount for each Settlement Unit falling in that RQM Calculation Month;
- (B) the difference between:
  - (i) the aggregate of the Baseload Difference Amounts for all Settlement Units falling within each Billing Period in that RQM Calculation Month calculated using the estimated Imported Electricity Amount; and
  - (ii) the aggregate of the Baseload Difference Amounts for all Settlement Units falling within each Billing Period in that RQM Calculation Month calculated using the recalculated Imported Electricity Amount,
 shall be an Imported Allowance Adjustment Amount; and
- (C) such Imported Allowance Adjustment Amount shall be included as such in the Billing Statement which is next issued by the CfD Counterparty.

## 14. STRIKE PRICE ADJUSTMENTS

### **Strike Price**

14.1 The Strike Price shall be adjusted only in accordance with the express provisions of the Investment Contract.

### **Strike Price indexation**

14.2 The CfD Counterparty shall calculate an indexation adjustment to the Strike Price during the Strike Price Adjustment Calculation Period in each calendar year of the Term (each such adjustment, an “**Indexation Adjustment**”).

14.3 Each Indexation Adjustment shall:

- (A) become effective on the first (1<sup>st</sup>) day of the Summer Season in the calendar year in which the Indexation Adjustment is calculated (each such date, an “**Indexation Anniversary**”); and
- (B) use the CPI for January of the relevant calendar year save where the CPI for January is not published by the first (1<sup>st</sup>) day of the Summer Season in such calendar year in which case the Reference CPI shall be used.

14.4 The Strike Price which is to apply with effect from each Indexation Anniversary as a result of the Indexation Adjustment shall be calculated by the CfD Counterparty in accordance with the following formula:

$$\text{Strike Price} = (SP^{base} + ADJ_t^{base}) \times \Pi_t$$

where:

$SP^{base}$  is the Initial Strike Price;

$ADJ_t^{base}$  denotes the sum of the Strike Price Adjustments applicable to Settlement Unit (t), expressed in Base Year Terms; and

$\Pi_t$  is the Inflation Factor applicable to Settlement Unit (t).

14.5 On or before the Indexation Adjustment takes effect in respect of each Indexation Anniversary, the CfD Counterparty shall revise the Strike Price to take account of any and all Strike Price Adjustments made in the period to such Indexation Anniversary.

14.6 The CfD Counterparty shall notify the Generator of the revised Strike Price within five (5) Business Days after each Indexation Anniversary.

### **Other Strike Price Adjustments**

14.7 Other Strike Price Adjustments may also be effected pursuant to and in accordance with the Investment Contract.

## **15. BASELOAD MARKET REFERENCE PRICE**

15.1 The CfD Counterparty shall, on the first (1<sup>st</sup>) Business Day of a Calculation Season:

- (A) use reasonable endeavours to identify any Replicated Trades in relation to the Baseload Price Sources conducted in such Calculation Season; and

- (B) subject to Condition 15.3, calculate the Baseload Market Reference Price for each Settlement Unit of such Calculation Season.

15.2 The “**Baseload Market Reference Price**” shall be expressed in £/MWh and shall, in respect of each Settlement Unit, be calculated in accordance with the following formula:

$$\text{Baseload Market Reference Price} = \sum_{i=1}^d \left( \frac{\sum_{j=1}^e (BP_{i,j} \times BQ_{i,j})}{\sum_{j=1}^e (BQ_{i,j})} \right) \times \frac{1}{N_d}$$

where:

- $d$  is the number of Trading Days in the Reference Price Sample Period;
- $e$  is the number of Baseload Price Sources or, where the Fallback Baseload Price applies, the number of prices in respect of the relevant Trading Day which are utilised in the calculation of the Fallback Baseload Price in relation to such Settlement Unit pursuant to paragraph 4 of Part C of Annex 4 (*BMRP*);
- $BP_{i,j}$  is, for each Baseload Price Source ( $j$ ), the Baseload Forward Season Trading Day Price in respect of the Calculation Season calculated in respect of Trading Day ( $i$ ) in the Reference Price Sample Period or, where the Fallback Baseload Price applies, each price ( $j$ ) in Trading Day ( $i$ ) which is utilised in the calculation of the Fallback Baseload Price in relation to such Settlement Unit pursuant to paragraph 4 of Part C of Annex 4 (*BMRP*);
- $BQ_{i,j}$  is, for each Baseload Price Source ( $j$ ), subject to Condition 15.3, the quantity of energy in MWh traded through the Baseload Forward Season Contracts considered in determining  $BP_{i,j}$  for the Trading Day ( $i$ ) or, where the Fallback Baseload Price applies, 5 MWh for each price which is utilised in the calculation of the Fallback Baseload Price in relation to such Settlement Unit pursuant to paragraph 4 of Part C of Annex 4 (*BMRP*); and
- $N_d$  is the number of Trading Days in the Reference Price Sample Period for which the total quantity of energy in MWh traded on the Baseload Forward Season Indices,  $\sum_{j=1}^e (BQ_{i,j})$ , is greater than zero (0) or, where the Fallback Baseload Price applies, in respect of which any sourced arm's length broker quotes have been utilised in the calculation of the Fallback Baseload Price in relation to such Settlement Unit pursuant to paragraph 4 of Part C of Annex 4 (*BMRP*).

15.3 Where any Baseload Forward Season Contract has been identified by the CfD Counterparty as having been reported in more than one (1) Baseload Price Source (a “**Replicated Trade**”):



- (A)  $BQ_{i,j}$  for each Baseload Price Source shall be calculated, solely for the purposes of this Condition 15.3, with all Replicated Trades having been excluded from each Baseload Price Source in which they appear (the “**Volume Comparison Metric**”); and
  - (B) for the purposes of performing the calculation in Condition 15.2 and the calculation of any Baseload Forward Season Trading Price used therein, each Replicated Trade shall be included only in one (1) Baseload Price Source, such Baseload Price Source to be the Baseload Price Source in which such Replicated Trade is reported which has the highest Volume Comparison Metric.
- 15.4 Condition 9 (*Definitions: Part 5A*) and this Condition 15 (*Baseload Market Reference Price*) may be amended, supplemented or replaced in accordance with Annex 4 (*BMRP*).

**Part 5B**  
**Payment calculations: Intermittent Technologies**

**16. APPLICATION**

This Part 5B (*Payment calculations: Intermittent Technologies*) shall apply to the Investment Contract only if it is expressed to apply to the Investment Contract in the IC Agreement.

**17. DEFINITIONS: PART 5B**

In this Part 5B (*Payment calculations: Intermittent Technologies*):

**“APX Intermittent Index”** means the APX Power UK Auction index, as administered by APX Holding B.V. (either directly or through one (1) or more of its subsidiaries);

**“Day Ahead Hourly Price”** means the price (expressed in £/MWh) for an Intermittent Day Ahead Contract as reflected in an Intermittent Day Ahead Index or Intermittent Day Ahead Indices (as the context requires);

**“Day Ahead Hourly Volume”** means the quantity of energy (expressed in MWh) traded for delivery in a Settlement Unit via the auction occurring on the previous Trading Day (or, in respect of the last Settlement Unit of any day which is also the first (1<sup>st</sup>) Settlement Unit of a Trading Day, occurring on such Trading Day) and conducted by the operator of the relevant Intermittent Price Source;

**“Estimated Output Billing Statement”** has the meaning given to that term in Condition 18.2;

**“Estimated Output Settlement Unit”** has the meaning given to that term in Condition 18.2;

**“GB Day Ahead Hourly Price”** means the Day Ahead Hourly Price published by an Intermittent Price Source in accordance with Commission Regulation (EU) No. 543/2013;

**“IMRP Calculation Date”** means the day which contains the Settlement Unit in respect of which an Intermittent Market Reference Price is being calculated;

**“IMRP Fallback Day”** has the meaning given to that term in Condition 20.2(C)(i);

**“IMRP Fallback Settlement Unit”** has the meaning given to that term in Condition 20.2(C);

**“Initial IMRP Indices”** means the APX Intermittent Index and the N2Ex Intermittent Index;

**“Intermittent Day Ahead Contract”** means a contract relating to the delivery of a firm volume of energy in a specified Settlement Unit within a specified day, entered into in the Trading Day preceding such day (or, in respect of the last Settlement Unit of any day which is also the first (1<sup>st</sup>) Settlement Unit of a Trading Day, entered into on such Trading Day) (whether physically or cash settled);

**“Intermittent Day Ahead Index”** means an index of Day Ahead Hourly Prices or another source of Day Ahead Hourly Prices and **“Intermittent Day Ahead Indices”** shall be construed accordingly;

**“Intermittent Difference Amount”** means, in respect of a Settlement Unit, an amount (expressed in pounds) calculated in accordance with the following formula:

$$\text{Intermittent Difference Amount} = \text{Difference} \times \text{MAX}(\text{MIN}(Q_t \times h_t \times TLM_t, M_t), 0)$$

where:

$Q_t$  is the Maximum Contract Capacity applicable to Settlement Unit (t);

$h_t$  is the number of hours in Settlement Unit (t);

$TLM_t$  is the transmission loss multiplier allocated in accordance with the BSC, or any new or substituted multiplier or factor which is in the nature of, or similar to, a transmission loss multiplier, in Settlement Unit (t); and

$M_t$  is the Metered Output during Settlement Unit (t);

**“Intermittent Market Reference Price”** has the meaning given to that term in Condition 20.2;

**“Intermittent Price Sources”** means the Intermittent Day Ahead Indices to be used in the calculation of the Intermittent Market Reference Price, being the Initial IMRP Indices or such other replacement or supplementary Intermittent Day Ahead Indices which are required to be so used as a result of the operation of the provision of Part A of Annex 5 (IMRP), and **“Intermittent Price Source”** shall be construed accordingly;

**“Long Clock Change Day”** means a Clock Change Day consisting of 25 hours;

**“Metered Output Cut-Off Time”** means, in relation to each Billing Period, 14:00 on the sixth (6<sup>th</sup>) Business Day following such Billing Period;

**“N2Ex Intermittent Index”** means the N2Ex Day-Ahead Auction Market index for physical delivery jointly operated by NASDAQ OMX Commodities A.S. and Nord Pool Spot A.S.;

**“Short Clock Change Day”** means a Clock Change Day consisting of 23 hours; and

**“Trading Day”** means any day on which trading on the market from which the Intermittent Price Sources are derived ordinarily takes place.

## 18. METERED OUTPUT

### *Metered Output calculation*

- 18.1 The CfD Counterparty shall calculate the Metered Output in respect of each Settlement Unit. The **"Metered Output"** in respect of each Settlement Unit shall be (subject to Conditions 18.2 to 18.6) the Loss Adjusted Metered Output for such Settlement Unit as reported by a BSC Company or a BSC Agent to the CfD Counterparty.

### *Estimates of Loss Adjusted Metered Output*

- 18.2 If the CfD Counterparty has not received notification from a BSC Company or a BSC Agent of the Loss Adjusted Metered Output for any Settlement Unit (an **"Estimated Output Settlement Unit"**) within a Billing Period (an **"Estimated Output Billing Period"**) on or prior to the Metered Output Cut-Off Time, the Loss Adjusted Metered Output for the Estimated Output Settlement Unit, as set out in the Billing Statement relating to such Estimated Output Billing Period (an **"Estimated Output Billing Statement"**), shall be calculated by the CfD Counterparty in accordance with Condition 18.3.
- 18.3 Subject to Conditions 18.4 and 18.5, the estimated Loss Adjusted Metered Output for each Estimated Output Settlement Unit comprised within an Estimated Output Billing Period (the **"Estimated Metered Output"**) shall be calculated by the CfD Counterparty as being the arithmetic mean of the Loss Adjusted Metered Output for the corresponding Settlement Units in each of the seven (7) Billing Periods immediately prior to the Estimated Output Billing Period for which the CfD Counterparty has received notification of the Loss Adjusted Metered Output from a BSC Company or a BSC Agent.
- 18.4 If an Estimated Output Billing Period is:
- (A) a Long Clock Change Day, then the second (2<sup>nd</sup>) Settlement Unit in each of the Billing Periods specified in Condition 18.3 shall be repeated for the purposes of estimating the Loss Adjusted Metered Output during the additional hour in such Clock Change Day; or
  - (B) a Short Clock Change Day, then the second (2<sup>nd</sup>) Settlement Unit in each of the Billing Periods specified in Condition 18.3 shall be ignored for the purposes of estimating the Loss Adjusted Metered Output during such Clock Change Day.
- 18.5 If any of the Billing Periods specified in Condition 18.3 is:
- (A) a Long Clock Change Day, then the second (2<sup>nd</sup>) Settlement Unit in such Billing Period shall be ignored for the purposes of estimating the Loss Adjusted Metered Output for the Estimated Output Billing Period; or
  - (B) a Short Clock Change Day, then the second (2<sup>nd</sup>) Settlement Unit in such Billing Period shall be repeated for the purposes of estimating the Loss Adjusted Metered Output for the Estimated Output Billing Period.

### ***Reconciliations of Estimated Metered Output***

- 18.6 If a BSC Company or a BSC Agent subsequently notifies the CfD Counterparty of the Loss Adjusted Metered Output for an Estimated Output Settlement Unit:
- (A) the CfD Counterparty shall recalculate the Metered Output for such Settlement Unit using such Loss Adjusted Metered Output; and
  - (B) if the calculation performed by the CfD Counterparty pursuant to Condition 18.6(A) results in a different Metered Output than that calculated by the CfD Counterparty in relation to the Estimated Output Settlement Unit and reflected in the relevant Estimated Output Billing Statement, then:
    - (i) the recalculated Metered Output shall be used by the CfD Counterparty to recalculate:
      - (a) the Intermittent Difference Amount for each relevant Estimated Output Settlement Unit; and
      - (b) the Aggregate Difference Amount for the Estimated Output Billing Period;
    - (ii) any adjustment to the Aggregate Difference Amount for the Estimated Output Billing Period shall be treated as and constitute a Reconciliation Amount; and
    - (iii) such Reconciliation Amount shall be included as such in the Billing Statement which is next issued by the CfD Counterparty.

## **19. STRIKE PRICE ADJUSTMENTS**

### ***Strike Price***

- 19.1 The Strike Price shall be adjusted only in accordance with the express provisions of the Investment Contract.

### ***Strike Price indexation***

- 19.2 The CfD Counterparty shall calculate an indexation adjustment to the Strike Price during the Strike Price Adjustment Calculation Period in each calendar year of the Term (each such adjustment, an “**Indexation Adjustment**”).
- 19.3 Each Indexation Adjustment shall:
- (A) become effective on the first (1<sup>st</sup>) day of the Summer Season in the calendar year in which the Indexation Adjustment is calculated (each such date, an “**Indexation Anniversary**”); and

- (B) use the CPI for January of the relevant calendar year, save where the CPI for January is not published by the first (1<sup>st</sup>) day of the Summer Season in such calendar year, in which case the Reference CPI shall be used.

- 19.4 The Strike Price which is to apply with effect from each Indexation Anniversary as a result of the Indexation Adjustment shall be calculated by the CfD Counterparty in accordance with the following formula:

$$\text{Strike Price} = (SP^{base} + ADJ_t^{base}) \times \Pi_t$$

where:

$SP^{base}$  is the Initial Strike Price;

$ADJ_t^{base}$  denotes the sum of the Strike Price Adjustments applicable to Settlement Unit (t), expressed in Base Year Terms; and

$\Pi_t$  is the Inflation Factor applicable to Settlement Unit (t).

- 19.5 On or before the Indexation Adjustment takes effect in respect of each Indexation Anniversary, the CfD Counterparty shall revise the Strike Price to take account of any and all Strike Price Adjustments made in the period to such Indexation Anniversary.
- 19.6 The CfD Counterparty shall notify the Generator of the revised Strike Price within five (5) Business Days after each Indexation Anniversary.

#### **Other Strike Price Adjustments**

- 19.7 Other Strike Price Adjustments may also be effected pursuant to and in accordance with the Investment Contract.

### **20. INTERMITTENT MARKET REFERENCE PRICE**

- 20.1 The CfD Counterparty shall calculate the Intermittent Market Reference Price for each Settlement Unit.

- 20.2 Subject to Condition 20.3, the “**Intermittent Market Reference Price**” shall be expressed in £/MWh and shall, in respect of each Settlement Unit, be calculated as follows:

- (A) If: (i) any of the Intermittent Price Sources has published a GB Day Ahead Hourly Price in relation to such Settlement Unit; and (ii) the GB Day Ahead Hourly Price published by each Intermittent Price Source which has published a GB Day Ahead Hourly Price is the same in relation to such Settlement Unit, the Intermittent Market Reference Price shall be such GB Day Ahead Hourly Price.
- (B) If: (i) none of the Intermittent Price Sources has published a GB Day Ahead Hourly Price in relation to such Settlement Unit; or (ii) the GB Day Ahead Hourly Price published by each Intermittent Price Source is not the same in relation to

such Settlement Unit, then the Intermittent Market Reference Price in relation to Settlement Unit (t) shall be calculated in accordance with the following formula:

$$\text{Intermittent Market Reference Price} = \left( \frac{\sum_{i=1}^e (DAP_{i,t} \times DAV_{i,t})}{\sum_{i=1}^e (DAV_{i,t})} \right)$$

where:

$e$  is the number of Intermittent Price Sources;

$DAP_{i,t}$  is the Day Ahead Hourly Price in Settlement Unit (t) as determined in the auction on the previous Trading Day (or, in respect of the last Settlement Unit of any day which is also the first (1<sup>st</sup>) Settlement Unit of a Trading Day, in the auction on such Trading Day) conducted by the operator of each Intermittent Price Source (i); and

$DAV_{i,t}$  is the Day Ahead Hourly Volume traded on Intermittent Price Sources (i) in respect of Settlement Unit (t).

(C) If no Intermittent Market Reference Price is capable of being calculated pursuant to Conditions 20.2(A) and 20.2(B) (whether due to the unavailability of all Intermittent Price Sources pursuant to Condition 20.3 or otherwise) in respect of any Settlement Unit (an “**IMRP Fallback Settlement Unit**”), the Intermittent Market Reference Price for such IMRP Fallback Settlement Unit shall, subject to Conditions 20.2(D) and 20.2(E), be:

- (i) the Intermittent Market Reference Price as calculated in accordance with Condition 20.2(A) for the Settlement Unit corresponding to the IMRP Fallback Settlement Unit falling on the seventh (7th) day prior to the IMRP Calculation Date (the “**IMRP Fallback Day**”);
- (ii) if no Intermittent Market Reference Price is available pursuant to Condition 20.2(C)(i), the Intermittent Market Reference Price shall be calculated in accordance with Condition 20.2(B) for the Settlement Unit corresponding to the IMRP Fallback Settlement Unit falling on the IMRP Fallback Day; or
- (iii) (if no Intermittent Market Reference Price is available on the IMRP Fallback Day in respect of such corresponding Settlement Unit) the Day Ahead Hourly Price for the corresponding Settlement Unit on the nearest prior corresponding day of the week to the IMRP Fallback Day for which a Day Ahead Hourly Price as calculated in accordance with Condition 20.2(A) or, if no calculation is possible pursuant to Condition 20.2(A), as calculated in accordance with Condition 20.2(B), is available.

- (D) If: (i) Condition 20.2(C) applies; (ii) the IMRP Calculation Date is a Business Day; and (iii) the IMRP Fallback Day is not a Business Day, then the Intermittent Market Reference Price in respect of the IMRP Fallback Settlement Unit shall be the GB Day Ahead Hourly Price for the corresponding Settlement Unit falling on the next Business Day following the IMRP Fallback Day.
  - (E) If: (i) Condition 20.2(C) applies; (ii) the IMRP Calculation Date is not a Business Day; and (iii) the IMRP Fallback Day is a Business Day, then the Intermittent Market Reference Price in respect of such corresponding Settlement Unit shall be the GB Day Ahead Hourly Price for the corresponding Settlement Unit falling on the next day which is not a Business Day following the IMRP Fallback Day.
- 20.3 If any Intermittent Price Source is not available to the CfD Counterparty on commercially reasonable terms in relation to any Settlement Unit, such Intermittent Price Source shall be excluded from the calculation of the Intermittent Market Reference Price in relation to such Settlement Unit.
- 20.4 The CfD Counterparty shall as soon as reasonably practicable prior to:
- (A) excluding any Intermittent Price Source from the calculation of the Intermittent Market Reference Price in relation to any Settlement Unit pursuant to Condition 20.3, provide the Generator with written notice of such exclusion; and
  - (B) including any Intermittent Price Source in the calculation of the Intermittent Market Reference Price which was previously excluded pursuant to Condition 20.3, provide the Generator with written notice of such inclusion.
- 20.5 Condition 17 (*Definitions: Part 5B*) and this Condition 20 (*Intermittent Market Reference Price*) may be amended, supplemented or replaced in accordance with Annex 5 (*IMRP*).



## Part 6

### Billing and payment

#### 21. BILLING STATEMENTS

##### *Delivery of Billing Statement*

- 21.1 The CfD Counterparty shall, in relation to each Billing Period from and including the Start Date, deliver a billing statement to the Generator (each, a “**Billing Statement**”).
- 21.2 Subject to Condition 21.3, each Billing Statement shall be delivered to the Generator no later than seven (7) Business Days after the end of the relevant Billing Period.
- 21.3 The first (1st) Billing Statement shall cover the Billing Periods falling within the period from and including the Start Date to and including the date of the CP Response Notice or Additional CP Response Notice (as relevant) in which the CfD Counterparty specifies that it has determined that all of the Further Conditions Precedent have been satisfied or waived in accordance with Condition 3.31.

##### *Contents of Billing Statement*

- 21.4 Each Billing Statement shall set out or identify:

##### *Identification information*

- (A) the Billing Period to which the Billing Statement relates;
- (B) the name of the Generator (or a unique identifier attributed to the Generator by the CfD Counterparty);
- (C) the details of the Facility (or a unique identifier attributed to the Facility by the CfD Counterparty);

##### *Aggregate Difference Amount calculation*

- (D) the Metered Output (or, if relevant, the Estimated Metered Output) in respect of each Settlement Unit falling in the relevant Billing Period;
- (E) the Market Reference Price in respect of each Settlement Unit falling in the relevant Billing Period;
- (F) the Strike Price applicable to each Settlement Unit falling in the relevant Billing Period;
- (G) the Difference for each of the Settlement Units falling in the relevant Billing Period;

- (H) the Difference Amounts for each of the Settlement Units falling in the relevant Billing Period;
- (I) the sum of the Difference Amounts for the Settlement Units falling in the relevant Billing Period (the “**Aggregate Difference Amount**”);

*Additional components*

- (J) any Reconciliation Amounts;
- (K) any Compensatory Interest Amount;

*RQM amounts*

- (L) (i) the Renewable Qualifying Multiplier for each Settlement Unit falling in the relevant Billing Period; and (ii) any RQM Adjustment Amount (but only if the Renewable Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement);

*CHP amounts*

- (M) the CHP Qualifying Multiplier for each Settlement Unit falling in the relevant Billing Period (but only if the CHP Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement);

*Imported Electricity Allowance amounts*

- (N) (i) the estimated Imported Electricity Allowance for each Settlement Unit falling in the relevant Billing Period; and (ii) any Imported Allowance Adjustment Amount (but only if the Facility is a Dual Scheme Facility); and

*Net Payable Amount*

- (O) the Net Payable Amount in respect of the relevant Billing Period.

**Calculation of Reconciliation Amounts**

21.5 The “**Reconciliation Amounts**” shall, in respect of each Billing Period, comprise any revisions to the Net Payable Amount in respect of any preceding Billing Period which are required to reflect:

- (A) any Settlement Runs;
- (B) the resolution of any Metering Dispute;
- (C) the operation of:
  - (i) Condition 10.4 (but only if Part 5A (*Payment calculations: Baseload Technologies*) is expressed to apply to the Investment Contract in the IC Agreement); or

- (ii) Condition 18.6 (but only if Part 5B (*Payment calculations: Intermittent Technologies*) is expressed to apply to the Investment Contract in the IC Agreement);
- (D) any amount payable pursuant to Condition 30.10 or Condition 30.16;
- (E) any RQM Adjustment Amount;
- (F) any Imported Allowance Adjustment Amount;
- (G) any agreed or determined adjustment to the Final Installed Capacity;
- (H) any QCiL Compensation (including any QCiL Strike Price Adjustment);
- (I) any QCiL True-Up Compensation (including any QCiL True-Up Strike Price Adjustment);
- (J) any Indexation Adjustment;
- (K) any Balancing System Charge Strike Price Adjustment;
- (L) any TLM(D) Strike Price Adjustment;
- (M) any GT Strike Price Adjustment; and
- (N) the correction of any error in any previous Billing Statement.

#### ***Calculation of Compensatory Interest Amount***

- 21.6 The “**Compensatory Interest Amount**” shall, in respect of each Billing Period, comprise interest due and payable in relation to each Reconciliation Amount reflected in the Billing Statement for the relevant Billing Period (a “**Reconciliation Billing Period**”), calculated on the basis that interest on each Reconciliation Amount shall accrue on such amount at the Compensatory Interest Rate for the period from (and including):
- (A) the Billing Period to which a Settlement Run relates in respect of any Reconciliation Amount resulting from a Settlement Run;
  - (B) the Billing Period to which a Metering Dispute relates in respect of any Reconciliation Amount resulting from the resolution of a Metering Dispute;
  - (C) the Estimated Output Billing Period to which an adjustment to the Metered Output relates pursuant to:
    - (i) Condition 10.4 (but only if Part 5A (*Payment calculations: Baseload Technologies*) is expressed to apply to the Investment Contract in the IC Agreement); or

- (ii) Condition 18.6 (but only if Part 5B (*Payment calculations: Intermittent Technologies*) is expressed to apply to the Investment Contract in the IC Agreement);
- (D) the Billing Period to which an RQM Adjustment Amount relates (other than where Part B of Annex 7 (*FMS arrangements and RQM Calculation Methodology*) expressly provides that Compensatory Interest is not payable in respect of the relevant RQM Adjustment Amount);
- (E) the earlier of: (i) the Longstop Date; and (ii) the date of the Final Installed Capacity Notice, in respect of any Reconciliation Amount resulting from the agreement or determination of the Final Installed Capacity;
- (F) the Billing Period to which an Imported Allowance Adjustment relates;
- (G) the QCiL Compensation Date in respect of any Reconciliation Amount to reflect any QCiL Compensation (including any QCiL Strike Price Adjustment) or QCiL True-Up Compensation (including any QCiL True-Up Strike Price Adjustment);
- (H) the relevant Indexation Anniversary in respect of any Indexation Adjustment;
- (I) the effective date of the relevant adjustment in respect of any Reconciliation Amount resulting from a Balancing System Charge Strike Price Adjustment;
- (J) the effective date of the relevant adjustment in respect of any Reconciliation Amount resulting from a TLM(D) Strike Price Adjustment;
- (K) the Curtailment Compensation Anniversary in respect of any Reconciliation Amount resulting from a Qualifying CPC Event;
- (L) the effective date of the relevant adjustment in respect of any Reconciliation Amount resulting from a GT Strike Price Adjustment; and
- (M) the Billing Period to which any adjustment to correct any error in any previous Billing Statement relates in respect of any Reconciliation Amount to correct such an error,

to (but excluding) the date of the relevant Reconciliation Billing Period. For this purpose: (i) interest shall accrue on such amounts from day to day and shall be calculated on the basis of the actual number of days elapsed and a year of 365 days; and (ii) the “**Compensatory Interest Rate**” shall be the prevailing Base Rate on each day during the relevant calculation period.

#### **Calculation of Net Payable Amount**

- 21.7 The “**Net Payable Amount**” shall, in respect of each Billing Period, be an amount expressed in pounds calculated in accordance with the following formula:

$$\text{Net Payable Amount} = ADA + RA + CIA$$

where:

*ADA* is the Aggregate Difference Amount in respect of such Billing Period;

*RA* is any Reconciliation Amount in respect of such Billing Period; and

*CIA* is any Compensatory Interest Amount in respect of such Billing Period,

and if such amount is:

- (i) positive, it shall represent an amount payable by the CfD Counterparty to the Generator; or
- (ii) negative, it shall represent an amount payable by the Generator to the CfD Counterparty.

## 22. SETTLEMENT

### ***Payment from Generator***

- 22.1 If the Net Payable Amount is a negative number, no later than the end of the tenth (10<sup>th</sup>) Business Day following the delivery of the relevant Billing Statement, the Generator shall pay to the CfD Counterparty the absolute value of the Net Payable Amount by direct bank transfer or equivalent transfer of immediately available funds into the account notified to the Generator pursuant to Condition 26.1(A).

### ***Payment from CfD Counterparty***

- 22.2 If the Net Payable Amount is a positive number, no later than twenty-eight (28) calendar days following the Billing Period to which the Billing Statement relates, the CfD Counterparty shall pay to the Generator the Net Payable Amount by direct bank transfer or equivalent transfer of immediately available funds into the account notified to the CfD Counterparty pursuant to Condition 26.1(B).

### ***Billing Statement Disputes***

- 22.3 Conditions 22.1 and 22.2 shall apply notwithstanding any dispute with respect to any Billing Statement and, if a Party wishes to dispute any amount shown in a Billing Statement, it shall give a notice to the other Party (a "**Billing Statement Dispute Notice**") which shall:
- (A) be substantially in the form set out in Part O of Annex 9 (*Pro forma notices*);
  - (B) specify the Billing Statement(s) to which the dispute relates;
  - (C) specify the name of the Generator (or the unique identifier attributed to the Generator by the CfD Counterparty);
  - (D) specify the name of the Facility (or the unique identifier attributed to the Facility by the CfD Counterparty);

- (E) specify the Billing Statement items to which the dispute relates;
  - (F) specify the amount in dispute and the apportionment of such amount in relation to the relevant Billing Statement items;
  - (G) include details of any other Billing Statement dispute which the referring Party considers should be consolidated with or joined to the dispute;
  - (H) specify the position the Party considers is correct and the Party's reasons for that position;
  - (I) include copies of any Supporting Information on which the referring Party intends to rely; and
  - (J) include any other Information that the Party deems relevant in relation to the dispute.
- 22.4 The making of a payment pursuant to Condition 22.1 or 22.2 shall not prevent a Party from raising a dispute pursuant to Condition 22.3.
- 22.5 If a dispute or part of a dispute pursuant to Condition 22.3 relates to the calculation of the Loss Adjusted Metered Output in respect of a Settlement Unit (a **"Metering Dispute"**):
- (A) such Metering Dispute shall be treated as a Trading Dispute pursuant to the BSC and shall be resolved in accordance with the provisions set out therein (to the exclusion of the Dispute Resolution Procedure);
  - (B) the Parties shall continue to comply with their obligations under the Investment Contract notwithstanding such Metering Dispute;
  - (C) the final determination of the Metering Dispute in accordance with Condition 22.5(A) shall be binding on the Parties; and
  - (D) neither Party shall dispute or attempt to dispute a final determination made in accordance with Condition 22.5(A).
- 22.6 Any Metering Dispute must be brought by the Party within the limitation period set out in the BSC with respect to Trading Disputes.
- 22.7 The Generator shall inform the CfD Counterparty as soon as reasonably practicable (and, in respect of Condition 22.7(A), no later than five (5) Business Days) after the Generator:
- (A) commences or becomes engaged in any Trading Dispute; or
  - (B) becomes aware of any fact, matter or circumstance which will or is reasonably likely to give rise to a Trading Dispute

where (in either case) the resolution of such Trading Dispute will or may impact the calculation of the Loss Adjusted Metered Output for the purposes of the Investment Contract.

## 23. DEFAULT INTEREST

### *Definition; Calculation*

23.1 “**Default Interest**” for any period (a “**calculation period**”) shall be calculated as follows:

$$\prod_{i=1}^D \left\{ 1 + \frac{\text{Base Rate} + 5\%}{365} \right\}$$

where:

*i* is a series of whole numbers from one (1) to “D” each representing the relevant day in chronological order from, and including, the first day in such calculation period;

*D* is the number of days in such calculation period; and

Base Rate means the prevailing Base Rate on the relevant day in the calculation period.

### *Application of Default Interest*

23.2 Subject to Conditions 23.4 and 79 (*Costs*), if either Party fails to pay any sum payable by it pursuant to the Investment Contract (including any amounts payable under any Arbitral Award or Expert determination) on the due date for payment, Default Interest shall accrue on that sum for the period from the due date for payment to the date of actual payment of that sum (after as well as before award or judgment).

23.3 The right to receive Default Interest pursuant to the Investment Contract (and as calculated in accordance with this Condition 23 (*Default Interest*)) is not exclusive of any rights and remedies provided by law in respect of the failure to pay the relevant sum on the due date or at all, provided that the Late Payment of Commercial Debts (Interest) Act 1988 shall not apply in respect of any unpaid sum due pursuant to the Investment Contract.

23.4 No Default Interest shall be payable by one Party to the other Party in relation to a Reconciliation Amount in respect of the period during which a Compensatory Interest Amount has accrued and been calculated pursuant to Condition 21.6, except that Default Interest shall accrue in respect of any Compensatory Interest Amount (and the Reconciliation Amount to which it relates) if and to the extent that such Compensatory Interest Amount has accrued and become due and payable and has not been paid.

**24. SET-OFF**

Each Party may set off any matured obligations due by the other Party pursuant to the Investment Contract against any matured obligation owed by that Party to the other Party.

**25. DEDUCTIONS AND WITHHOLDINGS**

Subject to Condition 24 (*Set-off*), all payments required to be made by the Generator pursuant to the Investment Contract shall be made in full, free and clear of any right of set-off and from any restriction, condition or deduction because of any counterclaim.

**26. PAYMENT ACCOUNTS**

26.1 Any payments made pursuant to or in connection with the Investment Contract and made to:

- (A) the CfD Counterparty shall be made to such account as may be notified to the Generator by the CfD Counterparty from time to time; and
- (B) the Generator shall be made to such account in the United Kingdom as may be notified to the CfD Counterparty by the Generator from time to time.



**Part 7**  
**Representations, warranties and undertakings**

**27. GENERATOR REPRESENTATIONS AND WARRANTIES**

***Agreement Date representations***

27.1 The Generator represents and warrants to the CfD Counterparty that, as at the Agreement Date, the following statements are true, accurate and not misleading:

- (A) *Status:* The Generator:
  - (i) is duly formed and validly existing under the laws of its jurisdiction of formation; and
  - (ii) has the power to own its assets and carry on its business as it is currently being conducted and as contemplated by the Investment Contract and the other IC Documents.
- (B) *Power and authority:* The Generator has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of, the Investment Contract and the other IC Documents.
- (C) *Enforceability:* The obligations expressed to be assumed by the Generator pursuant to the Investment Contract and the other IC Documents are legal, valid, binding and enforceable subject only to the Legal Reservations.
- (D) *Non-conflict with other obligations:* The entry into, delivery and performance by the Generator of the Investment Contract and the other IC Documents does not conflict with:
  - (i) its constitutional documents;
  - (ii) any Law or Directive applicable to it to an extent or in a manner which has or is reasonably expected to have a Material Adverse Effect;
  - (iii) any Required Authorisations to an extent or in a manner which has or is reasonably expected to have a Material Adverse Effect; or
  - (iv) any agreement or instrument binding upon it or any of its assets to an extent or in a manner which has or is reasonably expected to have a Material Adverse Effect.
- (E) *Required Authorisations:*
  - (i) All Required Authorisations have been obtained by the Generator and are in full force and effect, save to the extent that failure to do so has

not had and is not reasonably expected to have a Material Adverse Effect.

- (ii) All conditions of, and all obligations and liabilities under, Required Authorisations which are required to be performed, complied with or satisfied on or before the date on which this representation and warranty is made or deemed to be repeated by the Generator have been performed, complied with or satisfied, save where failure to do so has not had and is not reasonably expected to have a Material Adverse Effect.
- (F) *Compliance with Qualification Criteria:* The Generator is in compliance with the Qualification Criteria (save for any non-compliance which is attributable to any adjustment made to the Installed Capacity Estimate in accordance with Conditions 5, 6 or 7).
- (G) *Renewables Obligation:* The Facility has not been accredited under the Renewables Obligation Order 2009 (SI 2009/785) and no application for accreditation under such order is outstanding in respect of the Facility.
- (H) *Application Material:* Save as disclosed in writing to the CfD Counterparty prior to the Agreement Date, the Application Material is true and accurate in all material respects and not misleading.
- (I) *No Default:* No Default with respect to the Generator has occurred and is continuing or might reasonably be expected to result from its entry into or performance of the Investment Contract or any of the other IC Documents.
- (J) *No litigation:* No litigation, arbitration or administrative suit or proceeding, adjudication, expert determination, Tax claim or Tax investigation is current, pending or, so far as the Generator is aware, threatened against the Generator and which, if adversely determined, would have or would reasonably be expected to have a Material Adverse Effect.
- (K) *No requirement to deduct or withhold:* The Generator is not required by any Law or Directive applicable to it, as applied, interpreted or modified by the published practice of any relevant Competent Authority of any jurisdiction in which it is resident for Tax purposes, to make any deduction or withholding for or on account of any Tax from any payment to be made by it to the CfD Counterparty pursuant to the Investment Contract or any of the other IC Documents.

### **Start Date Representation**

27.2 The Generator represents and warrants to the CfD Counterparty that, as at and from the Start Date, the following statements are true, accurate and not misleading:

- (A) *Ownership:* The Generator is the legal and beneficial owner of the Facility, subject only to such rights and benefits as have been assigned by way of security to or in favour of any Lender, Affected Person or parent undertaking of

the Generator (or an agent or security trustee on its behalf) in accordance with Condition 77 (*Transfers*).

- (B) *Facility Generation Technology*: The generation technology deployed by the Facility is the Facility Generation Technology.

### ***Repeating Representations***

- 27.3 The Generator Repeating Representations are deemed to be repeated by the Generator on the Start Date in each case by reference to the facts and circumstances then existing.

## **28. CFD COUNTERPARTY WARRANTIES**

- 28.1 The CfD Counterparty shall (subject to Condition 28.2) be deemed to warrant to the Generator on the Start Date that by reference to the facts and circumstances then existing the following statements are true, accurate and not misleading:

- (A) *Status*: The CfD Counterparty:
- (i) is a limited liability company, duly incorporated and validly existing pursuant to the laws of England and Wales; and
  - (ii) has the power to own its assets and carry on its business as contemplated by the Investment Contract and the other IC Documents.
- (B) *Power and authority*: The CfD Counterparty has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of, the Investment Contract and the other IC Documents (including the obligations of the CfD Counterparty, and the transaction contemplated by or provided for by the Investment Contract and the other IC Documents).
- (C) *Enforceability*: The obligations expressed to be assumed by the CfD Counterparty pursuant to the Investment Contract and the other IC Documents are legal, valid, binding and enforceable subject only to the Legal Reservations.
- (D) *Non-conflict with other obligations*: The entry into, delivery and performance by the CfD Counterparty of the Investment Contract and the other IC Documents does not conflict with:
- (i) its constitutional documents;
  - (ii) any Law or Directive applicable to it to an extent or in a manner which has or is reasonably expected to have a Material Adverse Effect; or
  - (iii) any agreement or instrument binding upon it or any of its assets to an extent or in a manner which has or is reasonably expected to have a Material Adverse Effect.

- (E) *No requirement to deduct or withhold*: The CfD Counterparty is not required by any Law or Directive applicable to it, as applied, interpreted or modified by the published practice of any relevant Competent Authority of any jurisdiction in which it is resident for Tax purposes, to make any deduction or withholding for or on account of any Tax from any payment to be made by it to the Generator pursuant to the Investment Contract or any of the other IC Documents.

28.2 The warranties in Condition 28.1 shall not be deemed to be given at any time while the Secretary of State is the CfD Counterparty.

## **29. GENERATOR UNDERTAKINGS: GENERAL**

29.1 The Generator undertakes to the CfD Counterparty as follows:

- (A) *Compliance with Laws and Directives*: The Generator shall at all times comply with all Laws and Directives if failure to do so would have or would reasonably be expected to have a Material Adverse Effect.
- (B) *Required Authorisations*: The Generator shall: (i) promptly obtain all Required Authorisations; (ii) at all times perform, comply with and satisfy all conditions of, and all obligations and liabilities under, all Required Authorisations; and (iii) do all that is necessary to maintain in full force and effect all Required Authorisations, to the extent, in each case, that failure to do so would have or would reasonably be expected to have a Material Adverse Effect.
- (C) *Industry Documents*: The Generator shall at all times comply with all terms of those Industry Documents to which it is a party or by which it is bound if failure to do so would have or would reasonably be expected to have a Material Adverse Effect.
- (D) *No insolvency action*: The Generator shall not petition, apply for, institute, support or vote for the administration, winding-up or liquidation of the CfD Counterparty or seek any other relief as against the CfD Counterparty under any administration, insolvency or bankruptcy law or similar law affecting creditors' rights generally.
- (E) *Ownership*: The Generator shall at all times as from the Start Date be the legal and beneficial owner of the Facility, subject only to any third party rights arising by reason of any security interest created or subsisting over or in respect of the Facility.
- (F) *Facility Generation Technology*: The Generator shall at all times ensure that the generation technology deployed by the Facility is the Facility Generation Technology. The Generator shall not be deemed to be in breach of this Condition 29.1(F) solely by virtue of any failure to comply with the Fuelling Criteria if such failure has been addressed in the calculation or recalculation of the Renewable Qualifying Multiplier in accordance with Part B of Annex 7 (*FMS arrangements and RQM Calculation Methodology*) (but only if the Renewable Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement).

- (G) *Renewables Obligation*: The Generator shall procure that no application is made for accreditation of the Facility under the Renewables Obligation Order 2009 (SI 2009/785).
- (H) *Notification*: The Generator shall:
  - (i) provide the CfD Counterparty promptly with such Information regarding compliance or non-compliance by the Generator with the undertakings in this Condition 29.1 as the CfD Counterparty may reasonably request; and
  - (ii) give notice to the CfD Counterparty promptly upon becoming aware of the occurrence of any Default (together with details of the steps, if any, being taken to remedy it).

***Failure to comply with the Facility Generation Technology undertaking***

29.2 If the Generator fails to comply with Condition 29.1(F), the CfD Counterparty:

- (A) may withhold payment of any amounts which would otherwise be payable by the CfD Counterparty to the Generator which are attributable to the period during which the Generator is not in compliance with such Condition; and
- (B) shall be entitled to recover from the Generator any amounts paid by the CfD Counterparty to the Generator which are attributable to the period during which the Generator is not in compliance with such Condition.

**30. GENERATOR UNDERTAKINGS: METERING**

***Undertakings: Facility Metering Equipment***

30.1 With effect from the Start Date, the Generator shall:

- (A) ensure that at all times the Facility Metering Equipment meets all applicable rules and standards provided for in the BSC;
- (B) ensure that at all times:
  - (i) the Facility Metering Equipment accurately records the BM Unit Metered Volume comprising:
    - (a) all output electricity generated by the Facility; and
    - (b) all input electricity used by the Facility (excluding, if the Facility is a Dual Scheme Facility, any Imported Input Electricity);
  - (ii) where the Facility is a Dual Scheme Facility, the Facility Metering Equipment accurately records all Imported Input Electricity in relation to the Generating Station;

- (C) ensure that at all times the Facility Metering Equipment measures the input and output electricity referred to in Condition 30.1(B) separately from any other input and output electricity referred to therein; and
  - (D) investigate any fault or issue with the Facility Metering Equipment of which it is notified by the CfD Counterparty or required to investigate pursuant to the BSC,
- (each a “**Metering Compliance Obligation**” and together the “**Metering Compliance Obligations**”).

***Notification of Metering Compliance Obligation breach***

30.2 The CfD Counterparty may at any time give a notice to the Generator (a “**Metering Breach Notice**”) if it considers that the Generator is in breach of a Metering Compliance Obligation. A Metering Breach Notice shall be:

- (A) substantially in the form set out in Part P of Annex 9 (*Pro forma notices*);
- (B) specify which Metering Compliance Obligation the CfD Counterparty considers that the Generator has breached; and
- (C) be accompanied by such Supporting Information as the CfD Counterparty considers necessary to evidence the breach of the Metering Compliance Obligation.

***Response to notification of Metering Compliance Obligation breach***

30.3 Within ten (10) Business Days of receipt of a Metering Breach Notice, the Generator shall investigate whether it is in breach of the relevant Metering Compliance Obligation and give a notice to the CfD Counterparty (a “**Metering Breach Response Notice**”). A Metering Breach Response Notice shall:

- (A) be substantially in the form set out in Part Q of Annex 9 (*Pro forma notices*); and
- (B) state that either:
  - (i) (a) the Generator accepts that there has been a breach of the Metering Compliance Obligation; and (b) notify the date from which the Generator accepts that there has been a breach of the relevant Metering Compliance Obligation; or
  - (ii) the Generator does not accept that there has been a breach of the Metering Compliance Obligation.

30.4 If the Generator submits a Metering Breach Response Notice in accordance with:

- (A) Condition 30.3(B)(i), the provisions of Condition 30.5 shall apply; or

- (B) Condition 30.3(B)(ii), then the Expert Determination Procedure shall apply in respect of such dispute and if the Expert Determination Procedure applied pursuant to this Condition 30.4(B) determines that:
- (i) there has not been a breach of the Metering Compliance Obligation, then neither Party shall be required to take any further steps in relation to the Metering Breach Notice; or
  - (ii) there has been a breach of the Metering Compliance Obligation, the provisions of Condition 30.5 shall apply.

***Resolution of Metering Compliance Obligation breach***

30.5 If this Condition 30.5 applies:

- (A) the Generator shall provide a copy of a Metering Remediation Plan to the CfD Counterparty not later than fifteen (15) Business Days after the receipt (or deemed receipt) by the Generator of a Metering Breach Response Notice in accordance with Condition 30.3(B)(i) or the determination of the Expert in accordance with Condition 30.4(B)(ii) (as applicable);
- (B) as soon as reasonably practicable after the receipt (or deemed receipt) by the Generator of a Metering Breach Response Notice in accordance with Condition 30.3(B)(i) or the determination of the Expert in accordance with Condition 30.4(B)(ii) (as applicable) and in any case not later than sixty (60) Business Days after a BSC Company has approved the Metering Remediation Plan, the Generator shall:
  - (i) remedy the breach of the Metering Compliance Obligation; and
  - (ii) provide to the CfD Counterparty written confirmation from the relevant BSC Company that the breach of the Metering Compliance Obligation has been remedied to the satisfaction of such relevant BSC Company; and
- (C) the Generator shall give a notice to the CfD Counterparty confirming the fulfilment of its obligations pursuant to Condition 30.5(B) within five (5) Business Days of remedying the breach and in any case not later than sixty (60) Business Days after a BSC Company has approved the Metering Remediation Plan.

***Failure to remedy Metering Compliance Obligation breach***

30.6 If the Generator has not complied with its obligations under Condition 30.5, then a Technical Compliance Termination Event will be deemed to have occurred.

***Undertakings: electrical schematic***

30.7 If there is a Material Change to the Facility Metering Equipment, then the Generator shall:

- (A) notify the CfD Counterparty as soon as reasonably practicable and in any case within two (2) Business Days of the Metering Change occurring; and
  - (B) provide an updated version of the electrical schematic diagram referred to in paragraph 2.1(D) of Part B of Schedule 1 (*Conditions Precedent*) as soon as reasonably practicable and in any case within ten (10) Business Days of the Metering Change occurring,
- (the “**Electrical Schematic Obligation**”).

30.8 Any copy of the electrical schematic diagram provided pursuant to Condition 30.7(B) shall be accompanied by a Directors’ Certificate certifying that the date as at which the electrical schematic diagram is valid and the version number thereof are true, complete and accurate in all material respects and are not misleading, in each case by reference to the facts and circumstances then existing.

***Failure to comply with Electrical Schematic Obligation***

- 30.9 If the Generator is in breach of the Electrical Schematic Obligation, the CfD Counterparty may elect to suspend payment of any Net Payable Amounts which would otherwise be payable by the CfD Counterparty to the Generator in any period during which the Generator is in breach of the Electrical Schematic Obligation, provided that, prior to effecting any such suspension, the CfD Counterparty shall notify the Generator of: (i) its intention to suspend payment of any Net Payable Amounts; and (ii) the date from which it proposes to effect such suspension.
- 30.10 If the Generator subsequently complies with its Electrical Schematic Obligation, then the CfD Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of Condition 30.9. No Compensatory Interest or Default Interest shall be payable in respect of any amount payable pursuant to this Condition 30.10.

***Undertakings: Access to and testing of meters***

- 30.11 With effect from the Start Date, the Generator shall grant (or, if the Generator is not the Registrant of the Facility Metering Equipment, shall procure that the Registrant grants) the CfD Counterparty and any suitably-qualified persons nominated by the CfD Counterparty access to the Facility, the Facility Metering Equipment and to such plant, property or assets owned, occupied or controlled by the Generator (or the Registrant if the Generator is not the Registrant of the Facility Metering Equipment) and to which the Generator (or the Registrant if the Generator is not the Registrant of the Facility Metering Equipment) can lawfully grant access as may be reasonably necessary for the CfD Counterparty to read, test or verify any relevant data and inspect and conduct tests in respect of the Facility Metering Equipment (the “**Metering Access Right**”).
- 30.12 If the CfD Counterparty intends to exercise the Metering Access Right it shall give a notice to the Generator (a “**Metering Inspection Notice**”). A Metering Inspection Notice shall:
- (A) be substantially in the form set out in Part R of Annex 9 (*Pro forma notices*);



- (B) specify that the CfD Counterparty (or suitably-qualified persons nominated by it) intends to exercise the Metering Access Right; and
- (C) specify the date by which the Generator must, in accordance with Condition 30.13, permit the exercise of the Metering Access Right.

30.13 On receipt of a Metering Inspection Notice:

- (A) if the Generator is the Registrant of the Facility Metering Equipment, it shall permit the CfD Counterparty to exercise the Metering Access Right within ten (10) Business Days of receipt of the Metering Inspection Notice; and
- (B) if the Generator is not the Registrant of the Facility Metering Equipment, it shall procure that the CfD Counterparty is permitted to exercise the Metering Access Right within fifteen (15) Business Days of receipt of the Metering Inspection Notice.

30.14 The CfD Counterparty shall (and shall procure any suitably-qualified persons nominated by it to exercise the Metering Access Right shall):

- (A) take or refrain from taking all such other action as may be reasonably required by the Generator in order to comply with health and safety rules relating to the Facility; and
- (B) obtain each authorisation, licence, accreditation, permit, consent, certificate, resolution, clearance, exemption, order confirmation, permission or other approval of or from a Competent Authority necessary for it to exercise the Metering Access Right.

***Failure to provide Metering Access Right***

30.15 If the Generator is in breach of its obligation to permit the CfD Counterparty to exercise the Metering Access Right, the CfD Counterparty may elect to suspend payment of any Net Payable Amounts which would otherwise be payable by the CfD Counterparty to the Generator in any period during which the Generator is in breach of such obligation, provided that, prior to effecting any such suspension, the CfD Counterparty shall notify the Generator of: (i) its intention to suspend payment of any Net Payable Amounts; and (ii) the date from which it proposes to effect such suspension.

30.16 If the Generator subsequently complies with its obligation to permit the CfD Counterparty to exercise the Metering Access Right, then the CfD Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of Condition 30.15. No Compensatory Interest or Default Interest shall be payable in respect of any amount payable pursuant to this Condition 30.16.

30.17 If the Generator:

- (A) fails to comply with its obligations under Condition 30.13; and

- (B) has not permitted the CfD Counterparty to exercise its Metering Access Right within twenty (20) Business Days following the latest permitted date for compliance with its obligations pursuant to Condition 30.13(A) or 30.13(B) (as applicable),

then a Metering Access Termination Event will be deemed to have occurred.

### **31. GENERATOR UNDERTAKINGS: INFORMATION PROVISION**

#### ***Provision of Information to the CfD Counterparty***

31.1 The Generator, acting to a Reasonable and Prudent Standard, shall provide the CfD Counterparty with:

- (A) the Generator's estimate of the:
- (i) expected Start Date;
  - (ii) Installed Capacity as at the Start Date; and
  - (iii) commissioning profile of the Facility,

each such estimate to be provided on the Effective Date and at monthly intervals thereafter;

- (B) all Information requested by the CfD Counterparty to comply with its obligations under the Investment Contract (including the CfD Settlement Required Information), such Information to be provided promptly, and no later than five (5) Business Days (or, if such Information is not within the possession of the Generator, no later than ten (10) Business Days) or such longer period as is specified by the CfD Counterparty, after the Information is requested;
- (C) a forecast of the availability, the Loss Adjusted Metered Output, the Renewable Qualifying Multiplier (if applicable) and the CHP Qualifying Multiplier (if applicable) in respect of the Facility, such forecast to be provided:
- (i) within ten (10) Business Days of the Effective Date, for the period from the projected Start Date to the following 31 March and in respect of each calendar month (or part of a calendar month) during such period (but only if the Start Date is projected to occur before the following 31 March);
  - (ii) not later than 30 September in each year (or, in relation to the first (1<sup>st</sup>) such forecast, and if the Effective Date is after 30 September, no later than ten (10) Business Days after the Effective Date) for the twelve (12) month period commencing on 01 April in the following year in respect of each calendar month (or part of a calendar month) during such period, provided that either:
    - (a) such period commences after the Start Date; or

- (b) the Start Date is projected to occur during such period; and
- (iii) not later than five (5) Business Days prior to the first (1<sup>st</sup>) day of each calendar month after the Start Date in respect of:
  - (a) the next calendar month; and
  - (b) any other calendar months in respect of which the Generator has previously provided forecasts to the CfD Counterparty (but only if any of the Generator's forecasts have changed);
- (D) notification of the occurrence of any material event or circumstance which will or is reasonably likely to affect significantly the Metered Output, of the Facility, such notification to be provided promptly, and no later than five (5) Business Days after the Generator has become aware of a material event or circumstance;
- (E) details of any material event or circumstance which will or is reasonably likely to affect significantly the Metered Output of the Facility, promptly, and no later than twenty five (25) Business Days after the Generator has become aware of such material event or circumstance;
- (F) all Information reasonably requested by the CfD Counterparty regarding the financial condition, business or operations of the Generator to enable or assist the CfD Counterparty to fulfil the CfD Counterparty Permitted Purposes, such Information to be provided promptly and no later than ten (10) Business Days after such Information is requested, or such longer period as is specified by the CfD Counterparty;
- (G) all Information reasonably requested by the CfD Counterparty for the purposes of: (i) compiling and evaluating statistics relating to the outcomes of the Electricity Market Reform programme and the impact of that programme across a range of social and economic factors; and (ii) publishing material relating thereto, including announcements and reports describing the general outcomes, merits and achievements relating to the programme, such Information to be provided promptly and no later than ten (10) Business Days, or such longer period as is specified by the CfD Counterparty, after such Information is requested; and
- (H) where the Generator is an Embedded Generator, notification of:
  - (i) any Market Supply Agreement becoming effective or being novated, assigned or otherwise transferred to a different counterparty; and
  - (ii) the termination of any Market Supply Agreement,

in each case not less than five (5) Business Days prior to the same occurring or, if the termination of any Market Supply Agreement is not effected by the Generator, as soon as reasonably practicable thereafter.

***Accuracy of Information***

31.2 The Generator shall ensure that:

- (A) all forecasts and forward-looking statements provided by or on behalf of the Generator pursuant to Condition 31.1 are prepared in good faith, on a reasonable basis and with due care and attention; and
- (B) all other Information provided by or on behalf of the Generator pursuant to Condition 31.1 is true, complete and accurate in all material respects and not misleading.

**Part 8**  
**Changes in Law**

**32. QUALIFYING CHANGE IN LAW: PROCEDURE**

***CfD Counterparty QCiL Notice***

32.1 If the CfD Counterparty considers that a Qualifying Change in Law has been implemented, occurred or become effective or is shortly to be implemented, occur or become effective, it may give a notice to the Generator (a “**CfD Counterparty QCiL Notice**”). A CfD Counterparty QCiL Notice shall:

- (A) be substantially in the form set out in Part S of Annex 9 (*Pro forma notices*);
- (B) include reasonable details of the relevant Qualifying Change in Law;
- (C) specify the QCiL Effective Date or the Expected QCiL Effective Date (as appropriate);
- (D) specify why the CfD Counterparty considers that the Change in Law constitutes, or will constitute, a Qualifying Change in Law, including whether the CfD Counterparty considers the Qualifying Change in Law to be a Discriminatory Change in Law, a Specific Change in Law or an Other Change in Law; and
- (E) (if the CfD Counterparty considers it reasonably practicable to do so) specify whether the CfD Counterparty considers that the Notified Change in Law will give rise to or result in:
  - (i) QCiL Operating Costs or QCiL Operating Savings;
  - (ii) QCiL Capital Costs or QCiL Capital Savings;
  - (iii) an Adjusted Output Period (and, if so, the CfD Counterparty’s AOP Estimate);
  - (iv) a QCiL Construction Event; and/or
  - (v) a QCiL Operations Cessation Event.

***Generator QCiL Response Notice***

32.2 If the CfD Counterparty gives a CfD Counterparty QCiL Notice to the Generator, the Generator shall as soon as reasonably practicable, and in any event within forty (40) Business Days after receipt of such CfD Counterparty QCiL Notice, give a notice to the CfD Counterparty (a “**Generator QCiL Response Notice**”). A Generator QCiL Response Notice shall:

- (A) be substantially in the form set out in Part T of Annex 9 (*Pro forma notices*);

- (B) specify whether the Generator considers that the Notified Change in Law constitutes, or will constitute, a Qualifying Change in Law (and, if the Generator does not consider that the Notified Change in Law constitutes, or will constitute, a Qualifying Change in Law, the Generator shall include Supporting Information, in reasonable detail, which the Generator considers to be relevant to and supportive of that conclusion);
- (C) include either:
  - (i) a statement that the Generator agrees with the QCiL Effective Date or the Expected QCiL Effective Date specified in the CfD Counterparty QCiL Notice; or
  - (ii) if the Generator does not agree with the QCiL Effective Date or the Expected QCiL Effective Date specified in the CfD Counterparty QCiL Notice, an alternative QCiL Effective Date or Expected QCiL Effective Date;
- (D) specify whether the Generator considers that the Notified Change in Law will give rise to or result in:
  - (i) QCiL Operating Costs or QCiL Operating Savings and, if so, include the Generator's good faith estimate of such amounts and the profile of the incurrence of, or the making or receipt of, such costs or savings (as applicable);
  - (ii) QCiL Capital Costs or QCiL Capital Savings and, if so, include the Generator's good faith estimate of such amounts and the profile of the incurrence of, or the making or receipt of, such costs or savings (as applicable);
  - (iii) an Adjusted Output Period and, if so: (a) the Generator's AOP Estimate; and (b) the Generator's good faith estimate of the impact of the Notified Change in Law on the Estimated Facility Generation;
  - (iv) a QCiL Construction Event and, if so, the Generator's good faith estimate of the QCiL Construction Event Costs and QCiL Construction Event Savings; and/or
  - (v) a QCiL Operations Cessation Event and, if so, the Generator's good faith estimate of the QCiL Operations Cessation Event Costs and QCiL Operations Cessation Event Savings,

together with such Supporting Information, in reasonable detail, as the Generator considers to be relevant to and supportive of the foregoing; and
- (E) include Supporting Information evidencing, in reasonable detail, the steps that the Generator has taken and/or proposes to take to comply with the QCiL Mitigation Obligation and the Reasonable and Prudent Standard.

- 32.3 If the Generator, in a Generator QCiL Response Notice, indicates that it does not consider that the Notified Change in Law constitutes, or will constitute, a Qualifying Change in Law, it shall nonetheless provide the QCiL Response Information on the basis of an assumption that the Notified Change in Law constitutes, or will constitute, a Qualifying Change in Law.
- 32.4 Any Generator QCiL Response Notice shall be accompanied by a Directors' Certificate certifying that the information contained in, and enclosed with, the Generator QCiL Response Notice is true, complete and accurate in all material respects and is not misleading, in each case by reference to the facts and circumstances then existing, and stating (without prejudice to the generality of the certification required pursuant to this Condition 32.4) whether, in the opinion of the Generator, having made all due and careful enquiries, the Notified Change in Law is or will be a Qualifying Change in Law.

**Generator QCiL Notice**

- 32.5 If the Generator considers that a Qualifying Change in Law has been implemented, occurred or become effective or is shortly to be implemented, occur or become effective, it may give a notice to the CfD Counterparty (a "**Generator QCiL Notice**"). A Generator QCiL Notice shall:
- (A) be substantially in the form set out in Part U of Annex 9 (*Pro forma notices*);
  - (B) include reasonable details of the relevant Qualifying Change in Law;
  - (C) specify the QCiL Effective Date or the Expected QCiL Effective Date (as appropriate);
  - (D) specify why the Generator considers that the Notified Change in Law constitutes, or will constitute, a Qualifying Change in Law, including whether the Generator considers the Qualifying Change in Law to be a Discriminatory Change in Law, a Specific Change in Law or an Other Change in Law (and including Supporting Information, in reasonable detail, which the Generator considers to be relevant to and supportive of that conclusion);
  - (E) specify whether the Generator considers that the Notified Change in Law will give rise to or result in:
    - (i) QCiL Operating Costs or QCiL Operating Savings and, if so, include the Generator's good faith estimate of such amounts and the profile of the incurrence of, or the making or receipt of, such costs or savings (as applicable);
    - (ii) QCiL Capital Costs or QCiL Capital Savings and, if so, include the Generator's good faith estimate of such amounts and the profile of the incurrence of, or the making or receipt of, such costs or savings (as applicable);

- (iii) an Adjusted Output Period and, if so: (a) the Generator's AOP Estimate; and (b) the Generator's good faith estimate of the impact of the Notified Change in Law on the Estimated Facility Generation;
- (iv) a QCiL Construction Event and, if so, the Generator's good faith estimate of the QCiL Construction Event Costs and the QCiL Construction Event Savings; and/or
- (v) a QCiL Operations Cessation Event and, if so, the Generator's good faith estimate of the QCiL Operations Cessation Event Costs and the QCiL Operations Cessation Event Savings,

together with such Supporting Information, in reasonable detail, as the Generator considers to be relevant to and supportive of the foregoing; and

- (F) include Supporting Information evidencing, in reasonable detail, the steps that the Generator has taken and/or proposes to take to comply with the QCiL Mitigation Obligation and the Reasonable and Prudent Standard.

32.6 Any Generator QCiL Notice shall be accompanied by a Directors' Certificate certifying that the information contained in, and enclosed with, the Generator QCiL Notice is true, complete and accurate in all material respects and is not misleading, in each case by reference to the facts and circumstances then existing, and stating (without prejudice to the generality of the certification required pursuant to this Condition 32.6) whether, in the opinion of the Generator, having made all due and careful enquiries, the Notified Change in Law is or will be a Qualifying Change in Law.

32.7 The CfD Counterparty shall be under no obligation to consider or take any action in response to a Generator QCiL Notice unless and until the Generator shall have provided the CfD Counterparty with all of the QCiL Supporting Information, and the QCiL Directors' Certificate, in respect of such Generator QCiL Notice.

***Agreement between the Parties in respect of a Qualifying Change in Law***

32.8 As soon as reasonably practicable, and in any event within fifteen (15) Business Days of either:

- (A) the Generator giving a Generator QCiL Notice (and the associated QCiL Directors' Certificate); or
- (B) the Generator giving a Generator QCiL Response Notice (and the associated QCiL Directors' Certificate),

in respect of a Notified Change in Law, the Parties shall meet to discuss and, in good faith, seek to agree:

- (i) whether the Notified Change in Law constitutes, or will constitute, a Qualifying Change in Law;



- (ii) in respect of a Qualifying Change in Law:
  - (a) the QCiL Effective Date or the Expected QCiL Effective Date (as appropriate);
  - (b) whether the Notified Change in Law will, or is reasonably expected to, result in:
    - (1) QCiL Net Operating Costs or QCiL Net Operating Savings;
    - (2) QCiL Net Capital Costs or QCiL Net Capital Savings;
    - (3) an Adjusted Output Period (and, if so, the impact, or the reasonably anticipated impact, of the Notified Change in Law on the Estimated Facility Generation);
    - (4) a QCiL Construction Event; and/or
    - (5) a QCiL Operations Cessation Event;
  - (c) the amounts, forecasts and estimates applicable to that Qualifying Change in Law referred to in Condition 32.2(D) or 32.5(E) (as appropriate);
  - (d) the steps or additional steps, as the case may be, which the Generator should take to comply with the QCiL Mitigation Obligation and the Reasonable and Prudent Standard; and
  - (e) any other matters necessary to determine the quantum of the QCiL Compensation;
- (iii) the QCiL Compensation in respect of such Qualifying Change in Law; and
- (iv) the QCiL Compensation Date.

***Disputes in respect of a Qualifying Change in Law***

- 32.9 If the Generator and the CfD Counterparty are not able to agree any of the matters in Condition 32.8, either the Generator or the CfD Counterparty may refer the Dispute for resolution by an Arbitral Tribunal in accordance with the Arbitration Procedure or, if the Generator and the CfD Counterparty agree in writing that such Dispute is amenable to determination by an Expert, refer the Dispute to an Expert for determination in accordance with the Expert Determination Procedure.
- 32.10 Until the Dispute has been resolved by agreement between the Generator and the CfD Counterparty or determination in accordance with the Arbitration Procedure or the Expert Determination Procedure, as the case may be, there shall be no QCiL Compensation payable.

### 33. QUALIFYING CHANGE IN LAW: COMPENSATION

#### *Categories of Qualifying Change in Law compensation*

- 33.1 Compensation in respect of a Qualifying Change in Law shall be calculated:
- (A) if there are QCiL Operating Costs or QCiL Operating Savings, in accordance with Conditions 33.3 to 33.7 (inclusive) (a “**QCiL Opex Payment**”);
  - (B) if there are QCiL Capital Costs or QCiL Capital Savings, in accordance with Conditions 33.8 to 33.16 (inclusive) (a “**QCiL Capex Payment**”);
  - (C) if there is an Adjusted Output Period, in accordance with Conditions 33.17 to 33.22 (inclusive) (a “**QCiL Adjusted Revenues Payment**”);
  - (D) if there is a QCiL Construction Event, in accordance with Conditions 33.23 to 33.26 (inclusive) (a “**QCiL Construction Event Payment**”); and
  - (E) if there is a QCiL Operations Cessation Event, in accordance with Conditions 33.27 to 33.30 (inclusive) (a “**QCiL Operations Cessation Event Payment**”).
- 33.2 Any QCiL Compensation to be calculated in accordance with Condition 33.1 shall be payable in accordance with, and subject to, Conditions 34 (*Qualifying Change in Law: Effective date and payment*), 35 (*Qualifying Change in Law: True-up*) and 37 (*Changes in Law: General provisions*).

#### **QCiL Opex Payment**

- 33.3 Any QCiL Opex Payment shall be effected, where the relevant Qualifying Change in Law occurs, is implemented or becomes effective:
- (A) on or after the Start Date, as an adjustment to the Strike Price and:
    - (i) if there are QCiL Net Operating Costs, the Strike Price shall be increased; and
    - (ii) if there are QCiL Net Operating Savings, the Strike Price shall be reduced; or
  - (B) before the Start Date, as daily payments, which shall be payable:
    - (i) by the CfD Counterparty to the Generator if there are QCiL Net Operating Costs; or
    - (ii) by the Generator to the CfD Counterparty if there are QCiL Net Operating Savings.
- 33.4 For the purposes of Condition 33.3, the QCiL Opex Payment shall be an amount (expressed in pounds) calculated in accordance with:

- (A) Condition 33.5 if the QCiL Opex Payment is to be effected as an adjustment to the Strike Price; or
- (B) Condition 33.6 if the QCiL Opex Payment is to be paid by means of daily payments.

33.5 If Condition 33.433.4(A) applies, the QCiL Opex Payment shall, subject to Condition 33.7, be calculated in accordance with the following formula:

$$\text{QCiL Opex Payment} = \frac{\sum_{i=1}^n \frac{C_{I,i} - C_{S,i}}{(1 + R_S)^{i-1}}}{\text{Effective Projected Generation}}$$

where:

*i* is a whole number integer from one (1) to *n*; such integers referring to distinct time periods as follows:

- the first (1<sup>st</sup>) period (*i* = 1) covers the period from the QCiL Compensation Date to 31 December in the year of the QCiL Compensation Date;
- the second (2<sup>nd</sup>) to the (*n*-1)th periods ( $2 \leq i < n$ ) are consecutive periods of one (1) calendar year length each; and
- the *n*th period (*i* = *n*) is the period starting on 01 January in the year in which the last day of the Term falls and ending on the last day of the Term;

$C_{I,i}$  are, subject to Condition 33.7(B), the QCiL Operating Costs in period (i) expressed in pounds in real terms as at the QCiL Compensation Date;

$C_{S,i}$  are, subject to Condition 33.7(B), the QCiL Operating Savings in period (i) expressed in pounds in real terms as at the QCiL Compensation Date; and

$R_S$  is the Post-Tax Real Discount Rate.

33.6 If Condition 33.4(B) applies, the QCiL Opex Payment shall be effected on the basis that such QCiL Compensation shall be equivalent to the amount that the Generator would have received had the QCiL Opex Payment been effected as a Strike Price Adjustment in accordance with Condition 33.5.

33.7 If a Qualifying Change in Law gives rise to or results in both: (i) QCiL Operating Costs or QCiL Operating Savings; and (ii) an Adjusted Output Period, then:

- (A) subject to Condition 33.7(B), such QCiL Operating Costs or QCiL Operating Savings shall be used for the purposes of calculating the QCiL Opex Payment in accordance with Conditions 33.3, 33.4, 33.5 and 33.6; and

- (B) if and to the extent that any QCiL Operating Costs or QCiL Operating Savings are (or are reasonably likely to be) incurred, made or received solely in connection with, and during, the Adjusted Output Period, such QCiL Operating Costs or QCiL Operating Savings shall be excluded from the calculation of the QCiL Opex Payment in accordance with Conditions, 33.3, 33.4, 33.5, 33.6 and 33.7(A) and shall instead be taken into account in the calculation of the QCiL Adjusted Revenues Payment in accordance with Conditions 33.17, 33.18 and 33.22 and Condition 33.19, 33.20 or 33.21 (as applicable).

### **QCiL Capex Payment**

- 33.8 Any QCiL Capex Payment shall be effected, at the election of the CfD Counterparty (after consultation with the Generator), as a lump sum payment, staged payments or daily payments which shall be payable:

- (A) by the CfD Counterparty to the Generator if there are QCiL Net Capital Costs; or
- (B) by the Generator to the CfD Counterparty where there are QCiL Net Capital Savings,

irrespective of whether or not the relevant Qualifying Change in Law occurs, is implemented or becomes effective before, on or after the Start Date.

- 33.9 For the purposes of Condition 33.8, the QCiL Capex Payment shall, subject to Condition 33.16, be an amount (expressed in pounds) calculated in accordance with:

- (A) Condition 33.10 or 33.11 (as applicable) if the QCiL Capex Payment is to be paid as a lump sum;
- (B) Condition 33.12 if the QCiL Capex Payment is to be paid by means of staged payments; or
- (C) Condition 33.13 or 33.14 (as applicable) if the QCiL Capex Payment is to be paid by means of daily payments.

- 33.10 If: (i) the QCiL Net Capital Costs or the QCiL Net Capital Savings are first incurred, made or realised (or reasonably expected to be first incurred, made or realised) on or prior to the twelfth (12<sup>th</sup>) anniversary of the Start Date; and (ii) Condition 33.9(A) applies, the QCiL Capex Payment shall be calculated in accordance with the following formula:

$$\text{QCiL Capex Payment} = \sum_{i=1}^n \frac{C_i - S_i}{(1 + R_S)^{i-1}}$$

- 33.11 If: (i) the QCiL Net Capital Costs or the QCiL Net Capital Savings are first incurred, made or realised (or reasonably expected to be first incurred, made or realised) after the twelfth (12<sup>th</sup>) anniversary of the Start Date; and (ii) Condition 33.9(A) applies, the QCiL Capex Payment shall be calculated in accordance with the following formula:

$$\text{QCiL Capex Payment} = \frac{L - X}{L - N} \times \sum_{i=1}^n \frac{C_i - S_i}{(1 + R_S)^{i-1}}$$

33.12 If Condition 33.9(B) applies:

- (A) the QCiL Capex Payment shall be effected on the basis that such QCiL Compensation shall be equivalent to the amount that the Generator would have received had the QCiL Capex Payment been effected as a lump sum payment in accordance with Condition 33.10 or 33.11 (as applicable) or as daily payments in accordance with Condition 33.13 or 33.14 (as applicable); and
- (B) the CfD Counterparty may (after consultation with the Generator) determine the frequency of such payments provided that the final staged payment shall be made by the earlier of: (i) the date that is five (5) years from the QCiL Effective Date; and (ii) the Specified Expiry Date.

33.13 If: (i) the QCiL Net Capital Costs or the QCiL Net Capital Savings are first incurred, made or realised (or reasonably expected to be first incurred, made or realised) on or prior to the twelfth (12<sup>th</sup>) anniversary of the Start Date; and (ii) Condition 33.9(C) applies, the QCiL Capex Payment in respect of each Billing Period shall be calculated in accordance with the following formula:

$$\text{QCiL Capex Payment} = \sum_{i=1}^n \frac{C_i - S_i}{(1 + R_S)^{i-1}} \times \frac{R_d}{1 - \frac{1}{(1 + R_d)^{365(L-X)}}} \times \frac{CPI_t}{CPI_q}$$

33.14 If: (i) the QCiL Net Capital Costs or the QCiL Net Capital Savings are first incurred, made or realised (or reasonably expected to be first incurred, made or realised) after the twelfth (12<sup>th</sup>) anniversary of the Start Date; and (ii) Condition 33.9(C) applies, the QCiL Capex Payment in respect of each Billing Period shall be calculated in accordance with the following formula:

$$\text{QCiL Capex Payment} = \frac{L - X}{L - N} \times \sum_{i=1}^n \frac{C_i - S_i}{(1 + R_S)^{i-1}} \times \frac{R_d}{1 - \frac{1}{(1 + R_d)^{365(L-X)}}} \times \frac{CPI_t}{CPI_q}$$

33.15 For the purposes of the formulae in Conditions 33.10, 33.11, 33.13 and 33.14:

*i* is a whole number integer from one (1) to *n*; such integers referring to distinct time periods as follows:

- the first (1<sup>st</sup>) period (*i* = 1) covers the period from the QCiL Compensation Date to 31 December in the year of the QCiL Compensation Date;
- the second (2<sup>nd</sup>) to the (*n*-1)th periods ( $2 \leq i < n$ ) are consecutive periods of one (1) calendar year length each; and
- the *n*th period (*i* = *n*) is the period starting on 01 January in the year in which the last day of the Term falls and ending on the last day of the

Term;

$C_i$  are the QCiL Capital Costs in period (i), expressed in pounds in real terms as at the QCiL Compensation Date;

$S_i$  are the QCiL Capital Savings in period (i) expressed in pounds in real terms as at the QCiL Compensation Date;

$R_s$  is the Post-Tax Real Discount Rate;

$L$  is the period between: (a) the Start Date; and (b) the Specified Expiry Date, in years, and expressed as an integer;

$X$  is the number of days that have passed or will have passed from and including the Start Date to the QCiL Compensation Date divided by 365 (or, if such number would be a negative number, 0);

$N$  is twelve (12);

$R_d$  is the Daily Discount Rate;

$CPI_t$  denotes the CPI applicable during Billing Period (t); and

$CPI_q$  denotes the CPI applicable at the QCiL Compensation Date.

33.16 If a Qualifying Change in Law gives rise to or results in both: (i) QCiL Capital Costs or QCiL Capital Savings; and (ii) an Adjusted Output Period, then:

(A) subject to Condition 33.16(B), such QCiL Capital Costs or QCiL Capital Savings shall be used for the purposes of calculating the QCiL Capex Payment in accordance with Conditions 33.8, 33.9 and 33.15 and Conditions 33.10, 33.11, 33.12, 33.13 or 33.14 (as applicable); and

(B) if and to the extent that any QCiL Capital Savings are (or are reasonably likely to be) made or received solely in connection with, and during, the Adjusted Output Period, then such QCiL Capital Savings shall be excluded from the calculation of the QCiL Capex Payment in accordance with Conditions 33.8, 33.9, 33.15 and 33.16(A), and Condition 33.10, 33.11, 33.12, 33.13 or 33.14 (as applicable), and such QCiL Capital Savings shall instead be taken into account in the calculation of the QCiL Adjusted Revenues Payment in accordance with Conditions 33.17, 33.18 and 33.22 and Condition 33.19, 33.20 or 33.21 (as applicable).

### ***QCIL Adjusted Revenues Payment***

33.17 Any QCiL Adjusted Revenues Payment shall be effected, at the election of the CfD Counterparty (after consultation with the Generator), as a lump sum payment, staged payments or daily payments which shall be payable:

- (A) by the CfD Counterparty to the Generator if the amount calculated under the relevant formula is positive; or
- (B) by the Generator to the CfD Counterparty if the amount calculated under the relevant formula is negative,

irrespective of whether or not the relevant Qualifying Change in Law occurs, is implemented or becomes effective before, on or after the Start Date.

33.18 For the purposes of Condition 33.17, the QCiL Adjusted Revenues Payment shall be an amount (expressed in pounds) calculated in accordance with:

- (A) Condition 33.19 if the QCiL Adjusted Revenues Payment is to be paid as a lump sum;
- (B) Condition 33.20 if the QCiL Adjusted Revenues Payment is to be paid by means of staged payments; or
- (C) Condition 33.21 if the QCiL Adjusted Revenues Payment is to be paid by means of daily payments.

33.19 If Condition 33.18(A) applies, the QCiL Adjusted Revenues Payment shall be calculated in accordance with the following formula:

$$\text{QCiL Adjusted Revenues Payment} = SP \times \left( \sum_{i=1}^n \frac{M_{1,i}}{(1+R_S)^{i-1}} - \sum_{i=1}^n \frac{M_{2,i}}{(1+R_S)^{i-1}} \right) + \sum_{i=1}^n \frac{C_i - S_i}{(1+R_S)^{i-1}}$$

33.20 If Condition 33.18(B) applies:

- (A) the QCiL Adjusted Revenues Payment shall be effected on the basis that such QCiL Compensation shall be equivalent to the amount that the Generator would have received had the QCiL Adjusted Revenues Payment been effected as a lump sum payment in accordance with Condition 33.19 or as daily payments in accordance with Condition 33.21; and
- (B) the CfD Counterparty may (after consultation with the Generator) determine the frequency of such payments provided that the final staged payment shall be made by the earlier of: (i) the date that is five (5) years from the QCiL Effective Date; and (ii) the Specified Expiry Date.

33.21 If Condition 33.18(C) applies, the QCiL Adjusted Revenues Payment in respect of each Billing Period shall be calculated in accordance with the following formula:

$$\text{QCiL Adjusted Revenues Payment} = ARP \times \frac{R_d}{1 - \left( \frac{1}{(1+R_d)^N} \right)} \times \frac{CPI_t}{CPI_q}$$

33.22 For the purposes of the formulae in Conditions 33.19 and 33.21:

- $SP$  is the Strike Price applicable immediately prior to the QCiL Compensation Date (for this purpose, after any Strike Price Adjustment made pursuant to Conditions 33.3(A), 33.433.4(A), 33.5 and 33.7(A) (if relevant));
- $i$  is a whole number integer from one (1) to  $n$ ; such integers referring to distinct time periods as follows:
- the first (1<sup>st</sup>) period ( $i = 1$ ) covers the period from the QCiL Compensation Date to 31 December in the year of the QCiL Compensation Date;
  - the second (2<sup>nd</sup>) to the  $(n-1)$ th periods ( $2 \leq i < n$ ) are consecutive periods of one (1) calendar year length each; and
  - the  $n$ th period ( $i = n$ ) is the period starting on 01 January in the year in which the last day of the Adjusted Output Period falls and ending on the last day of the Adjusted Output Period;
- $M_{1,i}$  is the Estimated Facility Generation in period (i) had the Qualifying Change in Law not been implemented, occurred or become effective;
- $M_{2,i}$  is the Estimated Facility Generation in period (i) taking into account the Qualifying Change in Law having been implemented, having occurred or having become effective;
- $C_i$  are all QCiL Operating Costs incurred in period (i) (but only those QCiL Operating Costs referred to in Condition 33.7(B)), expressed in pounds in real terms as at the QCiL Compensation Date;
- $S_i$  are all QCiL Operating Savings and QCiL Capital Savings made or realised in period (i) (but only those QCiL Operating Savings referred to in Condition 33.7(B) and those QCiL Capital Savings referred to in Condition 33.16(B)), expressed in pounds in real terms as at the QCiL Compensation Date;
- $R_s$  is the Post-Tax Real Discount Rate;
- $ARP$  is the QCiL Adjusted Revenues Payment (lump sum), as calculated in accordance with Condition 33.19;
- $R_d$  is the Daily Discount Rate;
- $N$  is the duration, in days, of the Adjusted Output Period;
- $CPI_t$  denotes the CPI applicable during Billing Period (t); and
- $CPI_q$  denotes the CPI applicable at the QCiL Compensation Date.



**QCIL Construction Event Payment**

33.23 Any QCIL Construction Event Payment shall be effected as a lump sum payment or staged payments and shall be payable to the Generator by the CfD Counterparty.

33.24 For the purposes of Condition 33.23, the QCIL Construction Event Payment shall be an amount (expressed in pounds) calculated in accordance with:

- (A) Condition 33.25 if the QCIL Construction Event Payment is to be paid as a lump sum; or
- (B) Condition 33.26 if the QCIL Construction Event Payment is to be paid by means of staged payments.

33.25 If Condition 33.24(A) applies, the QCIL Construction Event Payment shall be calculated in accordance with the following formula:

$$\text{QCIL Construction Payment} = \sum_{i=1}^n \frac{C_i - S_i}{(1 + R_s)^{i-m}}$$

where:

$i$  is a whole number integer from one (1) to  $n$ ; such integers referring to distinct time periods as follows:

- the first (1<sup>st</sup>) period ( $i = 1$ ) covers the period from the date the first QCIL Construction Event Cost was incurred to 31 December in that year;
- the second (2<sup>nd</sup>) to the  $(n-1)$ th periods ( $2 \leq i < n$ ) are consecutive periods of one (1) calendar year length each; and
- the  $n$ th period ( $i = n$ ) is the period starting on 01 January in the year in which the final QCIL Construction Event Cost was incurred and ending on the last day of that year;

$C_i$  are all QCIL Construction Event Costs in period ( $i$ ), expressed in pounds in real terms as at the QCIL Compensation Date;

$S_i$  are all QCIL Construction Event Savings in period ( $i$ ), expressed in pounds in real terms as at the QCIL Compensation Date;

$R_s$  is the Post-Tax Real Discount Rate; and

$m$  is a whole number integer that defines the calendar year period within which the QCIL Compensation Date falls, defined as the number of years since the date the first cost was realised in relation to the QCIL Construction Event, rounded up to the nearest integer.

33.26 If Condition 33.24(B) applies:

- (A) the QCiL Construction Event Payment shall be effected on the basis that such QCiL Compensation shall be equivalent to the amount that the Generator would have received had the QCiL Construction Event Payment been effected as a lump sum payment in accordance with Condition 33.25; and
- (B) the CfD Counterparty may (after consultation with the Generator) determine the frequency of such payments provided that the final staged payment shall be made by the earlier of: (i) the date that is five (5) years from the QCiL Effective Date; and (ii) the Specified Expiry Date.

**QCIL Operations Cessation Event Payment**

33.27 Any QCiL Operations Cessation Event Payment shall be effected as a lump sum payment or staged payments and shall be payable to the Generator by the CfD Counterparty.

33.28 For the purposes of Condition 33.27, the QCiL Operations Event Cessation Payment shall be an amount (expressed in pounds) calculated in accordance with:

- (A) Condition 33.29 if the QCiL Operations Event Cessation Payment is to be paid as a lump sum; or
- (B) Condition 33.30 if the QCiL Operations Event Cessation Payment is to be paid by means of staged payments.

33.29 If Condition 33.28(A) applies, the QCiL Operations Event Cessation Payment shall be calculated in accordance with the following formula:

$$\text{QCIL Operations Cessation Payment} = SP \times \text{Effective Projected Generation} + \sum_{i=1}^n \frac{C_i - S_i}{(1 + R_S)^{i-1}}$$

where:

*SP* is the Strike Price applicable immediately prior to the QCiL Compensation Date;

*i* is a whole number integer from one (1) to *n*; such integers referring to distinct time periods as follows:

- the first (1<sup>st</sup>) period (*i* = 1) covers the period from the QCiL Compensation Date to 31 December in the year of the QCiL Compensation Date;
- the second (2<sup>nd</sup>) to the (*n*-1)th periods ( $2 \leq i < n$ ) are consecutive periods of one (1) calendar year length each; and
- the *n*th period (*i* = *n*) is the period starting on 01 January in the year in which the Specified Expiry Date falls and ending on the Specified Expiry

Date.

$C_i$  are all QCiL Operations Cessation Event Costs (where relevant, assessed by reference to the Estimated Facility Generation) in period (i), expressed in pounds in real terms as at the QCiL Compensation Date;

$S_i$  are all QCiL Operations Cessation Event Savings (where relevant, assessed by reference to the Estimated Facility Generation) in period (i), expressed in pounds in real terms as at the QCiL Compensation Date; and

$R_s$  is the Post-Tax Real Discount Rate.

33.30 If Condition 33.28(B) applies:

- (A) the QCiL Operations Cessation Event Payment shall be effected on the basis that such QCiL Compensation shall be equivalent to the amount that the Generator would have received had the QCiL Operations Cessation Event Payment been effected as a lump sum payment in accordance with Condition 33.29; and
- (B) the CfD Counterparty may (after consultation with the Generator) determine the frequency of such payments provided that the final staged payment shall be made by the earlier of: (i) the date that is five (5) years from the QCiL Effective Date; and (ii) the Specified Expiry Date.

***Additional calculations: Effective Projected Generation and Estimated Facility Generation***

33.31 If any formula in this Condition 33 (*Qualifying Change in Law: Compensation*) requires the Effective Projected Generation to be calculated, the “**Effective Projected Generation**” shall be an amount (expressed in MWh) calculated in accordance with the following formula:

$$\text{Effective Projected Generation} = \sum_{i=1}^n \frac{\text{Generation}_i}{(1 + R_s)^{i-1}}$$

where:

- $i$  is a whole number integer from one (1) to  $n$ ; such integers referring to distinct time periods as follows:
- the first (1<sup>st</sup>) period ( $i = 1$ ) covers the period from (if the QCiL Effective Date is on or after the Start Date) the QCiL Effective Date or (if the QCiL Effective Date is before the Start Date) the later of (i) the first (1<sup>st</sup>) day of the Target Commissioning Window and (ii) the date on which the Required Installed Capacity is expected to be commissioned, to 31 December in that year;
  - the second (2<sup>nd</sup>) to the (n-1)th periods ( $2 \leq i < n$ ) are consecutive

periods of one (1) calendar year length each; and

- the  $n$ th period ( $i = n$ ) is the period starting on 01 January in the year in which the Specified Expiry Date falls and ending on the Specified Expiry Date;

$Generation_i$  is the Estimated Facility Generation in period ( $i$ ); and

$R_s$  is the Post-Tax Real Discount Rate.

33.32 For the purposes of the formula in Condition 33.31, the “**Estimated Facility Generation**” shall be an amount (expressed in MWh) which is the product of:

- (A) (i) (where the Qualifying Change in Law occurs prior to the Start Date) the Installed Capacity Estimate; or (ii) (where the Qualifying Change in Law occurs on or after the Start Date or in the case of a Qualifying Shutdown Event), the lesser of: (a) the Maximum Contract Capacity; and (b) the Installed Capacity which has been Commissioned;
- (B) the number of hours in period  $i$ ;
- (C) the Assumed RQM (but only if the Renewable Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement);
- (D) the CHP Qualifying Multiplier (but only if the CHP Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement);
- (E) the Assumed Load Factor; and
- (F) (one (1) minus the Initial TLM(D) Charge).

**Additional calculations: Daily Discount Rate**

33.33 If any formula in this Condition 33 (*Qualifying Change in Law: Compensation*) requires a Daily Discount Rate to be calculated, such rate shall be calculated in accordance with the following formula:

$$\text{Daily Discount Rate} = (1 + R_s)^{\frac{1}{365}} - 1$$

where:

$R_s$  is the Post-Tax Real Discount Rate.

### 34. QUALIFYING CHANGE IN LAW: EFFECTIVE DATE AND PAYMENT

34.1 All QCiL Compensation in respect of a Notified Change in Law or a Qualifying Shutdown Event shall be calculated as at and be effective from:

- (A) (if the QCiL Compensation takes the form of a QCiL Opex Payment or a QCiL Capex Payment) the earlier of: (i) the QCiL Effective Date; and (ii) the date on which the Generator (acting in accordance with a Reasonable and Prudent Standard) first incurs QCiL Operating Costs or QCiL Capital Costs, or makes or realises QCiL Operating Savings or QCiL Capital Savings, in anticipation of such Notified Change in Law being implemented, occurring or becoming effective;
- (B) (if the QCiL Compensation takes the form of a QCiL Adjusted Revenues Payment) the first (1<sup>st</sup>) day of the relevant Adjusted Output Period;
- (C) (if the QCiL Compensation takes the form of a QCiL Construction Event Payment) the date of the QCiL Construction Event; or
- (D) (if the QCiL Compensation takes the form of a QCiL Operations Cessation Event Payment) the date of the QCiL Operations Cessation Event,

(the “**QCiL Compensation Date**”).

34.2 Subject to Condition 34.3:

- (A) any QCiL Compensation effected as a lump sum payment shall be paid by the CfD Counterparty or the Generator (as applicable) no later than twenty (20) Business Days after the later of:
  - (i) the QCiL Compensation Date; and
  - (ii) the date on which the amount of the QCiL Compensation is agreed or determined;
- (B) any QCiL Opex Payment effected as a Strike Price Adjustment shall be reflected in the calculation of the Difference, the Difference Amounts and the Aggregate Difference Amount in the Billing Statements for each Billing Period on and with effect from the QCiL Compensation Date; and
- (C) any QCiL Compensation effected as daily or staged payments shall commence no later than twenty (20) Business Days after the later of:
  - (i) the QCiL Compensation Date; and
  - (ii) the date on which the amount of the QCiL Compensation is agreed or determined,

and, in each case, the final payment shall be made by the earlier of: (i) the date that is five (5) years from the QCiL Effective Date; and (ii) the Specified Expiry

Date, in accordance with Condition 33.12(B), 33.20(B), 33.26(B) or 33.30(B) (as appropriate),

provided that, in each case, if the amount of any QCiL Compensation is agreed or determined after the QCiL Compensation Date, such QCiL Compensation shall be reflected as a Reconciliation Amount (pursuant to Condition 21.5(H)) in respect of the Billing Statements for each Billing Period on and with effect from the QCiL Compensation Date.

- 34.3 No QCiL Compensation shall be payable if and for so long as the CfD Counterparty withholds or suspends payment pursuant to Conditions 30.9 or 30.15.
- 34.4 All QCiL Compensation shall be made by direct bank transfer or equivalent transfer of immediately available funds into the account notified to the Generator pursuant to Condition 26.1(A) or the CfD Counterparty pursuant to Condition 26.1(B) (as relevant).
- 34.5 Any payment required to be made by the CfD Counterparty to the Generator pursuant to Condition 33 (*Qualifying Change in Law: Compensation*) shall be subject to the provisions of Condition 69.8.

### **35. QUALIFYING CHANGE IN LAW: TRUE-UP**

#### ***CfD Counterparty QCiL True-Up Notice***

- 35.1 If any QCiL Compensation has been paid or made (as appropriate) in respect of any Qualifying Change in Law, the CfD Counterparty may, subject to Condition 35.2, deliver to the Generator a notice (a “**CfD Counterparty QCiL True-Up Notice**”) requiring the Generator to confirm:
  - (A) the impact of the relevant Qualifying Change in Law having occurred, having being implemented or having become effective or, as the case may be, the Qualifying Shutdown Event having occurred (including all out-of-pocket costs (including QCiL Tax Liabilities) which have been incurred in respect of the Project by the Generator, all savings (including avoided out-of-pocket costs, reliefs from or reductions in a QCiL Tax Liability, insurance proceeds and other compensation) which have been made or received in respect of the Project by the Generator and revenue decreases or increases which were incurred, received or made by the Generator, and which arose directly from the relevant Qualifying Change in Law being implemented, occurring or becoming effective or, as the case may be, the Qualifying Shutdown Event having occurred, and the duration of any Adjusted Output Period affecting the Facility); and
  - (B) such other matters which were pertinent to the calculation of the QCiL Compensation (including the steps that the Generator has taken to comply with the QCiL Mitigation Obligation and the Reasonable and Prudent Standard),

(together, the “**QCiL True-Up Information**”). A CfD Counterparty QCiL True-Up Notice shall be substantially in the form set out in Part V of Annex 9 (*Pro forma notices*).

- 35.2 No CfD Counterparty QCiL True-Up Notice shall be given in respect of a Qualifying Change in Law or a Qualifying Shutdown Event, as the case may be, within one (1) calendar year of the relevant QCiL Compensation Date.

***QCiL True-Up Response Notice***

- 35.3 As soon as reasonably practicable and in any event within forty (40) Business Days following the receipt of a CfD Counterparty QCiL True-Up Notice, the Generator shall give to the CfD Counterparty a notice (a “**QCiL True-Up Response Notice**”). A QCiL True-Up Response Notice shall:

- (A) be substantially in the form set out in Part W of Annex 9 (*Pro forma notices*);
- (B) contain the QCiL True-Up Information; and
- (C) include confirmation that no amount has been recovered (or is entitled to be recovered) by the Generator pursuant to Conditions 37.6 and 37.7 or, if any amount has been so recovered, confirmation of such amount,

together with such Supporting Information, in reasonable detail, as the Generator considers to be relevant to and supportive of the information contained in the QCiL True-Up Response Notice.

- 35.4 A QCiL True-Up Response Notice shall be accompanied by a Directors' Certificate certifying that the information contained in, and enclosed with, the QCiL True-Up Response Notice is true, complete and accurate in all material respects and is not misleading, in each case by reference to the facts and circumstances then existing.

***Generator QCiL True-Up Notice***

- 35.5 If any QCiL Compensation has been paid or made (as appropriate) in respect of any Qualifying Change in Law, the Generator may, subject to Condition 35.8, deliver to the CfD Counterparty a notice (a “**Generator QCiL True-Up Notice**”).

- 35.6 A Generator QCiL True-Up Notice shall:

- (A) be substantially in the form set out in Part X of Annex 9 (*Pro forma notices*);
- (B) contain the QCiL True-Up Information; and
- (C) include confirmation that no amount has been recovered (or is entitled to be recovered) by the Generator pursuant to Conditions 37.6 and 37.7 or, if any amount has been so recovered, confirmation of such amount,

together with such Supporting Information, in reasonable detail, as the Generator considers to be relevant to and supportive of its conclusions in respect of this Condition 35.6.

- 35.7 A Generator QCiL True-Up Notice shall be accompanied by a Directors' Certificate certifying that the information contained in, and enclosed with, the Generator QCiL True-

Up Notice is true, complete and accurate in all material respects and is not misleading, in each case by reference to the facts and circumstances then existing.

- 35.8 No Generator QCiL True-Up Notice shall be given in respect of a Qualifying Change in Law or a Qualifying Shutdown Event, as the case may be, within one (1) calendar year of the relevant QCiL Compensation Date.
- 35.9 The CfD Counterparty shall be under no obligation to consider or take any action in response to a Generator QCiL True-Up Notice unless and until the Generator shall have provided the CfD Counterparty with all the QCiL True-Up Information, and the Directors' Certificate in respect of such Generator QCiL True-Up Notice.

***Agreement between the Parties in respect of a true-up***

- 35.10 Condition 35.11 shall apply in respect of any Qualifying Change in Law in relation to which QCiL Compensation has been paid:
- (A) in the case of the Generator giving a QCiL True-Up Response Notice (and the associated Directors' Certificate), as soon as reasonably practicable and in any event within twenty (20) Business Days of such notice; or
  - (B) in the case of the Generator giving a Generator QCiL True-Up Notice (and the associated Directors' Certificate) at such date as is determined by the CfD Counterparty in its sole and absolute discretion.
- 35.11 The Parties shall meet to discuss and, in good faith, seek to agree:
- (A) the QCiL True-Up Information;
  - (B) any such other matters which the Parties consider pertinent to the calculation of the QCiL True-Up Compensation;
  - (C) the QCiL True-Up Compensation that shall be payable by the CfD Counterparty or the Generator (as the case may be); and
  - (D) the manner in which such QCiL True-Up Compensation shall be paid by the CfD Counterparty or the Generator (as the case may be), provided that:
    - (a) where the QCiL True-Up Compensation relates to a QCiL Strike Price Adjustment, the QCiL True-Up Compensation shall be effected by way of a QCiL True-Up Strike Price Adjustment; and
    - (b) where the QCiL True-Up Compensation does not relate to a QCiL Strike Price Adjustment, the QCiL True-Up Compensation shall be paid in the same manner as the QCiL Compensation agreed in respect of that Qualifying Change in Law, unless the Parties expressly agree otherwise.
- 35.12 Any QCiL True-Up Compensation is to be calculated and paid in accordance with and subject to Conditions 33 (*Qualifying Change in Law: Compensation*), 34 (*Qualifying*



*Change in Law: Effective date and payment*) and 37 (*Changes in Law: General provisions*) (in each case with the necessary modifications).

### ***Disputes in respect of a true-up***

- 35.13 If the Generator and the CfD Counterparty are not able to agree any of the matters in Condition 35.11, either the Generator or the CfD Counterparty may refer the Dispute for resolution by an Arbitral Tribunal in accordance with the Arbitration Procedure or, if the Generator and the CfD Counterparty agree in writing that such Dispute is amenable to determination by an Expert, refer the Dispute to an Expert for determination in accordance with the Expert Determination Procedure.
- 35.14 Until the Dispute has been resolved by agreement between the Generator and the CfD Counterparty or determination in accordance with the Arbitration Procedure or the Expert Determination Procedure, as the case may be, there shall be no QCiL True-Up Compensation payable.

## **36. QUALIFYING SHUTDOWN EVENT: PROCEDURE**

- 36.1 If a Qualifying Shutdown Event has occurred, the Generator may give notice to that effect to the CfD Counterparty (a “**QSE Notice**”). A QSE Notice shall:
- (A) be substantially in the form set out in Part Y of Annex 9 (*Pro forma notices*);
  - (B) include reasonable details of the Qualifying Shutdown Event;
  - (C) specify the date on which the Qualifying Shutdown Event occurred;
  - (D) specify the Generator’s good faith estimate of the QCiL Operations Cessation Event Costs and the QCiL Operations Cessation Event Savings; and
  - (E) include such Supporting Information, in reasonable detail, which the Generator considers to be relevant and supportive of the foregoing.
- 36.2 Any QSE Notice shall be accompanied by a Directors’ Certificate certifying that the information contained in, and enclosed with, the QSE Notice is true, complete and accurate in all material respects and is not misleading, in each case by reference to the facts and circumstances then existing.

## **37. CHANGES IN LAW: GENERAL PROVISIONS**

### ***Interpretation***

- 37.1 Any QCiL Compensation in respect of any Notified Change in Law or Qualifying Shutdown Event to be calculated, agreed or determined and paid pursuant to this Part 8 (*Changes in Law*) shall be calculated on the basis that the Generator:
- (A) has complied, and will comply, with the QCiL Mitigation Obligation, irrespective of whether the Generator has in fact complied, or will comply, with such obligation; and

- (B) has complied, and will comply, with the Reasonable and Prudent Standard, irrespective of whether the Generator has in fact complied, or will comply, with such standard.

37.2 Any notification by the Generator to the CfD Counterparty of the mitigating steps that the Generator has taken, or proposes to take, in order to comply with the QCiL Mitigation Obligation, or the Reasonable and Prudent Standard, shall be of indicative value only and, as such, shall not be determinative of whether the Generator has complied, or will comply, with the QCiL Mitigation Obligation or the Reasonable and Prudent Standard.

***Mitigation and costs***

37.3 The Generator shall promptly take all reasonable steps to mitigate any loss or, as the case may be, maximise any benefit, in each case arising from a Qualifying Change in Law (including by recommencing generation as soon as reasonably practicable) or Qualifying Shutdown Event, as the case may be, provided that this obligation to mitigate shall not be construed as relieving the Generator from complying in full with the Qualifying Change in Law or Qualifying Shutdown Event.

37.4 The Generator shall give notice promptly to the CfD Counterparty of the mitigating steps that it has taken, is taking and proposes to take and shall promptly provide such Supporting Information regarding such mitigation as the CfD Counterparty may reasonably request.

37.5 The Generator shall, promptly on demand from time to time, indemnify the CfD Counterparty against any out-of-pocket costs properly incurred by the CfD Counterparty and which would not have been incurred but for a Generator QCiL Notice having been given. This Condition 37.5 shall not apply in respect of any such costs resulting from the CfD Counterparty having disputed that a Qualifying Change in Law or Qualifying Shutdown Event has occurred if a determination is made against the CfD Counterparty pursuant to the Dispute Resolution Procedure.

***No double recovery***

37.6 If the Generator is at any time entitled to recover from some other person any sum as a consequence of a Change in Law or Qualifying Shutdown Event (whether under a power purchase agreement, an electricity sale contract, insurance policy or otherwise), the Generator shall take all necessary steps to enforce such recovery. If the Generator shall recover any amount from such other person:

- (A) such amount shall be taken into account in the calculation of compensation pursuant to this Part 8 (*Changes in Law*);
- (B) no claim shall be made by the Generator pursuant to this Part 8 (*Changes in Law*) in respect of the amounts so recovered; and
- (C) if the Generator had previously received compensation in relation to such Change in Law or Qualifying Shutdown Event pursuant to the Investment

Contract, it shall pay to the CfD Counterparty an amount equal to the lesser of:  
(i) the amount so recovered; and (ii) the amount so previously received.

- 37.7 Condition 37.6 shall apply, *mutatis mutandis*, in circumstances in which the Generator is at any time entitled to recover from the CfD Counterparty any sum as a consequence of a Qualifying Change in Law or Qualifying Shutdown Event under any other FiT Contract for Difference to which it is a party.

### ***Excluded Change in Law***

- 37.8 There shall be no amendment to the Investment Contract, adjustment to the Strike Price or other compensation in respect of or on account of any Excluded Change in Law other than pursuant to the Change Control Procedure.

## **38. CHANGE IN APPLICABLE LAW: PROCEDURE**

### ***Requirement to undertake a Change in Applicable Law Review***

- 38.1 The CfD Counterparty shall conduct a Change in Applicable Law Review if:

- (A) it determines that:
    - (i) any Change in Applicable Law: (i) has been implemented, has occurred or has become effective; or (ii) is expected to be implemented, to occur or to become effective; and
    - (ii) as a result of such Change in Applicable Law being implemented, occurring or becoming effective one (1) or more of the Required CiL Amendment Objectives will cease to be met; or
  - (B) the Change in Applicable Law Request Criterion is met,
- (each, a “**Change in Applicable Law Review Trigger**”).

- 38.2 If the Generator considers that:

- (A) any Change in Applicable Law: (i) has been implemented, has occurred or has become effective; or (ii) is expected to be implemented, to occur or to become effective; and
- (B) as a result of such Change in Applicable Law being implemented, occurring or becoming effective one (1) or more of the Required CiL Amendment Objectives will cease to be met,

the Generator may give a notice to the CfD Counterparty requesting the CfD Counterparty to undertake a Change in Applicable Law Review (a “**Change in Applicable Law Request Notice**”). A Change in Applicable Law Request Notice:

- (i) shall be substantially in the form set out in Part Z of Annex 9 (*Pro forma notices*);

- (ii) shall specify why, and the date on which, the Generator considers that a Change in Applicable Law: (a) has been implemented, has occurred or has become effective; or (b) is expected to be implemented, occur or become effective;
- (iii) shall specify why the Generator considers that the Change in Applicable Law results or will result in one (1) or more of the Required CiL Amendment Objectives ceasing to be met; and
- (iv) may set out the Generator's opinion of the Required CiL Amendment(s),

together with such Supporting Information, in reasonable detail, which the Generator considers to be relevant to and supportive of the foregoing.

38.3 For the purposes of Condition 38.1(B), the **"Change in Applicable Law Request Criterion"** is that thirty per cent. (30%) or more of all CfD Generators as at the date of the Change in Applicable Law Request Notice, by volume or number, have given the CfD Counterparty a Change in Applicable Law Request Notice in any period of ten (10) consecutive Business Days. For the purposes of determining whether the Change in Applicable Law Request Criterion is met, the CfD Counterparty shall calculate:

- (A) the number of CfD Generators which have given a Change in Applicable Law Request Notice as a percentage of the total number of CfD Generators as at the date of the Change in Applicable Law Request Notice; and
- (B) the volume attributable to FiT Contracts for Difference to which CfD Generators which have given a Change in Applicable Law Request Notice are party as a percentage of the total volume attributable to FiT Contracts for Difference (and, for this purpose, "volume" shall be calculated by the CfD Counterparty using the Maximum Contract Capacity in each relevant FiT Contract for Difference).

#### ***Validity of Change in Applicable Law Request Notices***

38.4 The Generator acknowledges and agrees that all Change in Applicable Law Request Notices shall be invalid and of no effect if the Change in Applicable Law Request Criterion is not met.

38.5 The CfD Counterparty shall notify the Generator within ten (10) Business Days of the Change in Applicable Law Request Criterion having been met (a **"Change in Applicable Law Request Validity Notice"**). A Change in Applicable Law Request Validity Notice shall be substantially in the form set out in Part AA of Annex 9 (*Pro forma notices*).

#### ***Notification of Change in Applicable Law Review***

38.6 If the CfD Counterparty is required or elects to undertake a Change in Applicable Law Review pursuant to Condition 38.1, the CfD Counterparty shall give a notice to the Generator (a **"Change in Applicable Law Review Notice"**). A Change in Applicable Law Review Notice shall:

- (A) be substantially in the form set out in Part BB of Annex 9 (*Pro forma notices*);
- (B) specify the Change in Applicable Law Review Trigger which has occurred; and
- (C) specify a deadline by which the Generator must provide a Change in Applicable Law Review Response Notice, such deadline to be no less than ten (10) Business Days after the date on which the Change in Applicable Law Review Notice is received (or deemed to have been received) by the Generator (the **"Change in Applicable Law Review Response Deadline"**).

38.7 The Generator shall, as soon as reasonably practicable and not later than the Change in Applicable Law Review Response Deadline, give a notice to the CfD Counterparty (the **"Change in Applicable Law Review Response Notice"**). A Change in Applicable Law Review Response Notice:

- (A) shall:
  - (i) be substantially in the form set out in Part CC of Annex 9 (*Pro forma notices*); and
  - (ii) include all of the Supporting Information which the Generator wishes the CfD Counterparty to take account of in undertaking the Change in Applicable Law Review; and
- (B) may set out the Generator's opinion of the Required CiL Amendment(s).

38.8 The CfD Counterparty may disregard any Change in Applicable Law Review Response Notice received (or deemed to have been received) by the CfD Counterparty after the Change in Applicable Law Review Response Deadline.

#### ***Notification of outcome of Change in Applicable Law Review***

38.9 The CfD Counterparty shall give a notice to the Generator of the outcome of a Change in Applicable Law Review (a **"Change in Applicable Law Review Outcome Notice"**) as soon as reasonably practicable following the conclusion of a Change in Applicable Law Review. A Change in Applicable Law Review Outcome Notice shall:

- (A) be substantially in the form set out in Part DD of Annex 9 (*Pro forma notices*);
- (B) set out the outcome of the Change in Applicable Law Review and, if applicable, the Required CiL Amendments; and
- (C) specify the date from which such Required CiL Amendments are to take effect.

### **39. CHANGE IN APPLICABLE LAW: DISPUTE PROCESS**

#### ***Procedure for raising a Dispute***

39.1 The Generator may, within twenty (20) Business Days after receipt of a Change in Applicable Law Review Outcome Notice, give a notice to the CfD Counterparty that it

wishes to raise a Dispute in relation to the outcome of such Change in Applicable Law Review (a “**Change in Applicable Law Dispute**”, such notice a “**Change in Applicable Law Dispute Notice**” and any such Generator, a “**Change in Applicable Law Dispute Generator**”). Each Change in Applicable Law Dispute Notice shall:

- (A) be substantially in the form set out in Part EE of Annex 9 (*Pro forma notices*); and
- (B) comply with the requirements of a Dispute Notice as specified in Condition 55.3(B) to 55.3(G) (inclusive).

***Validity of Change in Applicable Law Dispute Notices***

39.2 The Generator acknowledges and agrees that all Change in Applicable Law Dispute Notices shall be invalid and of no effect if the Change in Applicable Law Dispute Threshold Criterion in respect of the relevant Change in Applicable Law Dispute is not met.

39.3 The CfD Counterparty shall notify the Generator within ten (10) Business Days of the Change in Applicable Law Dispute Threshold Criterion having been met (irrespective of whether or not the Generator is a Change in Applicable Law Dispute Generator) (a “**Change in Applicable Law Dispute Validity Notice**”). A Change in Applicable Law Dispute Validity Notice shall:

- (A) be substantially in the form set out in Part FF of Annex 9 (*Pro forma notices*);
- (B) include a proposal as to the identity, and terms of reference, of an Expert to determine the Change in Applicable Law Dispute (the “**Proposed Change in Applicable Law Expert**”) and details of the relevant expertise that the CfD Counterparty considers qualifies him to determine such Change in Applicable Law Dispute (being a person fulfilling the requirements of Condition 57.2 and having no conflict of interest which prevents him from determining the Change in Applicable Law Dispute);
- (C) comply with the requirements of an Expert Determination Notice as specified in Condition 57.1; and
- (D) comply with the requirements of a Consolidation Notice as specified in Condition 59.2.

***Permitted bases of Dispute: Change in Applicable Law Review***

39.4 The Generator acknowledges and agrees that it may only raise a Dispute with respect to the outcome of any Change in Applicable Law Review if there is a manifest error or fraud in any determination by the CfD Counterparty as to:

- (A) the outcome of the Change in Applicable Law Review; or
- (B) the Required CiL Amendments,

in each case contained within the Change in Applicable Law Review Outcome Notice, and any Change in Applicable Law Dispute Notice which is based upon grounds other than those specified in this Condition 39.4 shall be invalid and of no effect.

***Resolution of valid Change in Applicable Law Disputes***

39.5 If:

- (A) the Change in Applicable Law Dispute Threshold Criterion is met in respect of the relevant Change in Applicable Law Dispute; and
- (B) the relevant Change in Applicable Law Dispute complies with Condition 39.4,

then such Change in Applicable Law Dispute shall be finally resolved in accordance with Condition 39.6.

39.6 If Condition 39.5 applies to any Change in Applicable Law Dispute:

- (A) Condition 56 (*Resolution by Senior Representatives*) shall not apply to such Change in Applicable Law Dispute;
- (B) no agreement between the Generator and the CfD Counterparty to settle the relevant Change in Applicable Law Dispute shall be valid and binding unless such resolution is agreed with all CfD Generators;
- (C) the Arbitration Procedure shall not apply to such Change in Applicable Law Dispute;
- (D) the Generator agrees not to raise any objection to the consolidation of such Change in Applicable Law Dispute in accordance with Condition 59 (*Consolidation of Connected Disputes*);
- (E) the Expert Determination Procedure shall apply to such Change in Applicable Law Dispute on the basis that:
  - (i) (if the Expert Appointment Threshold is met) the CfD Counterparty shall be deemed to have satisfied the requirements of, and have given an Expert Determination Notice pursuant to, Condition 57.1 and the Parties will be deemed to have agreed to both the identity and the terms of reference of the Proposed Change in Applicable Law Expert;
  - (ii) (if the Expert Appointment Threshold is not met) the CfD Counterparty may within ten (10) Business Days, either:
    - (a) make an alternative proposal as to the identity and the terms of reference of an Expert to determine the Change in Applicable Law Dispute; or
    - (b) (1) request the LCIA to nominate an Expert for the purposes of determining the Change in Applicable Law Dispute in

accordance with Condition 57.4; and (2) following such nomination by the LCIA, the CfD Counterparty shall make an alternative proposal as to the terms of reference of such Expert to determine Change in Applicable Law Dispute,

in each case, Conditions 39.3(B) and 39.6(E)(i), and this Condition 39.6(E)(ii), shall apply to such proposed Expert as if he were a Proposed Change in Applicable Law Expert. The identity and the terms of reference of the Proposed Change in Applicable Law Expert shall be determined by the CfD Counterparty in its sole and absolute discretion (after having regard to any submissions presented by any CfD Generator) and any such determination shall be final and binding on the parties, provided that the terms of reference shall be sufficiently broad to enable the Expert to determine the Proposed Change in Applicable Law Dispute;

- (iii) if the CfD Counterparty and the CfD Generators fail to agree on the terms of appointment of the Expert within ten (10) Business Days of the parties agreeing the identity and terms of reference of an Expert in accordance with Condition 39.6(E)(i) or 39.6(E)(ii), as applicable, such matter shall be determined by the CfD Counterparty in its sole and absolute discretion (after having regard to any submissions presented by any CfD Generator) and any such determination shall be final and binding on the parties, provided that the terms of appointment shall comply with the requirements of Condition 39.6(E)(iv);
- (iv) Condition 57.5 shall be deemed to have been modified such that the Parties shall use reasonable endeavours to procure that the terms of appointment of the Expert prohibit the Expert from disclosing any Supporting Information disclosed or delivered by:
  - (a) the Generator to the Expert in consequence of, or in respect of, his appointment as the Expert to any other CfD Generator; or
  - (b) the CfD Counterparty to the Expert in consequence of, or in respect of, his appointment as the Expert to any CfD Generator other than the Generator;
- (v) the Expert will be instructed, in establishing or modifying the procedure for the determination of the Change in Applicable Law Dispute, to afford the Generator an opportunity to make submissions in respect of the Change in Applicable Law Dispute irrespective of whether or not the Generator is a Change in Applicable Law Dispute Generator;
- (vi) if the circumstances described in Condition 57.8 arise, Conditions 39.3(B), 39.6(E)(i) and 39.6(E)(ii) shall apply, mutatis mutandis, to the appointment of a replacement Expert;
- (vii) for the purposes of Condition 57.11, the Expert shall be: (i) required to include in his determination provision for the allocation of his fees and



the costs and expenses of the CfD Counterparty amongst each of the Change in Applicable Law Dispute Generators in such manner as he, in his absolute discretion, determines is fair and equitable if he makes a determination against the Change in Applicable Law Dispute Generators; and (ii) permitted to allocate his fees and the costs and expenses of the CfD Counterparty in such manner as he determines is fair and equitable if he makes a determination in favour of the Change in Applicable Law Dispute Generators; and

(viii) the Expert shall, notwithstanding any other provision of the Expert Determination Procedure, be instructed to reach a determination which is to be applied to all FiT Contracts for Difference; and

(F) the Generator acknowledges and agrees that the determination of the Expert in any Change in Applicable Law Dispute shall be applied to all FiT Contracts for Difference, irrespective of whether the Generator was a party to the Change in Applicable Law Dispute giving rise to that determination.

#### ***Expert Appointment Threshold***

39.7 For the purposes of Conditions 39.6(E)(i) and 39.6(E)(ii), the “**Expert Appointment Threshold**” is that thirty per cent. (30%) or more of CfD Generators, by volume or number, have consented, or not objected in writing, to both the identity and the terms of reference of the Proposed Change in Applicable Law Expert. For the purposes of determining whether the Expert Appointment Threshold is met, the CfD Counterparty shall calculate:

- (A) the number of CfD Generators which have consented or have been deemed to have consented to the Proposed Change in Applicable Law Expert as a percentage of the total number of CfD Generators; and
- (B) the volume attributable to FiT Contracts for Difference to which CfD Generators which have consented or have been deemed to have consented to the Proposed Change in Applicable Law Expert as a percentage of the total volume attributable to FiT Contracts for Difference (and, for this purpose, “volume” shall be calculated by the CfD Counterparty using the Maximum Contract Capacity in each FiT Contract for Difference).

#### ***Provisions applying pending resolution of a Change in Applicable Law Dispute***

39.8 If there is a valid Change in Applicable Law Dispute requiring resolution in accordance with the provisions of Conditions 39.5 and 39.6 then, pending resolution of such Change in Applicable Law Dispute, there shall be no amendments or supplements to the Investment Contract as a result of the Change in Applicable Law.

#### ***Change in Applicable Law Dispute Threshold Criterion***

39.9 For the purposes of this Condition 39 (*Change in Applicable Law: Dispute process*), the “**Change in Applicable Law Dispute Threshold Criterion**” is that thirty per cent. (30%) or more of CfD Generators, by volume or number, have given the CfD

Counterparty a Change in Applicable Law Dispute Notice in respect of any given Change in Applicable Law Dispute prior to the date specified in Condition 39.1. For the purposes of determining whether the Change in Applicable Law Dispute Threshold Criterion is met, the CfD Counterparty shall calculate:

- (A) the number of CfD Generators which have given a Change in Applicable Law Dispute Notice as a percentage of the total number of CfD Generators; and
- (B) the volume attributable to FiT Contracts for Difference to which CfD Generators which have given a Change in Applicable Law Dispute Notice are party as a percentage of the total volume attributable to FiT Contracts for Difference (and, for this purpose, "volume" shall be calculated by the CfD Counterparty using the Maximum Contract Capacity in each FiT Contract for Difference).

#### **40. CHANGE IN APPLICABLE LAW: GENERAL PROVISIONS**

40.1 The occurrence of a Change in Applicable Law shall not:

- (A) constitute Force Majeure or a Payment Disruption Event for the purposes of the Investment Contract; or
- (B) provide either Party the right to suspend or terminate its obligations under the Investment Contract.

40.2 Subject to the provisions of Conditions 38 (*Change in Applicable Law: Procedure*), 39 (*Change in Applicable Law: Dispute process*) and this Condition 40 (*Change in Applicable Law: General provisions*), the Parties shall be relieved from liability, and deemed not to be in breach of the Investment Contract (and any other IC Document) for any failure or delay in the performance under the Investment Contract (or any other IC Document) if and to the extent such failure or delay is directly attributable to the occurrence and continuation of a Change in Applicable Law, provided that nothing in Conditions 38 (*Change in Applicable Law: Procedure*), 39 (*Change in Applicable Law: Dispute process*) and this Condition 40 (*Change in Applicable Law: General provisions*) shall relieve either Party from any obligation to pay any sum due and payable to the other Party pursuant to the Investment Contract (or any other IC Document) (whether pursuant to an obligation to pay, indemnity or costs reimbursement provision or otherwise).

40.3 Any costs and expenses, or risks, arising from a Change in Applicable Law which are not of a type provided for in the Investment Contract are not intended by the provisions of Conditions 38 (*Change in Applicable Law: Procedure*), 39 (*Change in Applicable Law: Dispute process*) and this Condition 40 (*Change in Applicable Law: General provisions*) to be allocated to one (1) Party; and any such costs and expenses, or risks, shall be borne by the affected Party.

**Part 9**  
**Generation Tax**

**41. GENERATION TAX: PROCEDURE**

***Generator GT Notice***

- 41.1 If the Generator considers that a Generation Tax Change in Law has been implemented, occurred or become effective and will or, as the case may be, is likely to give rise to a Generation Tax Liability, it may give a notice to the CfD Counterparty (a “**Generator GT Notice**”). A Generator GT Notice shall:
- (A) be substantially in the form set out in Part GG of Annex 9 (*Pro forma notices*);
  - (B) be prepared at the cost and expense of the Generator;
  - (C) include reasonable details of the relevant Generation Tax Change in Law;
  - (D) specify the applicable Generation Tax Effective Date;
  - (E) specify why the Generator considers that the relevant Generation Tax Change in Law will or is likely to give rise to a Generation Tax Liability and the Generator’s actual or good faith estimate of the Generation Tax Liability; and
  - (F) include such Supporting Information, in reasonable detail, which the Generator considers to be relevant and supportive of the foregoing.
- 41.2 Any Generator GT Notice shall be accompanied by a Directors’ Certificate certifying that the information contained in, and enclosed with, the Generator GT Notice is true, complete and accurate in all material respects and is not misleading, in each case by reference to the facts and circumstances then existing.
- 41.3 The CfD Counterparty shall be under no obligation to consider or take any action in response to a Generator GT Notice unless and until the Generator shall have provided the CfD Counterparty with all of the Supporting Information, and the Directors’ Certificate, in respect of such Generator GT Notice.

***Agreement between the Parties as to Generation Tax Preliminary Matters***

- 41.4 As soon as reasonably practicable, and in any event within fifteen (15) Business Days, of the Generator giving the CfD Counterparty a Generator GT Notice (and the associated Directors’ Certificate), the Parties shall meet to discuss and, in good faith, seek to agree the Generation Tax Preliminary Matters.

***Disputes in relation to Generation Tax Preliminary Matters***

- 41.5 If the Generator and the CfD Counterparty are not able to agree the Generation Tax Preliminary Matters, either the Generator or the CfD Counterparty may refer the Dispute

for resolution by an Arbitral Tribunal in accordance with the Arbitration Procedure or, if the Generator and the CfD Counterparty agree in writing that such Dispute is amenable to determination by an Expert, refer the Dispute to an Expert for determination in accordance with the Expert Determination Procedure.

- 41.6 Until the Generator and the CfD Counterparty agree the Generation Tax Preliminary Matters or the Dispute is determined in accordance with the Arbitration Procedure or the Expert Determination Procedure, as the case may be, there shall be no appointment of any Energy Consultant.

#### ***CfD Counterparty GT Notice***

- 41.7 If the CfD Counterparty considers that a Generation Tax Change in Law has been implemented, occurred or become effective, it may give a notice to the Generator (a “**CfD Counterparty GT Notice**”). A CfD Counterparty GT Notice shall:

- (A) be substantially in the form set out in Part HH of Annex 9 (*Pro forma notices*);
- (B) include reasonable details of the relevant Generation Tax Change in Law; and
- (C) specify the applicable Generation Tax Effective Date.

#### ***Appointment of Energy Consultant***

- 41.8 If:

- (A) the CfD Counterparty gives a CfD Counterparty GT Notice to the Generator;
- (B) the CfD Counterparty and the Generator agree the Generation Tax Preliminary Matters; or
- (C) any Dispute with respect to the Generation Tax Preliminary Matters is resolved or determined as provided in Condition 41.5 and, further to such resolution or determination, it is resolved or determined that a Generation Tax Change in Law has been implemented, occurred or become effective and that the Generation Tax Effective Date has occurred or, as the case may be, will occur (the “**GT Dispute Determination**”),

the CfD Counterparty shall:

- (i) in the case of (A) above, no later than ninety (90) days after the later of: (a) the date on which the CfD Counterparty gives the relevant CfD Counterparty GT Notice to the Generator, and (b) the relevant Generation Tax Effective Date; and
- (ii) in the case of (B) or (C) above, no later than ninety (90) days after the later of: (a) the date on which the CfD Counterparty and the Generator agree the Generation Tax Preliminary Matters or, as the case may be, the GT Dispute Determination is made, and (b) the relevant Generation Tax Effective Date,

in each case, at its own cost and expense, appoint an Energy Consultant and instruct the Energy Consultant in accordance with this Condition 41.8 to prepare the Generation Tax Reports, provided that the CfD Counterparty shall not be required to appoint or instruct an Energy Consultant under this Condition 41.8 if the CfD Counterparty has already appointed and instructed (or proposes shortly to, and does in fact, appoint and instruct) an Energy Consultant to prepare generation tax reports in respect of the relevant Generation Tax Change in Law pursuant to the terms of another FiT Contract for Difference, and provided further that in relation to any particular Generation Technology the CfD Counterparty shall not be required to appoint or instruct an Energy Consultant under this Condition 41.8 or pursuant to the terms of another FiT Contract for Difference in the circumstances set out in Condition 43.3.

41.9 The Energy Consultant shall be instructed to determine:

- (A) in respect of a Preliminary Generation Tax Report:
  - (i) the change(s) or estimated change(s) (if any) to each FiT Market Reference Price, expressed in £/MWh or in or by such other manner, method or formulation as the Energy Consultant shall see fit, for each relevant period by reason and to the extent of electricity generators who are not party to FiT Contracts for Difference passing through all or some of the Generation Tax Liability to the wholesale price for electricity that is referable to the FiT Market Reference Prices;
  - (ii) the consequential change(s) (if any) for each such period that will need to be made to the Strike Prices used in FiT Contracts for Difference for each particular Generation Technology and/or electricity generation project, as the Energy Consultant considers appropriate, to reflect the change(s) to each FiT Market Reference Price referred to in Condition 41.9(A)(i); and
  - (iii) if applicable, the date with effect from which each such consequential change is to be made, which may be on, before or after the Generation Tax Effective Date; and
- (B) in respect of a Final Generation Tax Report, the change(s) or estimated change(s) (if any) to any of the determinations made by the Energy Consultant in the relevant Preliminary Generation Tax Report.

41.10 The Energy Consultant shall be instructed not to disclose commercially confidential information to market participants.

41.11 For the purposes of making its determination under Condition 41.9, the Energy Consultant shall take into account the following:

- (A) the FiT Market Reference Prices before and after the Generation Tax Change in Law (including such forward pricing of the relevant FiT Market Reference Prices as the Energy Consultant shall consider relevant and appropriate);

- (B) any such changes in the FiT Market Reference Prices that are due to any increase or decrease in the operating costs, expenses or revenues of electricity generators selling into the markets from which the FiT Market Reference Prices are derived which has been passed into those prices but which is not referable to the Generation Tax Change in Law, including:
  - (i) the cost of fuel and other consumables;
  - (ii) the carbon price floor on non-oil fossil fuels introduced by amendment of Schedule 6 to the Finance Act 2000 by the Finance Act 2013 (or any successor to such carbon price floor);
  - (iii) any other Tax; and
  - (iv) labour costs, insurance costs, business rates, transmission and balancing services charges, exchange rate changes, costs of capital and inflation;
- (C) any change in the dispatch regime of electric generating facilities before and after the Generation Tax Change in Law;
- (D) any price controls, revenue restrictions, constraints or other limitations imposed by Law or a Competent Authority on electricity generators intended to prevent or limit the pass through to the market price for electricity of the cost to generators of any Generation Tax Change in Law; and
- (E) such other fact based evidence as the Energy Consultant in its professional judgement, opinion and experience shall determine to be relevant,

and otherwise use its professional judgment, discretion and experience in making its determination under Condition 41.9.

41.12 For the purposes of making a determination under Condition 41.9, the Energy Consultant shall be entitled to:

- (A) request the Parties to provide such Supporting Information in relation to the relevant Generation Tax Report (a “**Generation Tax Information Request**”) as the Energy Consultant reasonably requires, and, if the Energy Consultant delivers a Generation Tax Information Request to one (1) or more Parties, the Parties shall, within ten (10) Business Days, or such longer period as is specified by the Energy Consultant, after receipt of the request, prepare and deliver such Supporting Information to the Energy Consultant; and
- (B) take into account:
  - (i) any Supporting Information provided by one (1) or more Parties in accordance with Condition 41.12(A); and

- (ii) any financial modelling, data or other submissions provided by any interested party (including any Government Entity, UK Competent Authority, the CfD Settlement Services Provider or the Parties),

and the Parties consent to copies of any Generator GT Notice or CfD Counterparty GT Notice or any Arbitral Tribunal or Expert determination referred to in Condition 41.5 being made available to the Energy Consultant.

41.13 The Energy Consultant shall be entitled to seek the views or procure the services of any third party expert or market participant it determines necessary or desirable in order to establish any inputs relevant to its determination under Condition 41.9.

41.14 The determination of the Energy Consultant as to the matters set out in Condition 41.9 shall be final and binding on the Parties in the absence of manifest error or fraud.

### ***Generation Tax Reports***

41.15 The terms of appointment of the Energy Consultant shall require it to produce:

- (A) a Preliminary Generation Tax Report as soon as reasonably practicable and in any event within one hundred and eighty (180) days after the date of instruction of the Energy Consultant by the CfD Counterparty; and
- (B) a Final Generation Tax Report as soon as reasonably practicable and in any event within three hundred and sixty-five (365) days after the date on which the final Preliminary Generation Tax Report is delivered to the CfD Counterparty.

41.16 Each Generation Tax Report shall be a document comprising at least:

- (A) a summary of the report's contents;
- (B) the following statements:
  - (i) confirmation that the Energy Consultant is not an affiliate of either Party or any other CfD Generator;
  - (ii) confirmation that the Energy Consultant has acted in the capacity of an independent professional in preparing the Generation Tax Report; and
  - (iii) any reasons that the Energy Consultant wishes to give for considering that it is independent of both Parties and any other CfD Generator;
- (C) the determination of the Energy Consultant:
  - (i) in relation to the Preliminary Generation Tax Report, as to those matters set out in Condition 41.9(A); and
  - (ii) in relation to the Final Generation Tax Report, as to those matters set out in Condition 41.9(B);

- (D) a section setting out:
  - (i) in relation to the Preliminary Generation Tax Report, any assumptions made by the Energy Consultant in making its determination in respect of that report which the Energy Consultant intends to revisit in the Final Generation Tax Report; and
  - (ii) in relation to the Final Generation Tax Report, any revisions made by the Energy Consultant to the assumptions (if any) referred to in Condition 41.16(D)(i);
- (E) a section setting out the professional rules or standards which apply to the Energy Consultant (or to the key personnel who have prepared the Generation Tax Report);
- (F) a section setting out the curriculum vitae of the key personnel who have prepared the Generation Tax Report and/or any other details of the Energy Consultant's qualifications and experience which it wishes to provide; and
- (G) a statement of the limits of liability of the Energy Consultant with respect to the Generation Tax Report.

41.17 The Energy Consultant shall be required to deliver each Generation Tax Report to the CfD Counterparty and consent to them being disclosed to all CfD Generators. The CfD Counterparty shall send the Generator a copy of each Final Generation Tax Report (redacted as necessary to protect Information which, in the opinion of the CfD Counterparty (acting reasonably), is commercially confidential to the CfD Counterparty or a CfD Generator) as soon as reasonably practicable after receipt.

## **42. GENERATION TAX: COMPENSATION**

### ***Strike Price Adjustment***

- 42.1 Promptly following receipt by the CfD Counterparty of the relevant Generation Tax Report (which shall include any similar report of an Energy Consultant prepared under any other FIT Contract for Difference), there shall be a consequential Strike Price Adjustment (a "**GT Strike Price Adjustment**") with effect from the date(s) and for the duration specified in such Generation Tax Report in accordance with the principles set out in Conditions 42.3 to 42.7 (inclusive) and after making allowance for any compensation already paid as a result of any delay in making such adjustment.
- 42.2 Any payment resulting from a GT Strike Price Adjustment shall be effected, at the election of the CfD Counterparty (after consultation with the Generator), as either a lump sum payment on a date agreed by the Parties or a series of payments during the remaining Term, instead of by way of a Strike Price Adjustment.

### ***Compensation on account of Generation Tax Liability***

- 42.3 The Generator's entitlement to compensation on account of Generation Tax Liability in respect of any period shall be subject to the Generator having given the CfD



Counterparty a notice confirming that in respect of the relevant period it has incurred and/or paid a Generation Tax Liability as a result of the relevant Generation Tax Change in Law and stating the actual amount of such Generation Tax Liability (a “**Generator GT Claim Notice**”).

42.4 The Generator shall give the CfD Counterparty a Generator GT Claim Notice:

- (A) where a Generation Tax first comes into effect, no earlier than twelve (12) months and no later than twenty-four (24) months after the Generation Tax Effective Date; and
- (B) thereafter, no less frequently than once in each subsequent period of twelve (12) months,

and, if the Generator does not deliver a Generator GT Claim Notice to the CfD Counterparty in respect of any twelve (12) month period by or within the time prescribed therefor, the Generator shall not be entitled to compensation in respect of that period. The Generator shall not be regarded as having delivered a Generator GT Claim Notice to the CfD Counterparty in respect of any twelve (12) month period unless and until the Generator shall have provided the CfD Counterparty with all of the Supporting Information, and the Directors’ Certificate, in respect of such Generator GT Claim Notice, as specified below.

42.5 Each Generator GT Claim Notice shall:

- (A) be substantially in the form set out in Part II of Annex 9 (*Pro forma notices*);
- (B) be prepared at the cost and expense of the Generator;
- (C) set out:
  - (i) the Generation Tax Liability the Generator has incurred and/or paid (if any), and the computation thereof, in respect of the relevant period;
  - (ii) the Generation Tax Liability of the Generator in respect of the relevant period that has otherwise been made good without cost to the Generator (if any); and
  - (iii) the Metered Output in respect of each Settlement Unit in respect of the relevant period,

together with such Supporting Information, in reasonable detail, as the Generator considers to be relevant to and supportive of the above (including any tax returns or amended tax returns submitted to, and any material correspondence in relation thereto with, HM Revenue & Customs, redacted as necessary to protect Information which, in the opinion of the Generator (acting reasonably), is commercially confidential to the Generator and which does not relate to the Generation Tax Liability of the Generator in respect of the relevant period); and

- (D) include Supporting Information evidencing, in reasonable detail, the steps that the Generator has taken and/or proposes to take to comply with the Generation Tax Mitigation Obligation and the Reasonable and Prudent Standard.
- 42.6 Any Generator GT Claim Notice shall be accompanied by a Directors' Certificate certifying that the information contained in, and enclosed with, the Generator GT Claim Notice is true, complete and accurate in all material respects and is not misleading, in each case by reference to the facts and circumstances then existing.
- 42.7 The maximum amount of compensation payable to the Generator on account of Generation Tax Liability in respect of any period shall be the lesser of:
- (A) the amount that is the product of the Metered Output in respect of each Settlement Unit in the relevant period and the amount of the GT Strike Price Adjustment for such period; and
  - (B) the Generation Tax Liability of the Generator in respect of the relevant period, as reduced by an amount equal to:
    - (i) the Generation Tax Liability in respect of such period that has otherwise been made good without cost to the Generator; and
    - (ii) the Generation Tax Liability in respect of such period that would not have arisen or would have been reduced or eliminated but for a failure by the Generator to comply with any of its obligations under the Investment Contract or any other IC Document (including under Condition 43.1).

### **43. GENERATION TAX: GENERAL PROVISIONS**

#### ***Mitigation***

- 43.1 The Generator shall promptly take all reasonable steps to mitigate any Generation Tax Liability.
- 43.2 The Generator shall give notice promptly to the CfD Counterparty of the mitigating steps that it has taken, is taking and proposes to take and shall promptly provide such Supporting Information regarding such mitigation as the CfD Counterparty may reasonably request.

#### ***Reversal of Strike Price Adjustment***

- 43.3 If the Strike Price has been adjusted in accordance with Condition 42.1 and thereafter the Generation Tax is terminated, repealed or withdrawn in its entirety in relation to some or all Generation Technologies, then the Strike Price applicable to those Generation Technologies will automatically be adjusted to the amount that it would have been but for any earlier adjustments with respect thereto in accordance with Condition 42.1, provided that if the Generation Tax is repealed with retrospective effective in relation to some or all Generation Technologies:

- (A) the Strike Price applicable to those Generation Technologies will be automatically adjusted to take account of any amount of compensation paid to the Generators in respect of those Generation Technologies and which would not have been paid but for the provisions of this Part 9 (*Generation Tax*); and
- (B) if compensation under this Part 9 (*Generation Tax*) had been paid to the Generators in respect of those Generation Technologies by way of a lump sum payment and/or a series of payments instead of by way of a Strike Price Adjustment, those Generators shall be automatically required to repay such amounts to the CfD Counterparty.

43.4 The adjustment in Condition 43.3 will occur without the need for a Generator GT Notice, a CfD Counterparty GT Notice or the appointment of an Energy Consultant.

***Interaction with Change in Law***

- 43.5 This Part 9 (*Generation Tax*) will apply to the exclusion of the Qualifying Change in Law provisions in Part 8 (*Changes in Law*) in respect of any matter that concerns a Generation Tax Change in Law or compensation payable by or to the CfD Counterparty in respect of any such Generation Tax Change in Law.
- 43.6 If any matter would fall to be covered by this Part 9 (*Generation Tax*) but for an exclusion, threshold, cap or other limitation set out or referred to in this Part 9 (*Generation Tax*) (including in any definitions contained in Part 1 (*Introduction*) which are used in this Part 9 (*Generation Tax*)) and it is also a Qualifying Change in Law, such matter shall not fall within the Qualifying Change in Law provisions in Part 8 (*Changes in Law*) due to the application of such exclusion, threshold, cap or other limitation.

**Part 10**  
**Balancing System (BSUoS/RCRC) and TLM(D)**

**44. BALANCING SYSTEM CHARGE**

***Initial Balancing System Charge***

- 44.1 The Initial Strike Price contains an assumed level of BSUoS Charges and RCRC Credits. The Initial Balancing System Charge is set out in the IC Agreement.

***Balancing System Charge Reports***

- 44.2 Once each calendar year (a “**Balancing System Charge Report Year**”), the CfD Counterparty shall provide the Generator with a written report (a “**Balancing System Charge Report**”). Each Balancing System Charge Report shall:

- (A) be substantially in the form set out in Part JJ of Annex 9 (*Pro forma notices*);
- (B) be prepared at the cost and expense of the CfD Counterparty;
- (C) be prepared in the Strike Price Adjustment Calculation Period in the relevant Balancing System Charge Report Year;
- (D) take no account of any inaccuracy in any previous Balancing System Charge Report;
- (E) set out, in respect of the period from 01 February in the calendar year immediately preceding the relevant Balancing System Charge Report Year to 31 January in such Balancing System Charge Report Year (the “**Balancing System Charge Review Period**”), the Annual Balancing System Charges which were incurred by electricity generators in Great Britain in that period, where such charges shall be sourced from relevant data provided by the GB System Operator (in the case of BSUoS Charges) or a BSC Company (in the case of RCRC Credits) (the “**Actual Balancing System Charge**”);
- (F) set out the Initial Balancing System Charge indexed in accordance with the following formula (the “**Indexed Initial Balancing System Charge**”):

$$IBC = \Pi_t \times I$$

where:

$IBC$  is the Indexed Initial Balancing System Charge;

$\Pi_t$  is the applicable Inflation Factor, but for this purpose references to:

- (a) Base Year CPI ( $CPI_{base}$ ) in the definition of Inflation Factor shall be to the value of the CPI for the penultimate month of the Initial Balancing System Charge Window; and
- (b)  $CPI_t$  in the definition of Inflation Factor shall be to the CPI for January in the Balancing System Charge Report Year save where the CPI for January is not published by the first (1<sup>st</sup>) day of the Summer Season in such Balancing System Charge Report Year in which case  $CPI_t$  shall be the Reference CPI; and

$I$  is the Initial Balancing System Charge;

(G) set out the difference (expressed in £/MWh) between:

- (i) the Actual Balancing System Charge; and
- (ii) the Indexed Initial Balancing System Charge,

(the “**Balancing System Charge Difference**”), where such difference shall be calculated in accordance with the following formula:

$$BSCD = ABC - IBC$$

where:

$BSCD$  is the Balancing System Charge Difference;

$ABC$  is the Actual Balancing System Charge; and

$IBC$  is the Indexed Initial Balancing System Charge;

(H) set out the Strike Price Adjustment that will apply with effect from the relevant Indexation Anniversary to give effect to the Balancing System Charge Difference calculated in the relevant Strike Price Adjustment Calculation Period, where such Strike Price Adjustment shall be calculated in accordance with the following formula:

$$ADJ_i = BSCD_i - BSCD_{i-1}$$

where:  $BSCD_{i-1} = 0$  if  $i = 1$ , and

where:

$ADJ_i$  is the Balancing System Charge Strike Price Adjustment;

$BSCD_i$  is the Balancing System Charge Difference as calculated in that year’s Balancing System Charge Report; and

*i* is a whole number integer, which refers to the year of the Balancing System Charge Report where:

- *i* = 1 is the first Balancing System Charge Report Year; and
- *i* > 1 is any subsequent year in which a Balancing System Charge Report is prepared.

### ***Balancing System Charge Strike Price Adjustment***

44.3 The Strike Price Adjustment, as set out in the relevant Balancing System Charge Report, shall apply on and from the relevant Indexation Anniversary (the “**Balancing System Charge Strike Price Adjustment**”).

## **45. TLM(D) CHARGES**

### ***Initial TLM(D) Charge***

45.1 The Initial Strike Price contains an assumed profile of the TLM(D) Charges. The Initial TLM(D) Charge for each calendar year from (and including) the Agreement Date to the end of the Term is set out in the IC Agreement (as a decimal).

### ***TLM(D) Charges Reports***

45.2 Once each calendar year (a “**TLM(D) Charges Report Year**”), the CfD Counterparty shall provide the Generator with a written report (a “**TLM(D) Charges Report**”). Each TLM(D) Charges Report shall:

- (A) be substantially in the form set out in Part KK of Annex 9 (*Pro forma notices*);
- (B) be prepared at the cost and expense of the CfD Counterparty;
- (C) be prepared in the Strike Price Adjustment Calculation Period in the relevant TLM(D) Charges Report Year;
- (D) take no account of any inaccuracy in any previous TLM(D) Charges Report;
- (E) set out, in respect of the period from 01 January in the calendar year immediately preceding the relevant TLM(D) Charges Report Year to 31 December in such calendar year (the “**TLM(D) Charges Review Period**”), the Annual TLM(D) Charges which were incurred by electricity generators in Great Britain in that period, where such charges shall be sourced from publicly available data published by a BSC Company (the “**Actual TLM(D) Charge**”);
- (F) set out the Initial TLM(D) Charge;
- (G) set out the difference (expressed as a decimal) between:
  - (i) the Actual TLM(D) Charge; and

(ii) the Initial TLM(D) Charge,

such difference being converted into an amount expressed in £/MWh (the “**TLM(D) Charges Difference**”) calculated in accordance with the following formula:

$$TCD = (SP_{IB} - IBC) \times \left( \frac{TLM_A - TLM_I}{1 - TLM_A} \right)$$

where:

*TCD* is the TLM(D) Charges Difference;

*SP<sub>IB</sub>* is the Indexed Base Year Strike Price, but for this purpose, references to  $CPI_t$  in the definition of Inflation Factor shall be to the CPI for January in the TLM(D) Charges Report Year, save where the CPI for January is not published by the first (1<sup>st</sup>) day of the Summer Season in such TLM(D) Charges Report Year, in which case  $CPI_t$  shall be the Reference CPI;

*IBC* is the Indexed Initial Balancing System Charge, but for this purpose, references to  $CPI_t$  in the definition of Inflation Factor shall be to the CPI for January in the TLM(D) Charges Report Year, save where the CPI for January is not published by the first (1<sup>st</sup>) day of the Summer Season in such TLM(D) Charges Report Year, in which case  $CPI_t$  shall be the Reference CPI;

*TLM<sub>A</sub>* is the Actual TLM(D) Charge (expressed as a decimal) for the TLM(D) Charges Review Period; and

*TLM<sub>I</sub>* is the Initial TLM(D) Charge (expressed as a decimal); and

- (H) set out the Strike Price Adjustment that will apply with effect from the relevant Indexation Anniversary to give effect to the TLM(D) Charges Difference calculated in the relevant Strike Price Adjustment Calculation Period, where such Strike Price Adjustment shall be an amount equal to the aggregate of the TLM(D) Charges Difference calculated in respect of that Indexation Anniversary and any TLM(D) Charges Difference added to or deducted from the then prevailing Strike Price in respect of any previous Indexation Anniversary.

#### ***TLM(D) Strike Price Adjustment***

- 45.3 The Strike Price Adjustment, as set out in the relevant TLM(D) Charges Report, shall apply on and from the relevant Indexation Anniversary (the “**TLM(D) Strike Price Adjustment**”).

**Part 11**  
**Curtailment**

**46. QUALIFYING CPC EVENT: PROCEDURE**

***Preliminary Annual QCPC Report***

- 46.1 If, in respect of any Contract Year, the Generator reasonably considers that a Qualifying CPC Event has occurred, it may (and shall, if so requested in writing by the CfD Counterparty) provide the CfD Counterparty with a written report in respect of the relevant Contract Year no later than the date falling three (3) months after the end of such Contract Year (each, a “**Preliminary Annual QCPC Report**”).
- 46.2 A Preliminary Annual QCPC Report shall:
- (A) be substantially in the form set out in Part LL of Annex 9 (*Pro forma notices*);
  - (B) be prepared at the cost and expense of the Generator;
  - (C) be prepared using the most up-to-date data available to the Generator at the time of its preparation;
  - (D) set out in respect of the relevant Contract Year, and each and every Qualifying CPC Event in such Contract Year, in reasonable detail:
    - (i) the circumstances which have given rise to the relevant Qualifying CPC Event and which limbs of the definition of Qualifying Curtailment or Qualifying Partial Curtailment (as relevant) have been satisfied;
    - (ii) when the Generator considers that the relevant Qualifying CPC Event occurred;
    - (iii) why the Generator considers that the relevant Qualifying CPC Event occurred; and
    - (iv) the output in MWh from the Facility which has been foregone by reason of such Qualifying CPC Event;
  - (E) set out in respect of the relevant Contract Year, and each and every Qualifying Curtailment in such Contract Year, a detailed cost analysis in respect of the relevant Qualifying Curtailment including:
    - (i) the amount of Defined Curtailment Compensation;
    - (ii) the amount of Curtailment Compensation;
    - (iii) the amount of Curtailment Compensation Shortfall or Curtailment Compensation Excess, as the case may be; and



(iv) if in respect of such Contract Year and all such Qualifying Curtailments in such Contract Year:

- (a) the aggregate Curtailment Compensation Shortfall exceeds the sum of the aggregate Curtailment Compensation Excess and any compensation received or receivable by the Generator or its nominee as referred to in paragraph (G), the amount of the difference; or
- (b) the aggregate Curtailment Compensation Excess exceeds the aggregate Curtailment Compensation Shortfall, the amount of the difference,

but in each case without prejudice to the manner in which the payment is to be made as determined in accordance with Conditions 47.1 to 47.5;

(F) set out in respect of the relevant Contract Year, and each and every Qualifying Partial Curtailment in such Contract Year, a detailed cost analysis in respect of the relevant Qualifying Partial Curtailment including:

- (i) the amount of the Defined Partial Curtailment Compensation;
- (ii) the amount of Partial Curtailment Compensation;
- (iii) the amount of the Partial Curtailment Compensation Shortfall or the Partial Curtailment Compensation Excess, as the case may be; and
- (iv) if in respect of such Contract Year and all such Qualifying Partial Curtailments in such Contract Year:
  - (a) the aggregate Partial Curtailment Compensation Shortfall exceeds the sum of the aggregate Partial Curtailment Compensation Excess and any compensation received or receivable by the Generator or its nominee as referred to in paragraph (G), the amount of the difference; or
  - (b) the aggregate Partial Curtailment Compensation Excess exceeds the aggregate Partial Curtailment Compensation Shortfall, the amount of the difference,

but in each case without prejudice to the manner in which the payment is to be made as determined in accordance with Conditions 47.1 to 47.5;

(G) set out in reasonable detail any other compensation which the Generator (or its nominee) has received or to which it is entitled pursuant to the Investment Contract or otherwise in respect of the same events or circumstances so that any risk of double compensation is removed when determining the amount payable by the CfD Counterparty under this Part 11 (*Curtailment*); and

(H) include such Supporting Information, in reasonable detail, as the Generator considers to be relevant to and supportive of the foregoing.

- 46.3 Any Preliminary Annual QCPC Report shall be accompanied by a Directors' Certificate certifying that the information contained in, and enclosed with, the Preliminary Annual QCPC Report is true, complete and accurate in all material respects and is not misleading, in each case by reference to the facts and circumstances then existing.
- 46.4 The CfD Counterparty shall be under no obligation to consider or take any action in response to a Preliminary Annual QCPC Report unless and until the Generator shall have provided the CfD Counterparty with all of the Supporting Information, and the Directors' Certificate, in respect of such Preliminary Annual QCPC Report.

***Agreement between the Parties as to Preliminary Annual QCPC Report***

- 46.5 As soon as reasonably practicable, and in any event within fifteen (15) Business Days, of the Generator providing the CfD Counterparty with a Preliminary Annual QCPC Report (and the associated Directors' Certificate), the Parties shall meet to discuss and, in good faith, seek to agree the Preliminary Annual QCPC Report.
- 46.6 If for whatever reason the Generator does not provide the CfD Counterparty with a Preliminary Annual QCPC Report in respect of any Contract Year in accordance with Conditions 46.1 and 46.2, the Generator shall not be entitled to any compensation under this Part 11 (*Curtailment*) in respect of a CPC Compensation Shortfall (if any) as it relates to that Contract Year.

***Disputes in relation to a Preliminary Annual QCPC Report***

- 46.7 If the Generator and the CfD Counterparty are not able to agree the Preliminary Annual QCPC Report, either the Generator or the CfD Counterparty may refer the Dispute for resolution by an Arbitral Tribunal in accordance with the Arbitration Procedure or, if the Generator and the CfD Counterparty agree in writing that such Dispute is amenable to determination by an Expert, refer the Dispute to an Expert for determination in accordance with the Expert Determination Procedure.
- 46.8 Until the Generator and the CfD Counterparty agree the Preliminary Annual QCPC Report or the Dispute is determined in accordance with the Arbitration Procedure or the Expert Determination Procedure, as the case may be, there shall be no Annual QCPC Report in respect of the relevant Contract Year.

***Qualifying CPC Events generally***

- 46.9 If a Preliminary Annual QCPC Report is submitted in relation to a Qualifying CPC Event in respect of a Contract Year, the submission of a subsequent report for a subsequent Contract Year in relation to the same change in the Law is not precluded provided that the other conditions which are necessary for the event or circumstance to constitute a Qualifying CPC Event are met for that subsequent Contract Year.

### ***Annual QCPC Report***

46.10 Upon:

- (A) the CfD Counterparty and the Generator agreeing a Preliminary Annual QCPC Report (and any amendments to that Preliminary Annual QCPC Report being made in accordance with that agreement); or
- (B) any Dispute with respect to a Preliminary Annual QCPC Report being resolved or determined in accordance with the Arbitration Procedure or the Expert Determination Procedure, as the case may be, (and any amendments to that Preliminary Annual QCPC Report being made in accordance with that resolution or determination),

the Preliminary Annual QCPC Report (once delivered and as amended, if applicable) shall become the “**Annual QCPC Report**” in respect of the relevant Contract Year.

## **47. QUALIFYING CPC EVENT: COMPENSATION**

### ***Qualifying CPC Event adjustment***

- 47.1 If, in respect of any Contract Year in which there is a Qualifying CPC Event, the aggregate Curtailment Compensation Shortfall exceeds the sum of the aggregate Curtailment Compensation Excess and any compensation received or receivable by the Generator or its nominee as referred to in Condition 46.2(G), the CfD Counterparty shall make payment(s) to the Generator in an aggregate amount equal to the difference as set out in or determined in accordance with the Annual QCPC Report for such Contract Year.
- 47.2 If, in respect of any Contract Year in which there is a Qualifying CPC Event, the aggregate Curtailment Compensation Excess exceeds the aggregate Curtailment Compensation Shortfall, the Generator shall make payment(s) to the CfD Counterparty in an aggregate amount equal to the amount of the difference as set out in the Annual QCPC Report for such Contract Year.
- 47.3 If, in respect of any Contract Year in which there is a Qualifying CPC Event, the aggregate Partial Curtailment Compensation Shortfall exceeds the sum of the aggregate Partial Curtailment Compensation Excess and any compensation received or receivable by the Generator or its nominee as referred to in Condition 46.2(G), the CfD Counterparty shall make payment(s) to the Generator in an aggregate amount equal to the amount of the difference as set out in or determined in accordance with the Annual QCPC Report for such Contract Year.
- 47.4 If, in respect of any Contract Year in which there is a Qualifying CPC Event, the aggregate Partial Curtailment Compensation Excess exceeds the aggregate Partial Curtailment Compensation Shortfall, the Generator shall make payment(s) to the CfD Counterparty in an aggregate amount equal to the amount of the difference as set out in the Annual QCPC Report for such Contract Year.

47.5 Any payments under Conditions 47.1 to 47.4 may be aggregated or netted and shall be effected, at the election of the CfD Counterparty (after consultation with the Generator), as either a lump sum payment or staged payments which shall be payable on, or as the case may be, from:

- (A) in respect of each Qualifying CPC Event and the first (1<sup>st</sup>) Annual QCPC Report in respect thereof, the date on which the relevant Preliminary Annual QCPC Report becomes the Annual QCPC Report (the “**Curtailment Compensation Anniversary**”); and
- (B) thereafter in respect of such Qualifying CPC Event and for each relevant Contract Year, the immediately succeeding Curtailment Compensation Anniversary for such Contract Year.

#### **48. CURTAILMENT: GENERAL PROVISIONS**

##### ***Interaction with Change in Law***

48.1 This Part 11 (*Curtailment*) shall apply to the exclusion of the Qualifying Change in Law provisions in Part 8 (*Changes in Law*) in respect of any matter that concerns Curtailment or Partial Curtailment of the Facility or compensation payable by or to the CfD Counterparty in respect of any such event or circumstance.

48.2 If any matter would fall to be covered by this Part 11 (*Curtailment*) but for an exclusion, threshold, cap or other limitation set out or referred to in this Part 11 (*Curtailment*) (including in any definitions contained in Part 1 (*Introduction*) which are used in this Part 11 (*Curtailment*)) and it would also be, but for this Condition 48.2, a Qualifying Change in Law, such matter shall not fall within the Qualifying Change in Law provisions in Part 8 (*Changes in Law*).

##### ***Costs***

48.3 The Generator shall, promptly on demand from time to time, indemnify the CfD Counterparty against any out-of-pocket costs properly incurred by the CfD Counterparty and which would not have been incurred but for a Preliminary Annual QCPC Report.

**Part 12**  
**Termination**

**49. TERMINATION**

***Pre-Start Date termination***

49.1 If:

- (A) (i) the Generator fails to deliver the Milestone Requirement Notice by the Milestone Delivery Date; or
- (ii) (subject to Condition 49.7) neither Milestone Requirement has been complied with and fulfilled by the Milestone Delivery Date;
- (B) at any time prior to the Start Date, a Termination Event occurs and is continuing;
- (C) the Initial Condition Precedent is not fulfilled by the Generator or waived by the CfD Counterparty within ten (10) Business Days of the Effective Date;
- (D) (subject to Condition 49.8) any of the Operational Conditions Precedent is not fulfilled by the Generator or waived by the CfD Counterparty by the Longstop Date; or
- (E) the State Aid Condition Precedent is not fulfilled by the State Aid CP Longstop Date,

then the CfD Counterparty shall have the right, but not the obligation, to give notice to the Generator terminating the Investment Contract (a “**Pre-Start Date Termination Notice**”). A Pre-Start Date Termination Notice shall:

- (i) be substantially in the form set out in Part MM of Annex 9 (*Pro forma notices*); and
- (ii) specify:
  - (a) the date (on or following the date of the Pre-Start Date Termination Notice) on which termination of the Investment Contract is designated by the CfD Counterparty to take effect (the date so designated being a “**Pre-Start Date Termination Date**”); and
  - (b) in the case of termination pursuant to Condition 49.1(B), the Termination Event which has occurred.

49.2 If the CfD Counterparty gives a Pre-Start Date Termination Notice, the Investment Contract shall terminate on the Pre-Start Date Termination Date even if (as the context requires):

- (A) a Milestone Requirement has been complied with and fulfilled prior to such date;
  - (B) the Termination Event is no longer continuing as at such date; or
  - (C) the Conditions Precedent remaining to be fulfilled when the Pre-Start Date Termination Notice was given have been fulfilled.
- 49.3 The Generator shall be entitled at any time within a Generator Pre-Start Date Termination Period to give notice in writing to the CfD Counterparty to terminate the Investment Contract if at such time the State Aid Condition Precedent shall not have been fulfilled (a “**State Aid Termination Notice**”). The Investment Contract shall terminate forthwith, without compensation, upon a State Aid Termination Notice being received by the CfD Counterparty.
- 49.4 A State Aid Termination Notice shall be substantially in the form set out in Part VVV of Annex 9 (*Pro forma notices*).
- 49.5 At any time within ten (10) Business Days after the date on which the Supplier Obligation Regulations that have been laid before each House of Parliament are first published on the website <http://www.legislation.gov.uk>, the Generator may serve a notice on the CfD Counterparty (a “**Supplier Obligation Termination Notice**”). A Supplier Obligation Termination Notice shall:
- (A) be substantially in the form set out in Part WWW of Annex 9 (*Pro forma notices*);
  - (B) explain one or more differences between (i) the content of the Supplier Obligation Regulations which shall have been laid before each House of Parliament and published on the website <http://www.legislation.gov.uk>; and (ii) the content which the Generator reasonably anticipated, on the Agreement Date and on the basis of the draft Contracts for Difference (Allocation) Regulations 2014 and the document entitled "Electricity Market Reform: Consultation on Proposals for Implementation" both published by DECC on 10 October 2013 (together, the “**Supplier Obligation Consultation Document**”), the Supplier Obligation Regulations would have had;
  - (C) state that the differences set out pursuant to Condition 49.5(B) would cause the commercial position of the Generator under the Investment Contract to be materially worse than it would have been but for those differences;
  - (D) give not less than ten Business Days notice to terminate the Investment Contract;
  - (E) include such Supporting Information as the Generator considers to be relevant; and
  - (F) be accompanied by a Directors' Certificate certifying that the information contained in, and enclosed with, the Supplier Obligation Termination Notice, is

true, complete and accurate in all material respects and not misleading and that any opinion expressed therein is reasonably and genuinely held.

- 49.6 The Investment Contract shall terminate on the date specified in the Supplier Obligation Termination Notice pursuant to Condition 49.5(D).
- 49.7 The CfD Counterparty shall not exercise its right to terminate the Investment Contract pursuant to Condition 49.1(A)(ii) in circumstances in which the Generator has provided a Milestone Requirement Notice no later than the Milestone Delivery Date unless and until:
- (A) the CfD Counterparty has given the Generator a Milestone Assessment Response Notice specifying that it requires Requested Milestone Supporting Information to be provided to it by the Generator; and
  - (B) either:
    - (i) the Generator fails to provide to the CfD Counterparty the Requested Milestone Supporting Information within the period specified in Condition 4.4(B)(i); or
    - (ii) (a) the Requested Milestone Supporting Information is provided to the CfD Counterparty within the period specified in Condition 4.4(B)(i); and (b) the CfD Counterparty has given the Generator a Further Milestone Assessment Response Notice specifying that the CfD Counterparty does not consider a Milestone Requirement to have been complied with and fulfilled.
- 49.8 The CfD Counterparty shall not exercise its right to terminate the Investment Contract pursuant to Condition 49.1(D) in circumstances in which the Generator has provided a Operational CP Notice no later than the Longstop Date unless and until:
- (A) the CfD Counterparty has given the Generator a CP Response Notice specifying that it requires Operational Condition Precedent Evidence to be provided to it by the Generator; and
  - (B) either:
    - (i) the Generator fails to provide to the CfD Counterparty the Operational Condition Precedent Evidence within the period specified in Condition 3.15(B)(i); or
    - (ii) (a) the requested Operational Condition Precedent Evidence is provided to the CfD Counterparty within the period specified in Condition 3.15(B)(i); and (b) the CfD Counterparty has given the Generator an Additional CP Response Notice specifying that the CfD Counterparty does not consider the Operational Condition Precedent to have been fulfilled.

**Default termination**

49.9 If, at any time on or after the Start Date, a Termination Event has occurred and is continuing, the CfD Counterparty shall have the right, but not the obligation, to give notice to the Generator terminating the Investment Contract (a “**Default Termination Notice**”). A Default Termination Notice shall:

- (A) be substantially in the form set out in Part NN of Annex 9 (*Pro forma notices*); and
- (B) specify:
  - (i) the date (on or following the date of the Default Termination Notice) on which termination of the Investment Contract is designated by the CfD Counterparty to take effect (the date so designated being a “**Designated Termination Date**”); and
  - (ii) the Termination Event which has occurred.

49.10 If the CfD Counterparty gives a Default Termination Notice to the Generator, the Investment Contract shall terminate on the Designated Termination Date even if the Termination Event is no longer continuing on the Designated Termination Date.

**Qualifying Change in Law termination**

49.11 Subject to Condition 49.12, if a Qualifying Change in Law is implemented, occurs or becomes effective and gives rise to or results in a QCiL Construction Event or a QCiL Operations Cessation Event, the CfD Counterparty shall give notice to the Generator terminating the Investment Contract (a “**QCiL Termination Notice**”). A QCiL Termination Notice shall:

- (A) be substantially in the form set out in Part OO of Annex 9 (*Pro forma notices*); and
- (B) specify the date (on or following the date of the QCiL Termination Notice) on which termination of the Investment Contract is designated by the CfD Counterparty to take effect (the date so designated being a “**QCiL Termination Date**”).

49.12 The CfD Counterparty shall not exercise its right to terminate the Investment Contract pursuant to Condition 49.11 in circumstances in which the Generator has provided a Generator QCiL Notice or a Generator QCiL Response Notice unless and until the Parties have agreed that a QCiL Construction Event or QCiL Operations Cessation Event has occurred or a determination to that effect has been made pursuant to the Dispute Resolution Procedure.

**No other termination rights**

49.13 The termination rights in this Condition 49 (*Termination*) are the only rights that either Party has to terminate the Investment Contract.



**Notice provisions**

- 49.14 Any Pre-Start Date Termination Notice or Default Termination Notice issued by the CfD Counterparty pursuant to this Condition 49 (*Termination*) may be revoked by the CfD Counterparty giving written notice of the same to the Generator at any time prior to the Pre-Start Date Termination Date or Designated Termination Date (as applicable) and upon such revocation the Pre-Start Date Termination Notice or Default Termination Notice (as applicable) shall cease to have any effect.

**50. CONSEQUENCES OF TERMINATION*****Consequences of termination: General***

- 50.1 Termination of the Investment Contract pursuant to Condition 49.1, 49.3, 49.5, 49.9 or 49.11:

- (A) shall not affect, and shall be without prejudice to, the accrued rights and liabilities of each Party and the rights and liabilities of each Party arising as a result of:
  - (i) any antecedent breach of any provision of the Investment Contract; and
  - (ii) any breach of any provisions of the Investment Contract which are expressed to survive expiry pursuant to Condition 52 (*Survival*); and
- (B) shall be subject to Condition 52 (*Survival*).

***Consequences of Pre-Start Date termination***

- 50.2 Subject to Condition 50.1, if the CfD Counterparty terminates the Investment Contract pursuant to Condition 49.1 or the Generator terminates the Investment Contract pursuant to Condition 49.3 or 49.5:

- (A) no payment shall be payable by either Party to the other Party as a consequence of such termination;
- (B) all rights and obligations of the Parties under the Investment Contract shall end; and
- (C) neither Party shall be entitled to make any claim against the other Party under or in respect of the Investment Contract.

***Consequences of Default termination***

- 50.3 If the CfD Counterparty terminates the Investment Contract pursuant to Condition 49.9 (other than where such termination has resulted from the occurrence of a Termination Event falling within Condition 51.1(D)), the CfD Counterparty shall:

- (A) calculate the Termination Amount; and

(B) give a notice to the Generator (a “**Termination Amount Notice**”). A Termination Amount Notice shall:

- (i) be substantially in the form set out in Part PP of Annex 9 (*Pro forma notices*); and
- (ii) specify the amount of the Termination Amount along with the principal inputs used by the CfD Counterparty to calculate such Termination Amount.

50.4 The Generator shall within thirty (30) Business Days of notification of the amount of the Termination Amount, pay to the CfD Counterparty (or such person as the CfD Counterparty may direct) the Termination Amount and no dispute by the Generator as to the amount of the Termination Amount shall relieve it of its obligation pursuant to this Condition 50.4.

50.5 Subject to Conditions 50.1, 50.3 and 50.4, if the CfD Counterparty terminates the Investment Contract pursuant to Condition 49.9:

- (A) no payment shall be payable by either Party to the other Party as a consequence of such termination;
- (B) all rights and obligations of the Parties under the Investment Contract shall end; and
- (C) neither Party shall be entitled to make any claim against the other Party under or in respect of the Investment Contract.

***Consequences of Qualifying Change in Law termination***

50.6 Subject to Condition 50.1, if the CfD Counterparty terminates the Investment Contract pursuant to Condition 49.11:

- (A) no payment shall be payable by either Party to the other Party as a consequence of such termination (except that such termination shall be without prejudice to: (i) the CfD Counterparty’s obligations to pay any QCiL Compensation; and (ii) the Generator’s or the CfD Counterparty’s (as relevant) obligations to pay any QCiL True-Up Compensation);
- (B) all rights and obligations of the Parties under the Investment Contract shall end; and
- (C) neither Party shall be entitled to make any claim against the other Party pursuant to the Investment Contract.

## 51. TERMINATION EVENTS

### *Termination Events*

51.1 A “**Termination Event**” means the occurrence at any time with respect to the Generator of any of the following events.

(A) *Insolvency*: The Generator:

- (i) is dissolved (other than pursuant to a solvent consolidation, amalgamation or merger) or becomes insolvent or unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (ii) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a solvent consolidation, amalgamation or merger); or
- (iii) is subject to any event with respect to it which, pursuant to the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in Conditions 51.1(A)(i) or 51.1(A)(ii),

except where any of the events set out in this Condition 51.1(A) is attributable to the CfD Counterparty not paying when due any amount which, but for the operation of Condition 69 (*Limited recourse arrangements, undertakings and acknowledgements*), would have been due pursuant to the Investment Contract.

(B) *Non-payment*: The Generator fails to pay:

- (i) any Net Payable Amount on the due date pursuant to the Investment Contract at the place at and in the currency in which it is expressed to be payable and that failure is not remedied on or before the tenth (10<sup>th</sup>) Business Day after the CfD Counterparty gives the Generator notice of that failure (the “**NPA Payment Cure Period**”) unless the failure is caused by a Payment Disruption Event in which case the NPA Payment Cure Period shall be extended day for day for each day on which the Payment Disruption Event continues; or
- (ii) any amount other than a Net Payable Amount on the due date pursuant to the Investment Contract at the place at and in the currency in which it is expressed to be payable and that failure is not remedied on or before the twentieth (20<sup>th</sup>) Business Day after the CfD Counterparty gives the Generator notice of that failure (the “**Non-NPA Payment Cure Period**”) unless the failure is caused by a Payment Disruption Event in which case the Non-NPA Payment Cure Period shall be extended day for day for each day on which the Payment Disruption Event continues.

(C) *Breach of key obligations*:

- (i) The Generator is in breach of any of Conditions 29.1(E) or 77 (*Transfers*); or

- (ii) any director, officer or other senior manager of the Generator commits or procures fraud, or aids, abets or counsels fraud (and fraud is in fact committed) in relation to the Investment Contract or any other IC Document.

(D) *Final Installed Capacity:*

- (i) The Final Installed Capacity is lower than the Required Installed Capacity; or
- (ii) the Generator does not give a Final Installed Capacity Notice within ten (10) Business Days of the later of:
  - (a) the Longstop Date; and
  - (b) the expiry of ten (10) Business Days following notice having been given by the CfD Counterparty to the Generator (on or at any time after the date falling ten (10) Business Days prior to the Longstop Date) reminding the Generator of the requirement to give a Final Installed Capacity Notice.

(E) *Credit support default:*

- (i) The Generator fails to transfer, deliver, extend, renew or replace (or procure the transfer, delivery, extension, renewal or replacement of) Acceptable Collateral in accordance with Part 13 (*Credit Support*);
- (ii) any Letter of Credit provided pursuant to Part 13 (*Credit Support*) expires or terminates or fails or ceases to be in full force and effect in breach of, and is not extended, renewed or replaced in accordance with, Part 13 (*Credit Support*); or
- (iii) the Generator, or the issuer of any Letter of Credit, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of a Letter of Credit provided to the CfD Counterparty pursuant to Part 13 (*Credit Support*), unless such disclaimer, repudiation, rejection or challenge is withdrawn or a substitute Letter of Credit is provided to the CfD Counterparty within five (5) Business Days of such disclaimer, repudiation, rejection or challenge.

(F) *Metering:* A Technical Compliance Termination Event or a Metering Access Termination Event.

## 52. SURVIVAL

52.1 Upon termination or expiry of the Investment Contract, the Parties shall have no further obligations under the Investment Contract but termination or expiry shall not affect:

- (A) (save to the extent taken into account in the calculation of the Termination Amount (if any)) the provisions of the Investment Contract as they relate to the

payment of any sum due by one Party to the other pursuant to the Investment Contract (including any QCiL Compensation or QCiL True-Up Compensation); and

- (B) the continued existence and validity of, and the rights and obligations of the Parties pursuant to Part 1 (*Introduction*), Part 6 (*Billing and payment*), this Part 12 (*Termination*), Conditions 54.14 and 54.15 and Part 14 (*Dispute Resolution*) to Part 17 (*Miscellaneous*) (inclusive).

**Part 13**  
**Credit Support**

**53. COLLATERAL REQUIREMENT**

***Notification of collateral requirement***

53.1 If there is a Payment Failure on more than one (1) occasion within any twelve (12) month period, the CfD Counterparty may (irrespective of whether or not the Generator has paid any of the Net Payable Amounts owing within the applicable NPA Payment Cure Period) give the Generator a notice on the second (2<sup>nd</sup>) such occurrence (a “**Second Payment Failure Notice**”). A Second Payment Failure Notice shall:

- (A) be substantially in the form set out in Part QQ of Annex 9 (*Pro forma notices*); and
- (B) identify the Billing Periods to which such Payment Failures relate.

53.2 If there have been Payment Failures on three (3) or more occasions in any twelve (12) month period, the CfD Counterparty may (irrespective of whether or not the Generator has paid any of the Net Payable Amounts owing within the applicable NPA Payment Cure Period) give a notice to the Generator (a “**Collateral Posting Notice**”). A Collateral Posting Notice shall:

- (A) be substantially in the form set out in Part RR of Annex 9 (*Pro forma notices*);
- (B) identify the Billing Periods to which such Payment Failures relate;
- (C) specify:
  - (i) the Collateral Amount;
  - (ii) the Collateral Posting Date; and
  - (iii) the Initial Collateral Repayment Date; and
- (D) provide details of the Reserve Account.

53.3 If any Payment Failure occurs after the date of a Collateral Posting Notice and before the applicable Collateral Repayment Date, the CfD Counterparty may give the Generator a notice (a “**Replacement Collateral Notice**”). A Replacement Collateral Notice shall:

- (A) be substantially in the form set out in Part SS of Annex 9 (*Pro forma notices*);
- (B) identify the Billing Periods to which such Payment Failures relate; and
- (C) specify the Replacement Collateral Repayment Date.

### ***Collateral Amount***

- 53.4 The Collateral Amount shall be calculated by the CfD Counterparty in accordance with the formula below:

$$\text{Collateral Amount} = 10 \times IC \times ALF \times (1 - TLM(D)) \times N \times HID \times RQM \times CHPQM$$

where:

<i>IC</i>	is the Maximum Contract Capacity;
<i>ALF</i>	is the Assumed Load Factor;
<i>TLM(D)</i>	is the Initial TLM(D) Charge;
<i>N</i>	is forty (40) days, representing the number of days for which collateral is required;
<i>HID</i>	is the number of hours in a day, being twenty-four (24) hours;
<i>RQM</i>	is the Assumed RQM (but only if the Renewable Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement) or, otherwise, one (1); and
<i>CHPQM</i>	is the CHP Qualifying Multiplier as at the Collateral Posting Date (but only if the CHP Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement) or, otherwise, one (1).

## **54. ACCEPTABLE COLLATERAL**

### ***Provision of collateral***

- 54.1 If a Collateral Posting Notice is given to the Generator, the Generator shall, no later than the Collateral Posting Date, transfer or deliver, or procure the transfer or delivery of, Acceptable Collateral to the CfD Counterparty in an aggregate amount equal to the Collateral Amount.

### ***Transfers and custody of collateral***

- 54.2 All transfers or deliveries pursuant to the Investment Contract of any Acceptable Collateral shall be made by or on behalf of the Generator and shall be given:
- (A) in the case of cash, by transfer in accordance with the instructions made by and on behalf of the CfD Counterparty, to the credit of the Reserve Account; and
  - (B) in the case of a Letter of Credit, by a Qualifying Issuer issuing a Letter of Credit to the CfD Counterparty or its designee. Such transfer shall be deemed effective

upon receipt by the CfD Counterparty or its designee from the Qualifying Issuer of the duly executed and issued Letter of Credit.

### **Letters of Credit**

54.3 The Generator shall:

- (A) procure that:
  - (i) any Letter of Credit provided pursuant to a Collateral Posting Notice shall be valid at least until the Initial Collateral Repayment Date as set out in that notice; and
  - (ii) (if a Replacement Collateral Notice is given) any Letter of Credit provided pursuant to a Replacement Collateral Notice shall be valid at least until the Replacement Collateral Repayment Date as set out in that notice; and
- (B) ensure that any Letter of Credit provided by the Generator as Acceptable Collateral, including any renewal or replacement of a Letter of Credit, shall be accompanied by a notice from the Generator (a “**Letter of Credit Details Notice**”). The Letter of Credit Details Notice shall be substantially in the form set out in Part TT of Annex 9 (*Pro forma notices*).

54.4 At least ten (10) Business Days prior to the date of expiry or cancellation of a Letter of Credit, the Generator shall renew or procure the renewal of such Letter of Credit by transferring or delivering, or by procuring the transfer or delivery of, Acceptable Collateral in substitution and to be effective no later than the date of expiry or cancellation of the current Letter of Credit, provided that Acceptable Collateral is still required, pursuant to the provisions of this Part 13 (*Credit Support*), after the date of expiry or cancellation of the current Letter of Credit.

### **Altering collateral**

54.5 If, at any time, the Posted Collateral is not Acceptable Collateral and/or the Posted Collateral is less than the Collateral Amount, the CfD Counterparty may give a notice to the Generator (a “**Collateral Correction Notice**”). A Collateral Correction Notice shall:

- (A) be substantially in the form set out in Part UU of Annex 9 (*Pro forma notices*); and
- (B) specify:
  - (i) the Posted Collateral which is not Acceptable Collateral and the reason that prevents such collateral from constituting Acceptable Collateral; and/or
  - (ii) the amount by which the Posted Collateral is less than the Collateral Amount (a “**Deficient Collateral Amount**”).



- 54.6 No later than five (5) Business Days after receipt of a Collateral Correction Notice, the Generator shall transfer or deliver, or procure the transfer or delivery of, Acceptable Collateral in an amount more than or equal to the Deficient Collateral Amount.
- 54.7 The Generator may, from time to time, and on giving the CfD Counterparty not less than ten (10) Business Days' notice, substitute some or all of the Posted Collateral with other Acceptable Collateral which shall not in any event be less than the Collateral Amount in aggregate.

***Credit event by a Qualifying Issuer***

- 54.8 If, at any time, the Qualifying Issuer of a Letter of Credit ceases to be a Qualifying Issuer, the Generator shall give notice to the CfD Counterparty and procure the replacement of such Letter of Credit with Acceptable Collateral within ten (10) Business Days of the date on which the Qualifying Issuer ceases to be a Qualifying Issuer.
- 54.9 If the Generator fails to procure replacement collateral within ten (10) Business Days in accordance with Condition 54.8, the CfD Counterparty may demand payment pursuant to the Letter of Credit and shall hold any cash paid pursuant to the Letter of Credit in a Reserve Account until such time as the Posted Collateral is substituted in accordance with Condition 54.7.

***Making a Posted Collateral Demand***

- 54.10 The CfD Counterparty may make a demand under a Letter of Credit procured by the Generator or draw down on any cash amount in a Reserve Account (a "**Posted Collateral Demand**") in the following circumstances:
- (A) the Generator fails to pay any amount when due pursuant to the Investment Contract and that failure is not remedied by the last day of the NPA Payment Cure Period; or
  - (B) the Generator fails to procure the extension or replacement of a Letter of Credit in accordance with Condition 54.4, in an amount of the Collateral Amount.
- 54.11 If a Posted Collateral Demand has been made, the Generator shall transfer or deliver, or procure the transfer or delivery of, further Acceptable Collateral in an amount no less than the Collateral Amount no later than two (2) Business Days after such demand.

***Return of collateral***

- 54.12 If the Generator has transferred or delivered, or procured the transfer or delivery of, Acceptable Collateral to the CfD Counterparty pursuant to Condition 54.1, and:
- (A) the Collateral Repayment Date has passed; or
  - (B) the Collateral Amount has been replaced or substituted with other Acceptable Collateral in accordance with this Part 13 (*Credit Support*),

the CfD Counterparty shall transfer the Posted Collateral back to the Generator no later than five (5) Business Days after the Collateral Repayment Date.

54.13 The CfD Counterparty shall transfer back the Posted Collateral:

- (A) in the case of cash, by transfer in accordance with the instructions made by and on behalf of the Generator, to the credit of one (1) or more bank accounts in the United Kingdom specified by the Generator; and
- (B) in the case of a Letter of Credit, by surrendering, or procuring the surrender of, the relevant Letter of Credit.

### ***Termination***

54.14 If the Investment Contract expires in circumstances where no Termination Amount, QCiL Compensation or QCiL True-Up Compensation is due to the CfD Counterparty, the CfD Counterparty shall return any Posted Collateral transferred or delivered by or on behalf of the Generator no later than five (5) Business Days after the expiry, provided that the CfD Counterparty shall be entitled to set off against the cash collateral in accordance with Condition 24 (*Set-off*).

54.15 If the Investment Contract is terminated in circumstances where a Termination Amount, QCiL Compensation and/or QCiL True-Up Compensation is due to the CfD Counterparty, the CfD Counterparty shall return any Posted Collateral transferred or delivered by or on behalf of the Generator after all Generator payment obligations pursuant to the Investment Contract have been fulfilled, provided that the CfD Counterparty shall be entitled to set off against the cash collateral in accordance with Condition 24 (*Set-off*).

**Part 14**  
**Dispute Resolution**

**55. DISPUTE RESOLUTION PROCEDURE: GENERAL PROVISIONS**

***Objective for resolution of Disputes***

55.1 Each Party shall, at each stage of the Dispute Resolution Procedure, endeavour in good faith to resolve all Disputes through negotiation.

***Compliance with obligations during a Dispute***

55.2 The Generator and the CfD Counterparty shall continue to comply with all of their respective obligations under the Investment Contract notwithstanding any Dispute which falls to be resolved in accordance with this Condition 55 (*Dispute Resolution Procedure: General provisions*).

***Outline of Dispute Resolution Procedure***

55.3 Except as otherwise expressly provided in these Conditions, if a Dispute arises either Party may give a notice to the other Party to initiate the Dispute Resolution Procedure (a “**Dispute Notice**”). A Dispute Notice:

- (A) shall be substantially in the form set out in Part VV of Annex 9 (*Pro forma notices*);
- (B) shall include a description of the subject matter of the Dispute and the issues to be resolved;
- (C) shall include a statement identifying the Condition to which the Dispute relates or pursuant to which the Dispute arises;
- (D) shall include a description of the position the referring Party considers is correct and the referring Party’s reasons for that position;
- (E) shall include details of any other dispute or claim relating to or arising out of another FiT Contract for Difference which the referring Party considers should be consolidated with or joined to the Dispute;
- (F) may, where the referring Party considers it appropriate, include copies of any Supporting Information on which the referring Party intends to rely;
- (G) shall include a statement outlining the relief, determination, remedy or recourse which the referring Party seeks in relation to the Dispute;
- (H) (except where the Investment Contract expressly provides for the Dispute to be subject to determination in accordance with the Expert Determination Procedure) shall include a statement as to whether the referring Party considers

that the Dispute should (without a Senior Representatives Settlement being reached) be referred for determination in accordance with the Expert Determination Procedure or resolution in accordance with the Arbitration Procedure; and

- (l) shall include the identity of the referring Party's Senior Representative.

55.4 Following the service by either Party of a Dispute Notice:

- (A) (subject to Condition 55.5) the Parties shall seek to resolve the Dispute by convening a meeting of the Senior Representatives of the Parties in accordance with Condition 56 (*Resolution by Senior Representatives*) but, if the Senior Representatives are unable to agree, settle, compromise or resolve the Dispute in accordance with Condition 56 (*Resolution by Senior Representatives*), Condition 55.4(B) shall apply; and
- (B) (subject to Condition 55.6) either Party may refer the Dispute for resolution by an Arbitral Tribunal in accordance with the Arbitration Procedure or, if the Parties agree in writing within the Resolution Period (or such longer period as they may agree in writing) that such Dispute is amenable to determination by an Expert, refer the Dispute to an Expert for determination in accordance with the Expert Determination Procedure.

55.5 Condition 55.4(A) shall not apply where the Investment Contract expressly provides that Condition 56 (*Resolution by Senior Representatives*) shall not apply to the relevant Dispute.

55.6 If the Investment Contract expressly provides for the relevant Dispute to be subject to determination in accordance with the Expert Determination Procedure:

- (A) Condition 55.4(B) shall not apply to such Dispute; and
- (B) following service of a Dispute Notice, such Dispute shall be referred to an Expert for determination in accordance with the Expert Determination Procedure (but subject to such amendments to the Expert Determination Procedure as are expressly provided for in the relevant provisions of the Investment Contract).

55.7 Subject to Condition 55.8, all communications between the Parties with respect to a Dispute (including any statement, concession, waiver or agreement made by a Party during discussions and meetings pursuant to Condition 56 (*Resolution by Senior Representatives*)) (and any minutes or statements relating to such discussions or meetings) shall be "without prejudice" to the Dispute (or "without prejudice save as to costs" if expressly communicated or stated to be as such) (together, "**Dispute Information**"). Dispute Information shall be inadmissible in any Proceedings that may follow (including pursuant to the Expert Determination Procedure or the Arbitration Procedure), except that those expressly stated to be "without prejudice save as to costs" shall be admissible for the purposes of Conditions 57.11 and 58.2.

55.8 Condition 55.7 shall not apply to:

- (A) any Dispute Notice;
- (B) any Senior Representatives Settlement; or
- (C) any communications between the Parties once an Expert Determination Procedure or an Arbitration Procedure has commenced, save for such communications expressly communicated or stated to be “without prejudice” or “without prejudice save as to costs”.

## 56. RESOLUTION BY SENIOR REPRESENTATIVES

56.1 The Parties shall procure that their respective Senior Representatives shall meet within ten (10) Business Days of the date of service of a Dispute Notice. If the Senior Representatives of the Parties:

- (A) are able to resolve the Dispute within thirty (30) Business Days of the date of service of the Dispute Notice (or within such longer period as the Senior Representatives of the Parties may agree) (the “**Resolution Period**”), the terms of the agreement, settlement, compromise or resolution reached between the Senior Representatives in respect of the Dispute (a “**Senior Representatives Settlement**”) shall be documented in writing and shall be signed by the Senior Representative of, and with effect from such signature shall become binding upon, each Party; or
- (B) are unable to resolve the Dispute within the Resolution Period, either Party may refer the Dispute for resolution by an Arbitral Tribunal in accordance with the Arbitration Procedure or, if the Parties agree in writing within the Resolution Period (or such longer period as they may agree in writing) that such Dispute is amenable to determination by an Expert, refer the Dispute to an Expert for determination in accordance with the Expert Determination Procedure.

56.2 If, at any time during the Resolution Period, both Parties agree that the Senior Representatives of the Parties will not be able to agree, settle, compromise or resolve the Dispute, then:

- (A) either Party may refer the Dispute for resolution by an Arbitral Tribunal in accordance with the Arbitration Procedure or, if the Parties agree that such Dispute is amenable to determination by an Expert, refer the Dispute to an Expert for determination in accordance with the Expert Determination Procedure; and
- (B) there shall be no requirement for the Parties to wait until the expiry of the Resolution Period before making any such reference.

56.3 Neither Party may commence the Expert Determination Procedure nor the Arbitration Procedure prior to the expiry of the Resolution Period except in the circumstances specified in Condition 56.2.

- 56.4 The rules, obligations and procedures set out in this Condition 56 (*Resolution by Senior Representatives*) shall apply to all Disputes unless expressly stated to the contrary in the Investment Contract.

## 57. EXPERT DETERMINATION PROCEDURE

- 57.1 Either Party may, subject to Condition 56 (*Resolution by Senior Representatives*), refer a Dispute to be determined by an Expert if either: (i) the Parties have agreed in writing that a Dispute is amenable to determination by an Expert pursuant to Condition 56.1(B) or 56.2(A); or (ii) the Investment Contract expressly provides for the relevant Dispute to be determined by an Expert. Such referral shall be effected by either Party giving a notice (an “**Expert Determination Notice**”) to the other Party. An Expert Determination Notice shall:

- (A) be substantially in the form set out in Part WW of Annex 9 (*Pro forma notices*);
- (B) include the information required to be included in a Dispute Notice pursuant to Conditions 55.3(B) to 55.3(G); and
- (C) include a proposal as to the identity, and terms of reference, of the Expert and the relevant expertise that the referring Party considers qualifies him to determine the relevant Expert Dispute.

- 57.2 Any Expert appointed to determine any Expert Dispute shall be required to have an appropriate level of experience in relation to matters of the same general description as the matter in Dispute.

- 57.3 The Party receiving the Expert Determination Notice (the “**Respondent**”) shall, within ten (10) Business Days of service of the Expert Determination Notice, give notice to the other Party (the “**Claimant**”) (an “**Expert Determination Response Notice**”). An Expert Determination Response Notice shall:

- (A) be substantially in the form set out in Part XX of Annex 9 (*Pro forma notices*); and
- (B) specify whether or not the Respondent accepts:
  - (i) the Expert proposed by the Claimant (and, if the Respondent does not accept the Expert proposed by the Claimant, it shall specify an alternative Expert for consideration by the Claimant); and
  - (ii) the terms of reference for the Expert proposed by the Claimant (and, if the Respondent does not accept the terms of reference for the Expert proposed by the Claimant, it shall propose alternative terms of reference for the Expert for consideration by the Claimant).

- 57.4 If the Parties fail to agree on the identity of the Expert within twenty (20) Business Days of the date of service of the Expert Determination Notice, either Party may request that the Expert be nominated by the LCIA, which shall be requested to choose a suitably

qualified and experienced Expert for the Expert Dispute in question. The LCIA's nomination shall, subject to Condition 57.5(A)(i), be binding on the Parties.

57.5 The Parties shall:

- (A) use reasonable endeavours to procure that within ten (10) Business Days of the Parties agreeing the identity of the Expert to be appointed (or the LCIA having nominated an Expert in accordance with Condition 57.4):
  - (i) the Expert confirms in writing to the Parties that:
    - (a) he is willing and available to act in relation to the Expert Dispute; and
    - (b) he has no conflict of interest which prevents him from determining the Expert Dispute;
  - (ii) (subject to the confirmation referred to in Condition 57.5(A)(i) having been given) the terms of appointment and the terms of reference of the Expert are agreed between the Parties and the Expert (and an appointment letter entered into among them), such terms:
    - (a) to include an undertaking that the Expert shall not disclose to any person any Supporting Information disclosed or delivered by a Party to the Expert in consequence of, or in respect of, his appointment as the Expert; and
    - (b) to exempt the Expert (and any employee, agent or adviser of or to the Expert) from liability for anything done or omitted in the discharge or purported discharge of the Expert's functions, unless such act or omission is fraudulent or in bad faith;
- (B) instruct the Expert:
  - (i) to act fairly and impartially;
  - (ii) to take the initiative in ascertaining the facts and the law, including by:
    - (a) considering any Supporting Information submitted to him by the Parties;
    - (b) instructing an expert and/or taking Counsel's opinion as to any matter raised in connection with the Dispute, provided that the Expert shall not be entitled to delegate any decision to such expert or Counsel;
    - (c) requiring the Parties to produce any Supporting Information (excluding any of the foregoing which would be privileged from production in court proceedings); and

- (d) opening up, reviewing and revising any opinion, assessment, certificate, instruction, determination or decision of whatsoever nature given or made pursuant to the Investment Contract, provided that he may not in so doing purport to decide any matter which falls outside the Expert's terms of reference in relation to the relevant Expert Dispute or is otherwise excluded from the Expert Determination Procedure; and
  - (iii) if requested by either Party in writing, to provide reasons for his decision, which shall be communicated to the Parties;
- (C) afford the Expert the discretion to establish the procedure (including the timetable) for the determination of the Expert Dispute, it being agreed by the Parties that:
- (i) the Expert shall be requested to confirm to the Parties the proposed procedure for the relevant Expert Dispute as soon as reasonably practicable after the Expert Appointment Date and, in any event, within ten (10) Business Days of such date and, in so doing, the Parties agree that:
    - (a) the Expert shall be requested to afford the Parties the opportunity to address him in a meeting at which both Parties shall have the right to be present, where either Party requests such a meeting in writing or the Expert otherwise considers it to be necessary or desirable to reach a determination in respect of the relevant Expert Dispute, with the format and procedure applicable to any such meeting being a matter for the Expert to decide in his sole and absolute discretion; and
    - (b) the Expert may (without limitation) modify the time periods provided for in Condition 57.6 and otherwise modify the procedure contemplated by such Condition;
  - (ii) all submissions made by a Party to the Expert (including all Supporting Information provided to him) shall be provided to the other Party contemporaneously with such submissions being made to the Expert; and
  - (iii) the Parties shall (without prejudice to Condition 57.5(C)(i)) request the Expert to determine the Expert Dispute within the earlier of:
    - (a) thirty (30) Business Days following the date on which a Response Submission has been provided by each Party; and
    - (b) sixty (60) Business Days after the First Submission Deadline; and
- (D) afford the Expert all Supporting Information and assistance which the Expert requires to determine the Expert Dispute (and, if a Party fails to produce any



such Supporting Information or assistance, the Expert may continue the determination process without that Supporting Information or assistance).

57.6 Subject to Condition 57.5(C):

- (A) the Claimant shall provide the Expert with a copy of the Expert Determination Notice no later than ten (10) Business Days after the Expert Appointment Date (the date on which the Expert receives the copy of the Expert Determination Notice being the “**Expert Referral Date**”);
- (B) each Party may, but is not obliged to, provide a written statement of its case, together with any Supporting Information, to the Expert (the “**First Submission**”) within twenty (20) Business Days of the Expert Referral Date (the “**First Submission Deadline**”) and, without limitation, the First Submission may cover any of the matters required to be contained in the relevant Dispute Notice pursuant to Conditions 55.3(B) to 55.3(G) (inclusive) and a copy of such First Submission shall be provided to the other Party at the same time as it is provided to the Expert; and
- (C) each Party may submit a reply, together with any Supporting Information, to the other Party’s First Submission (a “**Response Submission**”) within thirty (30) Business Days of receipt of the First Submission.

57.7 The Arbitration Act 1996 and the law relating to arbitrators and arbitrations shall not apply to the Expert or his determination or the procedure by which he reaches his determination.

57.8 If the Expert is at any time unable or unwilling to act, either Party may proceed to seek the appointment of a replacement Expert as if the Expert Determination Notice had just been served. The provisions of the Expert Determination Procedure shall apply, *mutatis mutandis*, to any replacement Expert and the replacement Expert shall be authorised to determine any Expert Dispute which was submitted to his predecessor but which his predecessor had not determined at the time when his predecessor became unable or unwilling to act.

57.9 The Expert’s determination shall be final and binding upon the Parties, except in the event of fraud or manifest error.

57.10 No Expert determination shall have the effect of amending the Investment Contract unless expressly permitted pursuant to the Investment Contract.

57.11 The Expert may, in his determination, provide that one or other or both of the Parties pay the Expert’s fees and expenses and each other’s costs (including the fees and expenses of external advisers and consultants) in such proportions as he may specify on the general principle that the allocation of costs should reflect the Parties’ relative success and failure in the Expert Determination Procedure. Without such a direction, each Party shall bear its own costs and the fees and expenses of the Expert shall be paid in equal shares by the Parties.

## 58. ARBITRATION PROCEDURE

- 58.1 Either Party may, subject to Condition 56 (*Resolution by Senior Representatives*), refer an Arbitration Dispute to arbitration. Any Arbitration Dispute so referred to arbitration shall be resolved in accordance with the LCIA Arbitration Rules, which rules are to be treated as incorporated by reference into this Condition 58.1.
- 58.2 The Arbitral Tribunal shall make its award in writing (the “**Arbitral Award**”) and the Parties agree that all Arbitral Awards shall be binding on the Parties.
- 58.3 No Arbitral Award shall have the effect of amending the Investment Contract unless expressly permitted pursuant to the Investment Contract.
- 58.4 The Arbitral Tribunal shall consist of three (3) Arbitrators except where the Parties have agreed in writing that the Arbitral Tribunal shall consist of one (1) Arbitrator (the “**Mutual Appointment Decision**”).
- 58.5 If the Arbitral Tribunal consists of:
- (A) three (3) Arbitrators, each Party shall nominate one (1) Arbitrator to be appointed by the LCIA as contemplated by the LCIA Arbitration Rules and the third Arbitrator shall be nominated by the Arbitrators nominated by the Parties and shall act as chairman; or
  - (B) one (1) Arbitrator, the Parties shall use reasonable endeavours to agree on the identity of the Arbitrator within ten (10) Business Days of the Mutual Appointment Decision, failing which the Arbitrator shall be appointed by the LCIA as contemplated by the LCIA Arbitration Rules.
- 58.6 The seat, or legal place, of any arbitration shall be London.
- 58.7 The language to be used in any arbitral proceedings shall be English.

## 59. CONSOLIDATION OF CONNECTED DISPUTES

- 59.1 If any Dispute raises issues which are substantially the same as, connected with or related to issues raised in any dispute or claim relating to or arising out of any other FiT Contract for Difference (each a “**Connected Dispute**”), and the Dispute Resolution Procedure has been commenced in relation to the Connected Disputes, then either Party may request consolidation of those Connected Disputes at any time so that the Connected Disputes shall be determined together in accordance with the Dispute Resolution Procedure, subject to the provisions of Conditions 59.2 to 59.5 (inclusive).
- 59.2 Where a Party wishes to consolidate Connected Disputes pursuant to Condition 59.1, that Party shall give notice in writing to all of the parties to the Connected Disputes (a “**Consolidation Notice**”). A Consolidation Notice shall be substantially in the form set out in Part YY of Annex 9 (*Pro forma notices*) and copied to the Expert or Arbitrator(s) (as relevant) of each Connected Dispute at the same time that it is given to the parties to each Connected Dispute, or, to the extent that the Expert or Arbitrator(s) have not been appointed at that date, forthwith upon appointment of the Expert or Arbitrator(s).

59.3 Following delivery of a Consolidation Notice, the Parties shall use reasonable endeavours to procure that the Expert or Arbitrator(s) (as relevant) of each Connected Dispute shall, within five (5) Business Days thereafter, determine between them whether:

- (A) they are satisfied both that the issues of fact and/or law raised in each of the Connected Disputes are substantially the same as, or substantially connected or related to, each other; and
- (B) consolidation of the Connected Disputes will not materially affect the timetable for resolution of any Connected Disputes; and:
  - (i) if they are so satisfied by majority:
    - (a) the Expert and/or Arbitrator(s), shall be requested by the Parties to give notice of that fact on the parties to all of the Connected Disputes; and
    - (b) the Connected Disputes shall be consolidated; or
  - (ii) if they are not so satisfied by majority, the Connected Disputes shall not be consolidated unless and until the Expert and/or Arbitrator(s) become so satisfied and determine that they shall be consolidated.

59.4 If different Experts or Arbitrator(s) have been appointed in respect of Connected Disputes prior to their being consolidated in accordance with the Dispute Resolution Procedure and those Experts or Arbitrator(s) give a notice, in accordance with Condition 59.3(B)(i), that the Connected Disputes shall be consolidated, the Parties shall agree in writing, within five (5) Business Days of receipt of that notice, which of the Experts or Arbitrators shall be the Experts or Arbitrator(s) for the consolidated Connected Disputes. If no such agreement can be reached, the parties to the Connected Dispute shall request that the president or vice-president of the LCIA Court select, within five (5) Business Days of such request, which of those Experts or Arbitrator(s) shall be the Experts or Arbitrator(s) for the consolidated Connected Disputes.

59.5 If the Expert or Arbitrator(s) of consolidated Connected Disputes is or are unable to give his or her (or their) award in respect of the consolidated Connected Disputes at the same time then the awards shall be given in such order as the Expert or Arbitrator(s) may determine.

## **60. NO OTHER PROCEEDINGS**

60.1 Subject to Conditions 60.2 and 61.1, any and all Disputes are to be finally resolved in accordance with the Dispute Resolution Procedure, and neither Party shall commence any Proceedings in respect of a Dispute other than in accordance with the Dispute Resolution Procedure. If either Party commences any Proceedings in breach of the Dispute Resolution Procedure, it shall not oppose an application for strike-out, termination, discontinuance or stay of such Proceedings.

60.2 Notwithstanding any other provision of the Dispute Resolution Procedure, either Party may at any time commence or prosecute Proceedings against the other Party in the courts of England and Wales for:

- (A) an order to obtain urgent injunctive or other equitable relief, including specific performance;
- (B) judgment to enforce a Senior Representatives Settlement, the determination of an Expert, or an Arbitral Award; and/or
- (C) give a notice of arbitration to the other Party so as to prevent the expiry of any applicable period of limitation or prescription, or the application of the equitable doctrine of laches.

## **61. METERING DISPUTES**

61.1 Metering Disputes shall be resolved solely as a Trading Dispute in accordance with the BSC pursuant to Conditions 22.5 to 22.7 and the Dispute Resolution Procedure shall not apply to any such Metering Disputes.

61.2 Notwithstanding any Metering Dispute, the Parties shall continue to comply with all of their respective obligations under the Investment Contract.

**Part 15**  
**General provisions regarding liabilities, remedies and waivers**

**62. EXCLUDED LOSSES AND LIABILITIES**

***General limitation on liability***

62.1 Subject to Conditions 62.2, 62.3 and 62.4, neither Party shall be liable to the other Party pursuant to the Investment Contract or any other IC Document, in tort (including negligence and/or breach of statutory duty) or otherwise at law for:

- (A) any loss, damage, cost or other expense to the extent that the same does not arise naturally from the breach and cannot reasonably be supposed to have been in the contemplation of the Parties at the Agreement Date as the probable result of such breach; or
- (B) any special, indirect or consequential loss including any such loss which constitutes loss of use, loss of goodwill, loss of profit or loss of revenue,

in each case incurred by the other Party in respect of any breach of the terms of the Investment Contract or any other IC Document.

62.2 Condition 62.1 shall not operate so as to prejudice or override the express terms of any obligation to pay or indemnity or costs reimbursement provision contained within the Investment Contract or any other IC Document.

62.3 Condition 62.1 shall not apply in respect of the calculation of any QCiL Compensation or QCiL True-Up Compensation, or the obligation of either Party to pay any QCiL Compensation or QCiL True-Up Compensation to the other Party, in each case in accordance with Part 8 (*Changes in Law*).

62.4 Condition 62.1 shall not apply in respect of the calculation of the Termination Amount, or the obligation of the Generator to pay the Termination Amount to the CfD Counterparty, in each case in accordance with Condition 50.4, it being agreed that the Termination Amount is reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages upon early termination of the Investment Contract.

***Transmission System Operator, Transmission Licensee or Licensed Distributor actions***

62.5 Subject to the payment of Curtailment Compensation in accordance with Part 11 (*Curtailment*), payments to the Generator in respect of or pursuant to:

- (A) instructions issued by any Transmission System Operator, Transmission Licensee or a Licensed Distributor, as the case may be; or
- (B) directions given or actions taken pursuant to the Fuel Security Code (as such term is defined in the Transmission Licence),

shall not be calculated or made pursuant to the terms of the Investment Contract, and the CfD Counterparty shall have no liability pursuant to the Investment Contract to pay or compensate the Generator in respect of any resulting lost output.

### **63. NO WAIVER**

63.1 No waiver by either Party of any breach by the other Party of the Investment Contract or any other IC Document shall operate unless expressly made in writing, and no such waiver shall be construed as a waiver of any other breach.

63.2 No delay or omission by either Party in exercising any right, power or remedy provided by law or pursuant to the Investment Contract or any other IC Document shall:

(A) affect that right, power or remedy; or

(B) operate as a waiver of it.

63.3 The single or partial exercise by either Party of any right, power or remedy provided by law or pursuant to the Investment Contract or any other IC Document shall not, unless otherwise expressly stated, preclude any other or further exercise of it or the exercise of any other right, power or remedy.

### **64. CONSENTS**

64.1 Any consents, confirmations, approvals, waivers or agreements to be given by the CfD Counterparty pursuant to the Investment Contract or any other IC Document:

(A) shall be effective only if given in writing; and

(B) except as otherwise expressly provided in the Investment Contract, may be given or withheld by the CfD Counterparty in its sole and absolute discretion and, if given, may be given on and subject to such terms and/or conditions as the CfD Counterparty may in its sole and absolute discretion determine.

64.2 The exercise of discretion by the CfD Counterparty (including in respect of the grant or withholding of any consent, confirmation, approval, waiver or agreement) shall in no way limit the manner in or extent to which that discretion may be exercised in future or give rise to any amendment or modification to the Investment Contract or any other IC Document.

### **65. ENTIRE AGREEMENT**

65.1 The Investment Contract, together with the other IC Documents, constitutes the entire agreement, understanding and representations of the Parties in respect of its subject matter and supersedes and extinguishes any agreements, understandings and/or representations previously given or made in respect thereof other than those included in the Investment Contract or the other IC Documents.

65.2 Each Party acknowledges that in entering into the Investment Contract it has not relied on, and shall have no right or remedy in respect of, any draft, agreement, undertaking,

representation, warranty, promise, assurance, arrangement or public statement of any nature whatsoever, whether or not in writing, relating to the subject matter of the Investment Contract or any other IC Document made or given by or on behalf of either Party or the Delivery Body at any time prior to the Agreement Date (whether made negligently or innocently) other than as expressly set out in the Binding Application, the Investment Contract or any other IC Document.

65.3 Nothing in this Condition 65 (*Entire agreement*) shall limit or exclude liability for fraud.

## **66. PAYMENT DISRUPTION EVENT**

### ***Relief due to Payment Disruption Event***

66.1 Subject to Condition 66.2, a Party affected by a Payment Disruption Event (a “**PDE Affected Party**”) shall be relieved from liability, and deemed not to be in breach of the Investment Contract (and any other IC Document), for:

- (A) any failure to pay (or delay in paying) to the other Party any sum due and payable pursuant to the Investment Contract (or any other IC Document) (whether pursuant to an obligation to pay, indemnity, costs reimbursement provision or otherwise); and
- (B) (in the case of the Generator) any failure to transfer, deliver, extend, renew or replace Acceptable Collateral in accordance with Part 13 (*Credit Support*), or any delay in doing so,

(such obligations “**PDE Obligations**”) in each case if and to the extent that such failure or delay is directly attributable to the occurrence and continuance of such Payment Disruption Event.

### ***Conditions to Payment Disruption Event relief***

66.2 The PDE Affected Party’s relief from liability pursuant to Condition 66.1 is subject to and conditional upon:

- (A) the PDE Affected Party giving notice promptly to the other Party of the nature and extent of the Payment Disruption Event causing its failure or delay in performance; and
- (B) the PDE Affected Party using reasonable endeavours:
  - (i) to mitigate the effects of the Payment Disruption Event;
  - (ii) to carry out and perform its obligations under the Investment Contract (and each other IC Document) in any way that is reasonably practicable; and
  - (iii) to pay the sum due and payable or transfer, deliver, extend, renew or replace Acceptable Collateral in accordance with Part 13 (*Credit*

*Support*) (as relevant) immediately upon cessation of the Payment Disruption Event.

## **67. FORCE MAJEURE**

### ***Relief due to Force Majeure***

- 67.1 Subject to the provisions of this Condition 67 (*Force Majeure*), a Party affected by Force Majeure (an “**FM Affected Party**”) shall be relieved from liability, and deemed not to be in breach of the Investment Contract (or any other IC Document), for any failure or delay in the performance of any of its obligations under the Investment Contract (or any other IC Document) if and to the extent such failure or delay is directly attributable to the occurrence and continuance of such Force Majeure.
- 67.2 Nothing in this Condition 67 (*Force Majeure*) shall relieve either Party from its obligations to perform or comply with any PDE Obligations.

### ***Conditions to Force Majeure relief***

- 67.3 The FM Affected Party's relief from liability pursuant to Condition 67.1 is subject to and conditional upon:
- (A) the FM Affected Party giving notice promptly to the other Party of the nature and extent of the Force Majeure causing its failure or delay in performance; and
  - (B) the FM Affected Party using reasonable endeavours to mitigate the effects of the Force Majeure, to carry out its obligations under the Investment Contract in any way that is reasonably practicable and to resume the performance of its obligations under the Investment Contract as soon as reasonably practicable.

### ***Provision of Force Majeure information***

- 67.4 In addition to its notification obligation pursuant to Condition 67.3, the FM Affected Party shall give notice promptly to the other Party (to the extent that such Information is available) of:
- (A) the steps being taken by the FM Affected Party to remove or mitigate the effect of the Force Majeure and to carry out its obligations under the Investment Contract (or the relevant IC Document);
  - (B) the anticipated date of resumption of performance of its obligations under the Investment Contract (or the relevant IC Document); and
  - (C) such other details relating to the Force Majeure and its effects as may be reasonably requested by the other Party,

and, to the extent that such Information is not available at the time a notice is given, the FM Affected Party shall provide such Information to the other Party as soon as it becomes available.



- 67.5 The FM Affected Party shall give notice to the other Party every twenty (20) Business Days of any update to the Information provided pursuant to Condition 67.4 and shall give notice promptly to the other Party upon it becoming aware of any material developments or additional material Information relating to the Force Majeure and its effects.

## **68. SEVERABILITY**

If any provision or part of a provision of the Investment Contract or any other IC Document is or becomes illegal, invalid or unenforceable in any respect in any jurisdiction, that shall not affect or impair:

- (A) the legality, validity or enforceability in that jurisdiction of any other provision of the Investment Contract or any other IC Document; or
- (B) the legality, validity or enforceability in other jurisdictions of that or any other provision of the Investment Contract or any other IC Document.

## **69. LIMITED RECOURSE ARRANGEMENTS, UNDERTAKINGS AND ACKNOWLEDGEMENTS**

### ***Transitional arrangements***

- 69.1 Conditions 69.2 to 69.7 inclusive (*CfD Counterparty payment undertakings*), Condition 69.8 (*Limited Recourse*) and Condition 69.9 (*Damages for breach*) shall not apply if and for so long as:

- (A) the Secretary of State is the CfD Counterparty; and
- (B) regulations have not been made under paragraph 6 of Schedule 2 to the EA 2013 which make provision for electricity suppliers to pay the Secretary of State for the purpose of enabling payments to be made under investment contracts (as contemplated by paragraph 7(1) of Schedule 2 to the EA 2013).

### ***CfD Counterparty payment undertakings***

- 69.2 For the purpose of Conditions 69.3 to 69.9, references in Conditions 69.3 to 69.6 to “liabilities” shall be construed as if the limited recourse provisions set out in Condition 69.8 do not apply.
- 69.3 The CfD Counterparty shall make appropriate requests to Electricity Suppliers on the basis provided for by the Supplier Obligation Regulations for the purpose of ensuring that it is in sufficient funds to meet its liabilities in full pursuant to the Investment Contract.
- 69.4 The CfD Counterparty (except, other than in relation to paragraph (D) below, where it is the Secretary of State) shall, to the extent consistent with the CfD Counterparty’s proper exercise of its functions and duties pursuant to the EA 2013, promptly:

- (A) take such steps as are necessary to recover from an Electricity Supplier any sum which the Electricity Supplier is required by virtue of the Supplier Obligation Regulations to pay to the CfD Counterparty and which has not been paid by the date on which it is required by virtue of the Supplier Obligation Regulations to be paid and which is necessary to ensure the CfD Counterparty can meet its liabilities in full pursuant to the Investment Contract;
- (B) at the times and otherwise in the manner prescribed by the Supplier Obligation Regulations, issue and enforce notices to Electricity Suppliers requiring the provision and/or payment of financial collateral to ensure the CfD Counterparty can meet its liabilities in full pursuant to the Investment Contract;
- (C) take such action (including the taking and prosecution of legal proceedings) against Electricity Suppliers as is necessary to ensure that the CfD Counterparty can meet its liabilities in full pursuant to the Investment Contract;
- (D) pursue any Electricity Supplier which has defaulted in making payment pursuant to the Supplier Obligation Regulations as a civil debtor unless, acting reasonably, the CfD Counterparty considers that there are more appropriate means of pursuing the defaulting Electricity Supplier or securing payment due to the Generator;
- (E) take such action (including the taking and prosecution of legal proceedings) to recover and receive from other sources of funds (if any) available to the CfD Counterparty, including:
  - (i) moneys standing to the credit of any designated risk, reserve or shortfall fund; and/or
  - (ii) moneys available by reason of any 'make whole', loss mutualisation or similar arrangements among Electricity Suppliers or others in respect of any shortfall in amounts due and owing but not paid by Electricity Suppliers to the CfD Counterparty for the purposes of enabling the CfD Counterparty to make payments pursuant to FiT Contracts for Difference,

as is necessary for the purpose of meeting its liabilities in full pursuant to the Investment Contract; and
- (F) notify the Secretary of State if the CfD Counterparty has reason to believe that it will have insufficient funds available to make when due the totality of the payments to generators that are required pursuant to FiT Contracts for Difference.

69.5 The CfD Counterparty (except where it is the Secretary of State) shall keep the Generator informed as to any call which the CfD Counterparty makes on any Electricity Supplier's reserve requirement (under and as defined in the Supplier Obligation Regulations) for the purpose of meeting its liabilities in full pursuant to the Investment Contract.

69.6 The CfD Counterparty (except where it is the Secretary of State) agrees that in circumstances where the CfD Counterparty has failed to pay an amount on the due date therefor pursuant to the Investment Contract:

- (A) damages alone would not be an adequate remedy for any breach by it of its obligations set out in paragraphs (A) to (E) (inclusive) of Condition 69.4;
- (B) accordingly, the Generator will be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach by the CfD Counterparty of its obligations set out in paragraphs (A) to (E) (inclusive) of Condition 69.4; and
- (C) it will not raise any objection to an application by the Generator for any such remedies.

69.7 Without prejudice to Condition 69.8, the maximum liability of the CfD Counterparty in respect of breach by it of Condition 69.3, 69.4 or 69.5 shall be limited to an amount equivalent to the Default Interest on the amount which has not been paid by the CfD Counterparty to the Generator pursuant to the Investment Contract by reason of the relevant breach for the period from what would have been the date of payment but for such breach to the date of actual payment, provided that the limit of liability in this Condition 69.7 shall not apply where the breach is caused by the gross negligence or wilful misconduct of the CfD Counterparty.

***Limited recourse***

69.8 Notwithstanding any other provision of the Investment Contract:

- (A) the liability of the CfD Counterparty pursuant to the Investment Contract shall not exceed the aggregate of:
  - (i) the amounts from time to time received and held by the CfD Counterparty, and allocated to the Investment Contract, pursuant to the Supplier Obligation Regulations; and
  - (ii) any other funds of the type referred to in Condition 69.4(E) from time to time received and held by the CfD Counterparty, and allocated to the Investment Contract, whether pursuant to the Supplier Obligation Regulations or otherwise; and
- (B) the CfD Counterparty shall not be in default pursuant to the Investment Contract in not making any payment that is due and owing if and to the extent that it shall not have received the amounts and other funds referred to in Condition 69.8(A) which are necessary to make such payment, but if and to the extent that such payment is not made, the CfD Counterparty shall continue to owe an amount equal to the amount of the payment due and owing but not paid and shall make such payment promptly (and in any event within two (2) Business Days) after and to the extent of its receipt of such corresponding and allocated amounts and other funds.

***Damages for breach***

69.9 The Parties acknowledge and agree that:

- (A) the CfD Counterparty shall have full right and liberty to recover from the Generator any loss, damage, cost or expense suffered or incurred by the CfD Counterparty as a result of a breach by the Generator of the Investment Contract or any IC Document and for this purpose no regard shall be had to the right or ability (if any) of the CfD Counterparty to recover such loss, damage, cost or expense from all or any Electricity Suppliers or any other person pursuant to any regulations made pursuant to the EA 2013 (including the Supplier Obligation Regulations); and
- (B) to the extent that any such loss, damage, cost or expense is recovered by the CfD Counterparty from the Generator, it is the intent that the CfD Counterparty will not keep those amounts but will, pursuant to the regulations made pursuant to the EA 2013 (including the Supplier Obligation Regulations):
  - (i) use such amounts to make good any loss, damage, cost or expense suffered or incurred by the CfD Counterparty;
  - (ii) pass or return those amounts to the Electricity Supplier(s) or other persons entitled thereto pursuant to such regulations; and/or
  - (iii) use such amounts for the benefit of such Electricity Supplier(s) or other person(s).

**Part 16**  
**Confidentiality, announcements and freedom of information**

**70. CONFIDENTIALITY**

***Confidentiality restrictions: application to the terms of the Investment Contract***

70.1 Subject to Condition 71 (*Announcements*), the Parties agree that the provisions of the Investment Contract shall not be treated as Confidential Information and may be disclosed without restriction.

***Generator Confidential Information: obligations of the CfD Counterparty***

70.2 The CfD Counterparty shall keep all Generator Confidential Information confidential and shall not disclose Generator Confidential Information without the prior written consent of the Generator, other than as permitted by Condition 70.4.

70.3 The CfD Counterparty shall not disclose or make use of any Generator Confidential Information otherwise than to fulfil the CfD Counterparty Permitted Purposes, except with the prior written consent of the Generator.

70.4 Condition 70.2 shall not prevent the disclosure of Generator Confidential Information by the CfD Counterparty:

(A) on a confidential basis:

- (i) to its Representatives to enable or assist the CfD Counterparty to fulfil the CfD Counterparty Permitted Purposes;
- (ii) to any Transferee to fulfil the CfD Counterparty Permitted Purposes;
- (iii) to any person engaged in providing services to the CfD Counterparty to enable or assist the CfD Counterparty to fulfil the CfD Counterparty Permitted Purposes;
- (iv) to any Government Entity (or to its Representatives or to any person engaged in providing services to such Government Entity) where the CfD Counterparty considers such disclosure is required to enable or assist:
  - (a) the CfD Counterparty to fulfil the CfD Counterparty Permitted Purposes;
  - (b) such person to: (i) fulfil any of its functions arising out of or in connection with the Investment Contract or any other FiT Contract for Difference; (ii) perform any function ancillary or related to its functions arising out of or in connection with the Investment Contract or any other FiT Contract for Difference; or

(iii) fulfil any functions, duties or obligations arising by virtue of or pursuant to the EA 2013; or

- (c) any transfer under a Transfer Scheme; or
- (v) to any Transmission System Operator, Transmission Licensee or Licensed Distributor, the CfD Settlement Services Provider, the Delivery Body, any BSC Company or any BSC Agent (or to their respective Representatives) to the extent that the CfD Counterparty considers such disclosure is required to enable or assist: (a) the CfD Counterparty to fulfil the CfD Counterparty Permitted Purposes; or (b) such person to fulfil or perform any of its functions, duties or obligations arising out of or in connection with the Investment Contract or any other FiT Contract for Difference or to fulfil or perform any ancillary or related function, duty or obligation (including any such functions, duties or obligations arising by virtue of or pursuant to the EA 2013),

provided that: (1) the CfD Counterparty shall use reasonable endeavours to inform the recipient of the Generator Confidential Information of the CfD Counterparty's obligations pursuant to Conditions 70.2 and 70.3; and (2) in the case of disclosure of Generator Confidential Information pursuant to Conditions 70.4(A)(i), 70.4(A)(ii) or 70.4(A)(iii), the CfD Counterparty shall ensure that the recipient of the Generator Confidential Information shall be subject to substantially the same obligation of confidentiality as contained in Conditions 70.2 and 70.3;

- (B) to enable a Dispute to be instigated, progressed, consolidated with other disputes, settled or determined pursuant to and in accordance with the Dispute Resolution Procedure (except where the relevant Generator Confidential Information has been provided on a "without prejudice" or "without prejudice save as to costs" basis);
- (C) to enable a Metering Dispute to be instigated, progressed, settled or determined in accordance with the provisions of the BSC;
- (D) (subject to Condition 70.5) to Parliament or to any Parliamentary committee, but only if and to the extent that the CfD Counterparty considers such disclosure is required to enable or assist it to fulfil any CfD Counterparty Permitted Purpose;
- (E) (subject to Condition 70.5) to any Secretary of State to enable or assist the Secretary of State to make a disclosure to Parliament or to any Parliamentary committee, but only if and to the extent that the Secretary of State has notified the CfD Counterparty that such disclosure is required to enable or assist the Secretary of State to fulfil its functions;
- (F) (subject to Condition 70.5) to any Secretary of State to enable or assist the Secretary of State to make a disclosure to the European Commission or other Competent Authority, but only if and to the extent that the CfD Counterparty considers (or the Secretary of State has notified the CfD Counterparty that) such

disclosure is required in connection with the application of the State Aid Rules or in connection with any European Commission decision relating to those rules;

- (G) (subject to Condition 70.5) to the European Commission or other Competent Authority, but only if and to the extent that the CfD Counterparty considers such disclosure is necessary in connection with the application of the State Aid Rules or in connection with any European Commission decision relating to those rules;
- (H) (subject to Condition 70.5) which is required to comply with any Law or Directive having the force of law or, if not having the force of law, compliance with which is in accordance with accepted general practice;
- (I) (subject to Condition 72 (*Freedom of information*)) which is required:
  - (i) by the FoIA; or
  - (ii) by the EIR;
- (J) to which the Generator has agreed in writing in advance;
- (K) for such time as the Secretary of State is the CfD Counterparty, to Parliament or any Parliamentary committee, the European Commission, any other Competent Authority or any other person for such purposes as the Secretary of State shall consider to be necessary or desirable in order to enable or assist the Secretary of State to determine or carry out his policy, and/or fulfil his functions, with regard to FiT Contracts for Difference, the Investment Contract or other aspects of electricity market reform;
- (L) to the National Audit Office for the purpose of any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the CfD Counterparty has used its resources; and
- (M) that is otherwise expressly permitted pursuant to the terms, or required for the operation or fulfilment, of the Investment Contract or any other IC Document.

70.5 Prior to any disclosure of Generator Confidential Information by the CfD Counterparty pursuant to any of Conditions 70.4(D), 70.4(E), 70.4(F), 70.4(G) and 70.4(H), the CfD Counterparty shall use reasonable endeavours to give notice to the Generator of the Generator Confidential Information to be disclosed, provided that:

- (A) it is lawful and reasonably practicable in the circumstances to do so; and
- (B) in the case of any disclosure pursuant to Condition 70.4(D) or 70.4(E), it is not inconsistent with Parliamentary convention.

***CfD Counterparty: insider dealing and market abuse***

70.6 The Generator shall consult with the CfD Counterparty in good faith, from time to time upon request by the CfD Counterparty, in relation to whether Generator Confidential

Information held by the CfD Counterparty (or its Representatives) constitutes at that time Inside Information. Nothing in this Condition 70.6 is intended to or shall result in the Generator or any of its Representatives: (i) incurring any liability whatsoever under or in respect of the CfD Counterparty's (or any of its Representatives') obligations and responsibilities pursuant to FSMA or the CJA or (ii) being obliged to consult with the CfD Counterparty on Generator Confidential Information to be provided to the CfD Counterparty which constitutes (or may constitute) "inside information" (within the meaning of section 118C of FSMA or section 56 of the CJA) in respect of any person other than the Generator or any members of its Group.

***CfD Counterparty: liability for Representatives and service providers***

70.7 The CfD Counterparty shall be responsible for:

- (A) any failure by its current or former Representatives or any person to whom Generator Confidential Information is disclosed pursuant to Condition 70.4(A)(ii) or 70.4(A)(iii) to comply with Condition 70.2 as if they were subject to it; and
- (B) any use by its current or former Representatives or any person to whom Generator Confidential Information is disclosed pursuant to Condition 70.4(A)(ii) or 70.4(A)(iii), of any Generator Confidential Information in breach of Condition 70.3, as if they were subject to it.

***CfD Counterparty Confidential Information: obligations of the Generator***

70.8 The Generator shall keep all CfD Counterparty Confidential Information confidential and shall not disclose CfD Counterparty Confidential Information without the prior written consent of the CfD Counterparty, other than as permitted by Condition 70.10.

70.9 The Generator shall not disclose or make use of any CfD Counterparty Confidential Information otherwise than to fulfil the Generator Permitted Purpose, except with the prior written consent of the CfD Counterparty.

70.10 Condition 70.8 shall not prevent the disclosure of CfD Counterparty Confidential Information by the Generator:

- (A) on a confidential basis:
  - (i) to its Representatives to enable or assist the Generator to fulfil the Generator Permitted Purpose;
  - (ii) to members of its Group (and their respective Representatives) to enable or assist the Generator to fulfil the Generator Permitted Purpose;
  - (iii) to any Transferee to fulfil the Generator Permitted Purpose;
  - (iv) to providers or prospective providers to the Generator of debt financing, refinancing or credit support and their professional advisers, provided



that such disclosure is restricted to Information necessary for the purposes of assessing the provision or potential provision of such financing, refinancing or credit support;

- (v) to *bona fide* prospective purchasers of the Facility or, where the Facility is a Dual Scheme Facility, the Generating Station, provided that such disclosure is restricted to Information necessary for the purpose of assessing such potential purchase;
- (vi) to any Transmission System Operator, Transmission Licensee or Licensed Distributor, the CfD Settlement Services Provider, the Delivery Body, any BSC Company or any BSC Agent (or to their respective Representatives) to the extent that the Generator considers such disclosure is required to enable or assist: (a) the Generator to fulfil the Generator Permitted Purpose; or (b) such person to fulfil or perform any of its functions, duties or obligations arising out of or in connection with the Investment Contract or any other FiT Contract for Difference or to fulfil or perform any ancillary or related function, duty or obligation (including any such functions, duties or obligations arising by virtue of or pursuant to the EA 2013);
- (vii) for the purposes of:
  - (a) the examination and certification by its auditors of the Generator's accounts; or
  - (b) complying with a proper request from the Generator's insurance adviser or insurer on placing or renewing any insurance policies,

provided that: (1) the Generator shall use reasonable endeavours to inform the recipient of the CfD Counterparty Confidential Information of the Generator's obligations pursuant to Conditions 70.8 and 70.9; and (2) in the case of disclosure of CfD Counterparty Confidential Information pursuant to Condition 70.10(A)(i), 70.10(A)(ii), 70.10(A)(iii), 70.10(A)(iv) or 70.10(A)(v), the Generator shall ensure that the recipient of the CfD Counterparty Confidential Information shall be subject to substantially the same obligation of confidentiality as contained in Conditions 70.8 and 70.9;

- (B) to enable a Dispute to be instigated, progressed, consolidated with other disputes, settled or determined pursuant to and in accordance with the Dispute Resolution Procedure (except where the relevant CfD Counterparty Confidential Information has been provided on a "without prejudice" or "without prejudice save as to costs" basis);
- (C) to enable a Metering Dispute to be instigated, progressed, settled or determined in accordance with the provisions of the BSC;
- (D) (subject to Condition 70.11) which is required to comply with any Law or Directive (including the rules of any securities exchange, clearing system or

regulatory body) having the force of law or, if not having the force of law, compliance with which is in accordance with the general practice of the Generator;

- (E) to which the CfD Counterparty has agreed in writing in advance; or
- (F) that is otherwise expressly permitted pursuant to the terms, or required for the operation or fulfilment, of the Investment Contract or any other IC Document.

70.11 Prior to any disclosure of CfD Counterparty Confidential Information by the Generator pursuant to and of Condition 70.10(D), the Generator shall use reasonable endeavours to give notice to the CfD Counterparty of the CfD Counterparty Confidential Information to be disclosed, provided that it is lawful and reasonably practicable in the circumstances to do so.

***Generator: liability for Representatives and service providers***

70.12 The Generator shall be responsible for:

- (A) any failure by its current or former Representatives or any person to whom CfD Counterparty Confidential Information is disclosed pursuant to Condition 70.10(A)(ii), 70.10(A)(iii), 70.10(A)(iv) or 70.10(A)(v) to comply with Condition 70.8 as if they were subject to it; and
- (B) any use by its current or former Representatives or any person to whom CfD Counterparty Confidential Information is disclosed pursuant to Condition 70.10(A)(ii) or 70.10(A)(iii), of any CfD Counterparty Confidential Information in breach of Condition 70.9 as if they were subject to it; and
- (C) any failure by any person to whom CfD Counterparty Confidential Information is disclosed pursuant to Condition 70.10(A)(iv) or 70.10(A)(v) to comply with the restrictions on usage of CfD Counterparty Confidential Information provided for in such Conditions.

***No licence***

70.13 No right or licence is granted to any person in relation to any Confidential Information save as explicitly set out in this Condition 70 (*Confidentiality*).

**71. ANNOUNCEMENTS**

***No announcements***

71.1 The Generator:

- (A) shall not, and shall ensure that its directors, officers and employees do not; and
- (B) shall use reasonable endeavours to ensure that each of its other current or former Representatives and each member of its Group (and their respective Representatives) do not,

make, publish, issue or release any announcement or public statement in relation to, or which refers to, the Investment Contract or any other IC Document or any related or ancillary matter, without the express prior consent of the CfD Counterparty (such consent not to be unreasonably withheld or delayed).

***Generator permitted announcements***

- 71.2 Notwithstanding Condition 71.1, the Generator (and its directors, officers and employees) may make, publish, issue or release any announcement or public statement in relation to, or which refers to, the Investment Contract or any other IC Document or any related or ancillary matter if and to the extent required by any Law or Directive (including the rules of any securities exchange, clearing system or regulatory body) having the force of law or, if not having the force of law, compliance with which is in accordance with the general practice of the Generator, provided the Generator shall use (and shall procure that its directors, officers and employees shall use) reasonable endeavours to agree the contents of such announcement or public statement with the CfD Counterparty before it is made, published, issued or released (such consent not to be unreasonably withheld or delayed) or, if the contents of such announcement or public statement are not able to be agreed before the making, publishing, issuing or releasing of such announcement or public statement, notify the CfD Counterparty of such announcement or public statement immediately following its being made, published, issued or released.

***CfD Counterparty permitted announcements***

- 71.3 The CfD Counterparty may make, publish, issue or release any announcement or public statement in relation to, or which refers to, the Investment Contract or any other IC Document or any related or ancillary matter that it considers to be necessary, desirable or appropriate (acting reasonably), provided that, if and to the extent that such announcement or statement contains any Generator Confidential Information, the making, publication, issue or release of such announcement or public statement does not breach Condition 70.2, 70.3 or 70.5.

**72. FREEDOM OF INFORMATION**

***Generator acknowledgements and undertakings***

- 72.1 The Generator acknowledges and agrees that the CfD Counterparty:
- (A) is subject to the requirements of the FoIA and the EIR;
  - (B) may, acting in accordance with the Code of Practice on the discharge of public authorities' functions pursuant to Part 1 of the FoIA (issued under section 45 of the FoIA) or the Code of Practice on the discharge of the obligations of public authorities pursuant to the EIR (issued pursuant to Regulation 16 of the EIR), be obliged pursuant to the FoIA or the EIR to disclose Information unless an exemption applies;

- (C) may, at its discretion, consult the Generator with regard to whether the FoIA or the EIR applies to a Request for Information and whether an exemption applies; and
- (D) shall be responsible for determining in its sole and absolute discretion, and notwithstanding any other provision in the Investment Contract or any other IC Document, whether the Information it holds (or that is held on its behalf) that is the subject of a Request for Information:

- (i) is exempt or excepted from disclosure pursuant to the FoIA or the EIR, as appropriate; and

- (ii) is to be disclosed in response to a Request for Information,

and, for the purposes of this Condition 72.1(D) any notification to the CfD Counterparty which identifies Information as being Generator Confidential Information is of indicative value only and the CfD Counterparty may nevertheless be obliged to disclose such Information in accordance with the requirements of the FoIA and the EIR.

## 72.2 The Generator:

- (A) shall not, and shall ensure that its directors, officers and employees do not; and
- (B) shall use reasonable endeavours to ensure that each of its other current or former Representatives and each member of its Group (and their respective Representatives) do not,

respond directly to a Request for Information unless expressly authorised to do so in writing by the CfD Counterparty.

## 72.3 The Generator undertakes to assist and co-operate with the CfD Counterparty, at the Generator's cost, to enable the CfD Counterparty to comply with its obligations pursuant to the FoIA and the EIR.

### ***Requests for Information: procedure***

## 72.4 If the CfD Counterparty receives a Request for Information in relation to Information that the Generator is holding on behalf of the CfD Counterparty and which the CfD Counterparty does not hold itself, the CfD Counterparty shall refer to the Generator such Request for Information and the Generator shall:

- (A) provide the CfD Counterparty with a copy of all such Information in the form that the CfD Counterparty requests as soon as reasonably practicable and in any event within five (5) Business Days, or such longer period as is specified by the CfD Counterparty, of the CfD Counterparty's request; and
- (B) provide all assistance reasonably requested by the CfD Counterparty in respect of any such Information to enable the CfD Counterparty to respond to a

Request for Information within the time for compliance set out in section 10 of the FoIA or regulation 5 of the EIR.

- 72.5 The Generator shall ensure that all Information held on behalf of the CfD Counterparty is retained for disclosure and shall permit the CfD Counterparty to inspect such Information as requested from time to time.
- 72.6 If the Generator receives a Request for Information in relation to the CfD Counterparty or in connection with the Investment Contract, the Generator shall forward such Request for Information to the CfD Counterparty as soon as reasonably practicable after receipt and in any event within two (2) Business Days, and this Condition 72 (*Freedom of information*) shall apply as if the Request for Information had been received by the CfD Counterparty.

***Publication schemes***

- 72.7 Nothing in this Condition 72 (*Freedom of information*) shall restrict or prevent the publication by the CfD Counterparty of any Information in accordance with:
- (A) any publication scheme (as defined in the FoIA) adopted and maintained by the CfD Counterparty in accordance with the FoIA; or
  - (B) any model publication scheme (as defined in the FoIA) applicable to the CfD Counterparty as may be published from time to time by the Information Commissioner,

provided that, in deciding whether to publish Generator Confidential Information in accordance with any such publication scheme or model publication scheme, the CfD Counterparty shall take account of whether such Generator Confidential Information would be exempt from disclosure pursuant to the FoIA.

**Part 17**  
**Miscellaneous**

**73. INTELLECTUAL PROPERTY RIGHTS**

***Retention of Intellectual Property Rights***

- 73.1 Each Party shall retain ownership of any Intellectual Property Rights developed by or on behalf of that Party, whether pursuant to or independently from the Investment Contract, any other IC Document or (in the case of the CfD Counterparty) any other FiT Contract for Difference.

***Licence of Intellectual Property Rights***

- 73.2 Each Party hereby grants to the other Party with effect from the Start Date and subject to Condition 73.3(B) for the duration of the Term, a licence of any Intellectual Property Rights that are created by it, or on its behalf, pursuant to the terms of the Investment Contract, any other IC Document or (in the case of the CfD Counterparty) any other FiT Contract for Difference that:

- (A) it owns; or
- (B) is licensed to it (but only to the extent that it has the right to sub-license such Intellectual Property Rights),

on a non-exclusive, royalty-free, non-transferable basis (and, subject to Condition 73.3(A), without the right to sub-license) solely for the CfD Counterparty Permitted Purposes (in the case of the CfD Counterparty) or the Generator Permitted Purpose (in the case of the Generator), but excluding any Intellectual Property Rights owned by, or licensed to, the Generator which have been generated after the Start Date in the operation of the Facility pursuant to the Investment Contract or any other IC Document and which are not otherwise required for the CfD Counterparty Permitted Purposes.

- 73.3 The licence granted pursuant to Condition 73.2 shall:

- (A) permit each Party to sub-license to the extent required for the CfD Counterparty Permitted Purposes (in the case of the CfD Counterparty) or the Generator Permitted Purpose (in the case of the Generator); and
- (B) permit each Party to use the Intellectual Property Rights after expiry or termination of the Investment Contract, but only for the CfD Counterparty Permitted Purposes (in the case of the CfD Counterparty) or the Generator Permitted Purpose (in the case of the Generator).

***Indemnity for infringement of Intellectual Property Rights***

- 73.4 The Generator shall indemnify the CfD Counterparty, and keep the CfD Counterparty fully and effectively indemnified, against all liabilities, costs, expenses, damages and

losses (including legal costs) incurred in respect of any actual infringement of third party Intellectual Property Rights arising from the use by the CfD Counterparty (or any entity that is sub-licensed in accordance with Condition 73.3(A)) of Intellectual Property Rights licensed to the CfD Counterparty by the Generator pursuant to Condition 73.2, provided that such infringement has arisen from the use of such Intellectual Property Rights in accordance with the CfD Counterparty Permitted Purposes.

- 73.5 The CfD Counterparty shall indemnify the Generator, and keep the Generator fully and effectively indemnified, against all liabilities, costs, expenses, damages and losses (including legal costs) incurred in respect of any actual infringement of third party Intellectual Property Rights arising from the use by the Generator (or any entity that is sub-licensed in accordance with Condition 73.3(A)) of Intellectual Property Rights licensed to the Generator by the CfD Counterparty pursuant to Condition 73.2, provided that such infringement has arisen from the use of such Intellectual Property Rights in accordance with the Generator Permitted Purpose.

#### **74. GENERATOR CO-OPERATION: STATE AID RULES**

- 74.1 If the CfD Counterparty is notified or becomes aware that the European Commission or other Competent Authority has decided that the United Kingdom must recover any State aid granted or paid in relation to the Investment Contract and that decision has not been annulled, the CfD Counterparty shall give notice promptly to the Generator of the sums to be repaid and any other actions necessary to ensure compliance with the European Commission or other Competent Authority's decision and the Generator shall repay or procure the repayment of the relevant sums so notified to the CfD Counterparty or as the CfD Counterparty directs and take any other necessary actions so notified without delay.

- 74.2 The Generator shall, on reasonable notice and at its own cost:

(A) do or procure the doing of all acts and execute or procure the execution of all documents; and

(B) provide the CfD Counterparty with the Information and assurances,

reasonably necessary for the United Kingdom to comply with the terms of any European Commission decision relating to the Investment Contract pursuant to the State Aid Rules.

#### **75. GENERATOR ACKNOWLEDGEMENTS: GENERAL**

##### ***Generator responsibility for advice and appraisal***

- 75.1 The Generator acknowledges and agrees that neither the CfD Counterparty, the CfD Settlement Services Provider, the Delivery Body nor the Secretary of State (nor any of their respective Representatives):

(A) is:

(i) acting as a fiduciary of the Generator; or

- (ii) advising the Generator (including as to any financial, legal, tax, investment, accounting or regulatory matters in any jurisdiction); or
- (B) shall have any liability, duty, responsibility or obligation to the Generator with respect thereto.

***CfD Counterparty contracting as principal***

75.2 The Generator acknowledges and agrees that:

- (A) the CfD Counterparty is contracting as principal and not on behalf of or as an agent for the Delivery Body or (where the Secretary of State is not the CfD Counterparty) the Secretary of State;
- (B) subject to Condition 75.3 it shall not have or bring any claim or action against the Secretary of State or the Delivery Body (or their respective Representatives), or the Representatives of the CfD Counterparty, in respect of the Investment Contract or any other IC Document;
- (C) nothing in the Investment Contract or any other IC Document shall impute or impose any liability, duty, responsibility or obligation upon the CfD Counterparty (other than pursuant to and in accordance with the express terms of the Investment Contract or any other IC Document); and
- (D) it shall not hold itself out as having any authority to act for or represent the CfD Counterparty in any way, nor act in any way which confers on the Generator any express, implied or apparent authority to incur any obligation or liability on behalf of the CfD Counterparty.

75.3 Condition 75.2(B) shall not apply in relation to any claim or action against the Secretary of State himself acting in his capacity as the CfD Counterparty.

***Generator's relationship with the CfD Settlement Services Provider***

75.4 The Generator acknowledges and agrees that it shall not have or bring any claim or action against the CfD Settlement Services Provider in respect of any breach of the Investment Contract (or any other IC Document) or any loss, damage, cost or expense suffered or incurred thereunder and that its sole recourse for any breach of the Investment Contract (or any other IC Document) or any loss, damage, cost or expense suffered or incurred thereunder shall be against the CfD Counterparty.

**76. NO PARTNERSHIP**

Nothing in the Investment Contract or any other IC Document and no action taken by the Parties pursuant to the Investment Contract or any other IC Document shall constitute a partnership, joint venture or agency relationship between the Parties.



## 77. TRANSFERS

### ***Restriction on Transfers***

77.1 Save as expressly permitted by this Condition 77 (*Transfers*), neither Party may:

- (A) assign to any person all or any of its rights or benefits under the Investment Contract or any other IC Document;
- (B) make a declaration of trust in respect of or enter into any arrangement whereby it agrees to hold in trust for any person all or any of its rights or benefits under the Investment Contract or any other IC Document; or
- (C) transfer (whether by way of novation, sub-contract, delegation or otherwise) to any person, or enter into an arrangement whereby any person is to perform, any or all of its obligations under the Investment Contract or any other IC Document,

(each, a “**Transfer**”, and “**Transferee**”, which expression shall (where the context so requires) be deemed to include any transferee under a Transfer Scheme, shall be construed accordingly), without the prior written consent of the other Party.

### ***Permitted Transfers by the Secretary of State***

77.2 Notwithstanding Condition 77.1, but subject to Condition 77.6(C), the Secretary of State shall be entitled, without the consent of the Generator, to effect a Transfer to any person by or by virtue of a Transfer Scheme.

### ***Permitted Transfers by the CfD Counterparty (not being the Secretary of State)***

77.3 Notwithstanding Condition 77.1, a Transfer of the rights or obligations of the CfD Counterparty (not being the Secretary of State) may be effected, without the consent of the Generator, to any person by or by virtue of a Transfer Scheme.

### ***Other permitted assignments by the CfD Counterparty***

77.4 Notwithstanding Condition 77.1, the CfD Counterparty shall be entitled, without the consent of the Generator, to assign to any person all or any of its rights or benefits under the Investment Contract and any other IC Document on such terms as the CfD Counterparty considers appropriate.

### ***Permitted delegation by the CfD Counterparty***

77.5 Notwithstanding Condition 77.1, the CfD Counterparty shall be entitled, without the consent of the Generator, to sub-contract or delegate to any person, or enter into an arrangement whereby any person is to perform, any or all of its obligations under the Investment Contract and any other IC Document on such terms as the CfD Counterparty considers appropriate, provided that the CfD Counterparty shall not be relieved of any of its obligations under the Investment Contract and any other IC Document and shall be liable for the acts and omissions of any person to whom it sub-

contracts or delegates or with whom it enters into an arrangement to perform any or all of its obligations under the Investment Contract and any other IC Document.

***General provisions relating to permitted transfers***

- 77.6 (A) If the CfD Counterparty effects or proposes to effect a Transfer referred to in Conditions 77.2, 77.3, 77.4 or 77.5, the Generator shall enter into such further agreements and do all such other things as are necessary to substitute the relevant Transferee for the CfD Counterparty in respect of the rights, benefits, obligations or liabilities that are, or are to be, the subject of the Transfer (the **“Transferring Rights and Obligations”**) and to give effect to any consequential amendments to the Investment Contract (or other relevant IC Document) that are necessary to give effect to such transfer.
- (B) To the extent practicable, the CfD Counterparty shall give the Generator not less than ten (10) Business Days’ prior written notice specifying the identity of the Transferee and the Transferring Rights and Obligations, provided that no such prior written notice shall be required in respect of any Transfer: (i) by or by virtue of a Transfer Scheme; or (ii) pursuant to Condition 77.5.
- (C) No Transfer Scheme entered into by the Secretary of State under Condition 77.2 may take effect so as to transfer obligations of the Secretary of State prior to the Supplier Obligation Regulations coming into effect.

***Permitted assignment by the Generator***

- 77.7 (A) Notwithstanding Condition 77.1, the Generator shall be entitled, without the consent of the CfD Counterparty, to assign all (but not part) of its rights and benefits under the Investment Contract and any other IC Document by way of security to or in favour of:
- (i) any Lender;
  - (ii) any Affected Person;
  - (iii) any parent undertaking of the Generator which provides funding in relation to the Facility; or
  - (iv) any agent or security trustee on behalf of any Lender or Affected Person or any parent undertaking of the Generator referred to in (iii) above.

The Generator shall give the CfD Counterparty not less than ten (10) Business Days’ written notice prior to effecting an assignment pursuant to this Condition 77.7(A) and shall specify in such notice the identity of the assignee and provide such details in relation to such assignee as the CfD Counterparty may reasonably request having received such notification.

- (B) The CfD Counterparty shall enter into a Direct Agreement with, and at the request of, any person (or with any agent or security trustee on the relevant person's behalf):
- (i) who is:
    - (a) a Lender with the benefit of first ranking security over all or substantially all of the assets of the Generator (including its rights in respect of the Facility and under the Investment Contract); or
    - (b) an Affected Person (or an agent or security trustee on an Affected Person's behalf) with the benefit of first ranking security over all or substantially all of the assets of the Generator (including its rights in respect of the Facility and under the Investment Contract); and
  - (ii) in whose favour the Generator assigns its rights under the Investment Contract and any other IC Document in accordance with Condition 77.7(A).

***Other Transfers by the Generator; Stapling obligation***

- 77.8 If the consent of the CfD Counterparty to the transfer by the Generator of all or substantially all of the Generator's rights, benefits and obligations under the Investment Contract and any other IC Document to a Transferee is required and is given, the Generator shall transfer ownership of the Facility to the same Transferee contemporaneously with the Transfer. Any Transfer effected, or purported to be effected, in breach of this Condition 77.8 shall be ineffective and void.

***Costs***

- 77.9 The CfD Counterparty shall, promptly on demand from time to time, indemnify the Generator against any out-of-pocket costs properly incurred by the Generator and which would not have been incurred but for a Transfer of the rights and obligations of the CfD Counterparty being effected by or by virtue of a Transfer Scheme.

**78. NOTICES**

***Form of notices***

- 78.1 Any notice to be given pursuant to the Investment Contract, or any other IC Document, shall be effective only if it is in writing and is in English. Faxes are not permitted and, unless otherwise expressly stated, emails and website publication are not permitted.

***Notice details***

- 78.2 The notice details of the Parties as at the Agreement Date are set out in the IC Agreement.

***Changes to notice details***

78.3 A Party may change its notice details on giving notice to the other Party in accordance with this Condition 78 (*Notices*). Such notice shall be effective only from:

- (A) the date specified in such notice (being not less than three (3) Business Days after the date of delivery or deemed delivery of such notice); or
- (B) (if no date is specified in such notice or the date specified is fewer than three (3) Business Days after the date of delivery or deemed delivery of such notice) the date falling three (3) Business Days after the notification has been received.

***Deemed delivery***

78.4 Any notice given pursuant to the Investment Contract or any other IC Document shall, without evidence of earlier receipt, be deemed to have been received:

- (A) if delivered by hand, on the Business Day of delivery or, if delivered on a day other than a Business Day, on the next Business Day after the date of delivery;
- (B) if sent by first class post within the United Kingdom, on the third (3<sup>rd</sup>) Business Day after the day of posting;
- (C) if sent from one country to another, on the fifth (5<sup>th</sup>) Business Day after the day of posting; or
- (D) if sent by email (where such notice is expressly permitted by email), when sent except that an email shall be deemed not to have been sent if the sender receives a delivery failure notification,

provided that any notice given outside Working Hours in the place to which it is addressed (or, in the case of a notice sent by email, the location of the person to whom it is addressed) shall be deemed not to have been given until the start of the next period of Working Hours in such place.

***Notice requirements***

78.5 Except where expressly stated to the contrary, each notice given by the CfD Counterparty to the Generator, or by the Generator to the CfD Counterparty, pursuant to the Investment Contract or any other IC Document must be duly signed:

- (A) in the manner, and by the person, specified in the relevant provision of the Investment Contract or IC Document; or
- (B) (where no such requirement is specified) by an authorised signatory of the relevant Party.

***Disapplication of notice provisions***

- 78.6 This Condition 78 (*Notices*) shall not apply in relation to any document relating to service of process (including in respect of the service of Service Documents).

***Emails permitted***

- 78.7 The CfD Counterparty may deliver any Billing Statement to the Generator pursuant to Condition 21.1 by email.
- 78.8 The CfD Counterparty may deliver any Balancing System Charge Report to the Generator pursuant to Condition 44.2 by email.
- 78.9 The CfD Counterparty may deliver any TLM(D) Charges Report to the Generator pursuant to Condition 45.2 by email.
- 78.10 Either Party may give any notice required to be given pursuant to Part A of Annex 4 (*BMRP*) or Part A of Annex 5 (*IMRP*), as applicable, by email.

***Website publication***

- 78.11 The CfD Counterparty may deliver any Balancing System Charge Report to the Generator pursuant to Condition 44.2 by publishing such report on its website.
- 78.12 The CfD Counterparty may deliver any TLM(D) Charges Report to the Generator pursuant to Condition 45.2 by publishing such report on its website.

**79. COSTS**

- 79.1 Subject to Condition 79.2, each Party shall bear all costs and expenses incurred by it in connection with the entry into the Investment Contract and each other IC Document, including all costs and expenses incurred in connection with the negotiation, preparation, execution, performance and carrying into effect of, and compliance with, the Investment Contract and each other IC Document.
- 79.2 Condition 79.1 is subject to any provision of the Investment Contract or any other IC Document which expressly provides for the Generator to bear the costs and expenses of the CfD Counterparty (or to pay or reimburse or indemnify the CfD Counterparty in respect of such costs and expenses) in respect of which such costs and expenses shall comprise all out-of-pocket costs and expenses (including all legal and other advisory and consultants' fees) properly incurred by the CfD Counterparty in relation to the relevant matter. Where such costs and expenses are required to be apportioned between the Generator and one (1) or more other CfD Generators, the CfD Counterparty shall apportion such costs between the Generator and such other CfD Generators in such proportion as the CfD Counterparty (acting reasonably) deems fair and equitable.

## 80. FURTHER ASSURANCE

- 80.1 Subject to Condition 80.2, each Party shall at its own cost do or procure the doing of all things and execute or procure the execution of all further documents necessary to give full force and effect to and securing to the other Party the full benefit of the rights, powers and benefits conferred upon it under or pursuant to the Investment Contract and all other IC Documents save that the CfD Counterparty shall not be required pursuant to this Condition 80 (*Further assurance*) to exercise or perform any statutory power or duty.
- 80.2 For such time as the Secretary of State is the CfD Counterparty the obligation in Condition 80.1 shall not apply so as to oblige the Secretary of State to do anything which it would not oblige the CfD Counterparty to do were the CfD Counterparty a limited liability company and not the Secretary of State.

## 81. THIRD PARTY RIGHTS

### *Third Party Provisions*

- 81.1 Conditions 75.1, 75.2 and 75.4 confer benefits on the CfD Settlement Services Provider, the Secretary of State, the Delivery Body and their respective Representatives (each, a “**Third Party**”) (such Conditions being “**Third Party Provisions**”).
- 81.2 Subject to the remaining provisions of this Condition 81 (*Third party rights*), the Third Party Provisions are intended to be enforceable by the Third Parties by virtue of the C(RTP) Act.
- 81.3 The Parties do not intend that any term of the Investment Contract, other than the Third Party Provisions, should be enforceable, by virtue of the C(RTP) Act, by any person who is not a Party.
- 81.4 Notwithstanding this Condition 81 (*Third party rights*), the Investment Contract may be varied in any way and at any time by the Parties without the consent of any Third Party.

## 82. NO VARIATION

Subject to Condition 38 (*Change in Applicable Law: Procedure*), the Change Control Procedure, paragraphs 1.7, 2.12, 3.2 and 4.6 and 4.8 of Part A of Annex 4 (*BMRP*) and paragraphs 1.12, 2.5 and 2.6 of Part A of Annex 5 (*IMRP*) and save as expressly provided in the Investment Contract, no variation to the provisions of the Investment Contract shall be valid unless it is in writing and signed by each Party.

## 83. COUNTERPARTS

The Investment Contract may be executed in any number of counterparts and by the Parties to it on separate counterparts, but shall not be effective until each Party has executed at least one (1) counterpart. Each counterpart shall constitute an original but all of the counterparts together shall constitute one and the same instrument.

#### **84. GOVERNING LAW AND JURISDICTION**

- 84.1 The Investment Contract, the other IC Documents and any matter, claim or dispute arising out of or in connection with them (including any Dispute) shall be governed by and construed in accordance with English law.
- 84.2 Any Dispute shall be finally determined or resolved in accordance with the Dispute Resolution Procedure.
- 84.3 Any Metering Dispute shall be finally determined or resolved in accordance with Condition 61 (*Metering Disputes*).

#### **85. AGENT FOR SERVICE OF PROCESS**

##### ***Application***

- 85.1 This Condition 85 (*Agent for service of process*) shall apply to the Investment Contract only if it is expressed to apply to the Investment Contract in the IC Agreement.

##### ***Service Agent***

- 85.2 The Generator irrevocably appoints the Service Agent to be its agent for the receipt of Service Documents and claim forms, application notices, orders, judgments and any other documents relating to any Metering Dispute. It agrees that any Service Document and any claim form, application notice, order, judgment or other document relating to any Metering Dispute may be effectively served on it in England and Wales by service on its Service Agent effected in any manner permitted by the Civil Procedure Rules.

##### ***Replacement***

- 85.3 If the Service Agent at any time ceases for any reason to act as such, the Generator shall appoint a replacement agent for the receipt of Service Documents and claim forms, application notices, orders, judgments and any other documents relating to any Metering Dispute having an address for service in England or Wales and shall notify the CfD Counterparty of the name and address of the replacement agent. Failing such appointment and notification, the CfD Counterparty shall be entitled by notice to the Generator to appoint a replacement agent to act on behalf of the Generator for the receipt of Service Documents and claim forms, application notices, orders, judgments and any other documents relating to any Metering Dispute. The provisions of this Condition 85 (*Agent for service of process*) applying to service on a Service Agent apply equally to service on a replacement agent.

##### ***Service of process***

- 85.4 A copy of any Service Document or any claim form, application notice, order, judgment or other document relating to any Metering Dispute served on an agent shall be sent by post to the Generator. Failure or delay in so doing shall not prejudice the effectiveness of service of the relevant document.

**86. LANGUAGE*****English language***

- 86.1 All Information provided by the Generator to the CfD Counterparty pursuant to the Investment Contract or any other IC Document shall be in English unless otherwise agreed by the CfD Counterparty.

***Translations***

- 86.2 In the case of any Information which is translated into English, prior to its being delivered to the CfD Counterparty pursuant to the Investment Contract or any other IC Document, the Generator shall ensure that any such translation is carried out (at the Generator's cost) by a recognised and appropriately qualified and skilled translation agent.
- 86.3 The CfD Counterparty shall be entitled to assume the accuracy of and rely upon the English translation of any Information provided pursuant to Condition 86.2 and the English translation shall prevail.



**Schedule 1**  
**Conditions Precedent**

**Part A**  
**Initial Condition Precedent**

Delivery to the CfD Counterparty of a legal opinion addressed to the CfD Counterparty, in form and content satisfactory to the CfD Counterparty (acting reasonably), from the legal advisers to the Generator confirming that the Generator:

- (A) is duly formed and validly existing under the laws of the jurisdiction of formation;  
and
- (B) has the power to enter into and perform, and has taken all necessary action to authorise its entry into and performance of, the Investment Contract and the other IC Documents.

**Part B**  
**Further Conditions Precedent**

**1. STATE AID APPROVAL**

The arrangements notified to the European Commission by Her Majesty's Government (including in an initial notification and any subsequent submissions) in connection with the Investment Contract (the "**Notified Arrangements**") receiving State aid approval by virtue of:

- (A) the European Commission issuing a decision that the Notified Arrangements do not constitute State aid;
- (B) the European Commission issuing a decision on terms reasonably satisfactory to Her Majesty's Government that any State aid arising from the Notified Arrangements is compatible with the internal market;
- (C) the European Commission issuing a decision that any State aid arising from the Notified Arrangements is compatible with the internal market subject to compliance with specified conditions or obligations (the "**State Aid Conditions**") (an "**EC Conditional Decision**") where Condition 3.20 does not apply;
- (D) the European Commission issuing an EC Conditional Decision and the Parties reaching, within twenty (20) Business Days after expiry of the period for notifying objections under Condition 3.19, a mutually satisfactory arrangement to comply with the State Aid Conditions; or
- (E) any State aid arising from the Notified Arrangements being deemed to be authorised and capable of implementation pursuant to Article 4(6) EC Council Regulation 659/1999.

**2. OPERATIONAL**

**2.1 Delivery to the CfD Counterparty of the following:**

- (A) written confirmation from the CfD Settlement Services Provider that:
  - (i) it has received the CfD Settlement Required Information which is required from the Generator prior to the Start Date; and
  - (ii) the Generator has in place the systems and processes which are necessary for the continued provision of the CfD Settlement Required Information;
- (B) evidence, in form and content satisfactory to the CfD Counterparty, acting reasonably, that an Installed Capacity of not less than eighty per cent. (80%) of the Installed Capacity Estimate has been Commissioned;

- (C) evidence, in form and content satisfactory to the CfD Counterparty, acting reasonably, that the Generator is complying in full with the Metering Compliance Obligations;
  - (D) a date and time stamped copy of the electrical schematic diagram, certified as being correct and up-to-date by a director of the Generator and showing the locations of the Facility Metering Equipment associated with all assets comprised within the Facility (including details on the type of BSC-approved metering and Communications Equipment installed in compliance with the Metering Compliance Obligation and any relevant MSID); and
  - (E) evidence, in form and content satisfactory to the CfD Counterparty, acting reasonably, that all Communications Equipment relating to Facility Metering Equipment are satisfactorily installed, commissioned, configured, operational, maintained, tested and are fully compliant with the BSC.
- 2.2 Delivery to the CfD Counterparty of a copy of: (i) a valid CHPQA Certificate; and (ii) a valid CHPQA Guidance Note 44 Certificate, each certified as being correct and up-to-date by a director of the Generator (but only if the CHP Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement).
- 2.3 The FMS Procedures having been documented and agreed between the CfD Counterparty and the Generator (but only if the Renewable Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement).
- 2.4 The Generator having given the CfD Counterparty not less than three (3) months' notice of the intended Start Date (but only if the Generator is an Embedded Generator).
- 2.5 The Generator having notified the CfD Counterparty of the counterparty with which it has entered into a Market Supply Agreement (but only if the Generator is an Embedded Generator).

## Annex 1 Calculation of Termination Amount

### 1. DEFINITIONS: ANNEX 1

In this Annex 1 (*Calculation of Termination Amount*):

**“Estimated Facility Generation”** shall be an amount (expressed in MWh) which is the product of:

- (A) the lesser of: (i) the Maximum Contract Capacity; and (ii) the Installed Capacity which has been Commissioned;
- (B) the number of hours in period  $i$ ;
- (C) the Assumed RQM (but only if the Renewable Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement);
- (D) the CHP Qualifying Multiplier (but only if the CHP Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement);
- (E) the Assumed Load Factor; and
- (F) (one (1) minus the Initial TLM(D) Charge);

**“The Green Book”** means “The Green Book: Appraisal and Evaluation in Central Government” published by HM Treasury, as updated or reissued from time to time; and

**“Updated Energy and Emissions Projections”** means the regular updated projections of energy demand, supply and greenhouse gas emissions produced and published by DECC.

### 2. TERMINATION AMOUNT CALCULATION

- 2.1 The **“Termination Amount”** shall be calculated in accordance with the following formula:

$$\text{Termination Amount} = \text{MAX} \left[ 0, \sum_{i=1}^n \left\{ (RP_i - SP) \times \frac{Gen_i}{(1+d)^{i-1}} \right\} \right]$$

where:

$i$  is a whole number integer from 1 to  $n$ ; such integers referring to distinct time periods as follows:

- the 1st period ( $i=1$ ) covers the period from the Termination Date to 31 December in the year of termination;

- the 2nd to the (n-1)th periods ( $2 \leq i < n$ ) are consecutive periods of one (1) calendar year length each; and
- the nth period ( $i = n$ ) is the period starting on 01 January in the year in which the Specified Expiry Date falls and ending on the Specified Expiry Date.

$RP_i$  is the estimate (expressed in £/MWh) of the energy prices for period (i) determined by the CfD Counterparty as at the Termination Date, having regard to the matters set out in paragraph 2.2;

$SP$  is the Strike Price as at the Termination Date;

$Gen_i$  is the Estimated Facility Generation in period (i); and

$d$  is the Social Time Preference rate (a real discount rate) as set out in The Green Book.

2.2 Without prejudice to its right to determine  $RP_i$  the CfD Counterparty shall, when determining  $RP_i$ , have regard to:

- (A) the market price for energy in the system into which electricity is delivered by the Facility;
- (B) the Facility Generation Technology;
- (C) the liquidity of the market referred to in paragraph 2.2(A);
- (D) the level of quoted wholesale energy prices on the Termination Date for delivery for a period of up to two (2) years following the Termination Date;
- (E) the wholesale electricity price projections corresponding to the central scenario of DECC's most recently issued Updated Energy and Emissions Projections (or equivalent) if available; and
- (F) any recent changes or announced changes in the electricity market which are reasonably likely to have a material effect on the estimate of the wholesale market energy prices.

## Annex 2 Change Control Procedure

### 1. INTERPRETATION: ANNEX 2

#### *Interpretation*

- 1.1 In this Annex 2 (*Change Control Procedure*), any reference to an “amendment” (or grammatical variation thereof or any analogous term) in respect of any Proposed Amendment shall be deemed to include any change, replacement, deletion or supplement to or of any provision of:
- (A) the Investment Contract;
  - (B) FiT Contracts for Difference (other than any FiT Contract for Difference to which this Annex 2 (*Change Control Procedure*) is expressed not to apply); or
  - (C) FiT Contracts for Difference of a particular category (other than any FiT Contract for Difference to which this Annex 2 (*Change Control Procedure*) is expressed not to apply).

### 2. CHANGE CONTROL PROCEDURE

#### *Amendment Notifications*

- 2.1 The CfD Counterparty may at any time give a notice to the Generator proposing an amendment to the Investment Contract (an “**Amendment Notification**”). Each Amendment Notification shall:
- (A) be substantially in the form set out in Part ZZ of Annex 9 (*Pro forma notices*);
  - (B) set out the proposed amendment(s) (the “**Proposed Amendment**”);
  - (C) specify the date on which the Proposed Amendment is proposed to become effective (the “**Proposed Amendment Effective Date**”);
  - (D) state whether the CfD Counterparty considers the Proposed Amendment to be a Material Amendment or a Technical Amendment;
  - (E) if the CfD Counterparty considers the Proposed Amendment to be a Technical Amendment, state whether the Proposed Amendment is a General Amendment;
  - (F) if the Proposed Amendment is a General Amendment, state whether it applies to all FiT Contracts for Difference or only to those of a specified category or categories (in each case, other than any FiT Contract for Difference to which this Annex 2 (*Change Control Procedure*) is expressed not to apply) and, if the latter, set out those categories; and

- (G) contain such Supporting Information as the CfD Counterparty considers necessary to enable the Generator to evaluate the Proposed Amendment.

***Material Amendments: process***

2.2 If an Amendment Notification specifies that the Proposed Amendment is a Material Amendment, the Generator shall, within twenty (20) Business Days of the Amendment Notification having been given to it by the CfD Counterparty, either:

- (A) confirm by notice in writing to the CfD Counterparty that it agrees with the Proposed Amendment and the Proposed Amendment Effective Date; or
- (B) specify, by notice in writing to the CfD Counterparty (a “**Material Amendment Response Notification**”), any objections which the Generator has to:
  - (i) the Proposed Amendment, any such notification to include details of:
    - (a) any proposal by the Generator to address the matters identified in the Amendment Notification by means of an alternative amendment; and
    - (b) any consequential matters arising from the Proposed Amendment which the Generator considers have not been identified in the Amendment Notification; or
  - (ii) the Proposed Amendment Effective Date.

2.3 Any Material Amendment Response Notification shall also include such Supporting Information as the Generator considers necessary to enable the CfD Counterparty to evaluate the matters covered in such notification.

2.4 Within ten (10) Business Days of receipt by the CfD Counterparty of a Material Amendment Response Notification, the Parties shall meet and negotiate in good faith to agree:

- (A) whether to effect the Proposed Amendment;
- (B) the date on which the Proposed Amendment shall become effective (which need not be the Proposed Amendment Effective Date); and
- (C) if effected:
  - (i) the terms of the Proposed Amendment; and
  - (ii) what, if any, consequential amendments need to be made to the Investment Contract.

**Material Amendments: implementation**

2.5 A Material Amendment shall not become effective unless and until documented in writing and signed by each Party (a “**Material Amendment Agreement**”). Any Material Amendment Agreement shall:

- (A) set out the amendment which is to be effected;
- (B) state the effective date of the amendment; and
- (C) detail any consequential amendments to be made (whether or not identified in the Amendment Notification).

**Technical Amendments (bilateral Proposed Amendments): process**

2.6 If an Amendment Notification:

- (A) specifies that the Proposed Amendment is a Technical Amendment; and
- (B) does not specify that it is a General Amendment,

the Generator shall, within twenty (20) Business Days of the Amendment Notification having been given to it by the CfD Counterparty (the “**Technical Amendment Response Period**”), either:

- (i) confirm by notice in writing to the CfD Counterparty that it agrees with the Proposed Amendment and the Proposed Amendment Effective Date; or
- (ii) specify, by notice in writing to the CfD Counterparty (a “**Technical Amendment Response Notification**”), any objections which the Generator has to:
  - (a) the classification of the Proposed Amendment as a Technical Amendment (including reasonable details of the Generator’s reasons for such objections) (a “**Classification Objection**”);
  - (b) the Proposed Amendment, any such notification to include details of:
    - (1) any proposal by the Generator to address the matters identified in the Amendment Notification by means of an alternative amendment; and
    - (2) any consequential matters arising from the Proposed Amendment which the Generator considers have not been identified in the Amendment Notification; or
  - (c) the Proposed Amendment Effective Date.

2.7 Any Technical Amendment Response Notification shall also include such Supporting Information as the Generator considers necessary to enable the CfD Counterparty to evaluate the matters covered in such notification.



## 2.8 If the Generator:

- (A) does not give the CfD Counterparty a Technical Amendment Response Notification within the Technical Amendment Response Period, the Proposed Amendment shall be binding on the Parties with effect from the Proposed Amendment Effective Date; or
- (B) gives the CfD Counterparty a Technical Amendment Response Notification within the Technical Amendment Response Period, then the following provisions shall apply:
  - (i) if the Technical Amendment Response Notification included a Classification Objection, then:
    - (a) the Technical Amendment Response Notification shall constitute a Dispute Notice and the resulting Dispute shall be subject to the Dispute Resolution Procedure; and
    - (b) if, pursuant to the Dispute Resolution Procedure, either of the Parties agrees (whether by means of a Senior Representatives Settlement or otherwise) that the Proposed Amendment is a Material Amendment or it is otherwise determined or resolved pursuant to the Dispute Resolution Procedure that the Proposed Amendment is a Material Amendment, then the Proposed Amendment shall not become effective between the Parties unless and until a Material Amendment Agreement is entered into; and
  - (ii) if either:
    - (a) the Technical Amendment Response Notification did not include a Classification Objection; or
    - (b) (pursuant to the Dispute Resolution Procedure) the Parties agree (whether by means of a Senior Representatives Settlement or otherwise) that the Proposed Amendment is a Technical Amendment or it is otherwise determined or resolved pursuant to the Dispute Resolution Procedure that the Proposed Amendment is a Technical Amendment,
 then:
    - (1) the CfD Counterparty shall consider the objections of the Generator set out in the Technical Amendment Response Notification and may make such amendments to the Proposed Amendment as it deems appropriate having regard to such objections; and
    - (2) the Proposed Amendment (as amended if the CfD Counterparty elects to so amend pursuant to paragraph 2.8(B)(ii)(b)(1)) shall

become binding on the Parties with effect from the Proposed Amendment Effective Date.

***Technical Amendments (General Amendments): process***

- 2.9 If an Amendment Notification specifies that the Proposed Amendment is a Technical Amendment and is a General Amendment, then paragraphs 2.6 to 2.8 shall be applied, *mutatis mutandis*, on the following basis:
- (A) the confirmation provided for in paragraph 2.6(B)(i) shall be deemed to have been given by the Generator, and the Proposed Amendment shall (subject to paragraph 2.9(C)) be binding on the Generator with effect from the Proposed Amendment Effective Date, unless seventy-five per cent. (75%) or more in number of all CCP Affected Parties give a Technical Amendment Response Notification to the CfD Counterparty within the Technical Amendment Response Period;
  - (B) if seventy-five per cent. (75%) or more in number of the CCP Affected Parties deliver a Technical Amendment Response Notification within the Technical Amendment Response Period then the procedure provided for in paragraph 2.8(B) shall be applied; and
  - (C) if the Generator gives a Technical Amendment Response Notification within the Technical Amendment Response Period which includes a Classification Objection, then the Proposed Amendment shall only become binding on the Generator in accordance with the provisions of paragraph 2.8(B).

***Technical Amendments: implementation***

- 2.10 Where any Technical Amendment is to take effect in accordance with this Change Control Procedure, the Generator shall, if requested by the CfD Counterparty, promptly sign an agreement (a “**Technical Amendment Agreement**”) which:
- (A) sets out the amendment which is to be effected;
  - (B) states the effective date of the amendment; and
  - (C) details any consequential amendments to be made (whether or not identified in the Amendment Notification),

in each case as agreed, determined or resolved in accordance with the relevant provisions of paragraphs 2.6 to 2.9 (inclusive).

- 2.11 Any failure or refusal by the Generator to sign a Technical Amendment Agreement shall not operate so as to prevent the relevant Technical Amendment being binding on the Parties with effect from the relevant Proposed Amendment Effective Date in accordance with the provisions of paragraph 2.8(B)(ii) or 2.9(A) (as appropriate).

**Miscellaneous**

- 2.12 The categorisation of any Proposed Amendment as a Technical Amendment (irrespective of whether it is a General Amendment) or a Material Amendment shall not operate so as to prevent the provisions of Condition 59 (*Consolidation of Connected Disputes*) applying to any Dispute arising in respect of that Proposed Amendment.

**Annex 3**  
**Form of Direct Agreement**

DATED [●]

**THE SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE**

and

**[●]**

as Security Trustee

and

**[●]**

as Generator

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**DIRECT AGREEMENT**

in relation to an Investment Contract for *[insert details of generating asset]*

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**THIS DIRECT AGREEMENT** (this “**Deed**”) is dated [●] and made as a deed

**BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE** of 3 Whitehall Place, London SW1A 2AW (the “**Secretary of State**”);
- (1) *[insert name and details of the security trustee]* as security trustee for and on behalf of the Finance Parties (the “**Security Trustee**”); and
- (3) *[insert name and details of the generator]*, a company incorporated under the laws of [England and Wales] whose registered office is [●] and whose company number is [●] (the “**Generator**”).

**BACKGROUND**

- (A) The Secretary of State has, as CfD Counterparty, entered into the Contract with the Generator.
- (B) [The Generator has entered into the Facilities Agreement with, amongst others, the Security Trustee and the Lenders pursuant to which the Lenders have agreed, on and subject to the terms and conditions of the Facilities Agreement, to make available the loan facilities specified therein.
- (C) It is a condition precedent to the availability of funding under the Facilities Agreement that the Parties enter into this Deed.
- (D) The Security Trustee is entering into this Deed as [agent for the Finance Parties and as trustee and holder of the security created by the Generator in favour of the Finance Parties]/[security trustee for the Finance Parties].<sup>1</sup>
- (E) The Parties intend this document to take effect as a deed.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed, unless otherwise defined herein or the context requires otherwise:

“**Affiliate**” means, in relation to a Party, any holding company or subsidiary company of the relevant Party from time to time or any company which is a subsidiary company of a holding company of that Party from time to time (and the expressions “holding

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<sup>1</sup> Note to draft: Recitals and related definitions to conform to underlying funding arrangements.

company" and "subsidiary" shall have the meanings respectively ascribed to them by section 1159 of the Companies Act 2006);

**"Appointed Representative"** means the Representative identified in the Step-In Notice;

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in London;

**"CfD Counterparty"** means:

- (a) until a transfer of the Contract shall have taken place in accordance with Condition 77.2 of the Contract, or the rights and liabilities of the Secretary of State under it are otherwise transferred or assigned to another person, the Secretary of State; and
- (b) thereafter such person to whom the rights and liabilities of the CfD Counterparty under the Contract shall have been transferred or assigned in accordance with Condition 77.2 or otherwise;

**"CfD Counterparty Enforcement Action"** means:

- (c) the termination or revocation of the Contract by the CfD Counterparty (including the giving of any notice under or pursuant to Condition 49.1 (*Pre-Start Date termination*) or 49.9 (*Default termination*) of the Contract by the CfD Counterparty to the Generator terminating the Contract, but excluding the giving of any notice under or pursuant to Condition 49.11 (*Qualifying Change in Law termination*) of the Contract by the CfD Counterparty to the Generator terminating the Contract and the subsequent termination of the Contract under that Condition);
- (d) the suspension or withholding (as applicable) by the CfD Counterparty of payments under or pursuant to Condition 30.9 (*Failure to comply with Electrical Schematic Obligation*) or 30.15 (*Failure to provide Metering Access Right*) or 29.2 (*Failure to comply with the Facility Generation Technology undertaking*) of the Contract or paragraph 3.4 (*Failure to comply with FMS Audit Right*) of Part A of Annex 7 to the Contract; or
- (e) the commencement by the CfD Counterparty of any proceedings for, or the petitioning by the CfD Counterparty for, the winding-up, administration, dissolution or liquidation of the Generator (or the equivalent procedure under the law of the jurisdiction in which the Generator is incorporated, domiciled or resident or carries on business or has assets);

**"CfD Counterparty Enforcement Notice"** means a notice given by the CfD Counterparty to the Security Trustee specifying the CfD Counterparty Enforcement Action which the CfD Counterparty intends to take and, in reasonable detail, the grounds for such intended action;

**"CfD Settlement Required Information"** has the meaning given to that term in the Contract;



**“CfD Settlement Services Provider”** has the meaning given to that term in the Contract;

**“Contract”** means the investment contract dated [[●]/[on or around the date of this Deed]] and made between the Secretary of State (as CfD Counterparty) and the Generator in relation to the Facility;

**“Contract Default”** has the meaning given to “Default” in the Contract;

**“Event of Default”** means any event or circumstance the occurrence of which is treated as an event of default under the Facilities Agreement;

**“Facilities Agreement”** means the facilities agreement dated [[●]/*on or around the date of this Deed*]] between, amongst others, the Lenders, the Security Trustee, the Facility Agent and the Generator;<sup>2</sup>

**“Facility”** has the meaning given to that term in the Contract;

**“Facility Agent”** means the Facility Agent appointed under the Facilities Agreement;

**“Finance Documents”** means the Facilities Agreement and the other documents defined as Finance Documents in the Facilities Agreement;<sup>3</sup>

**“Finance Parties”** means the parties with the benefit of security under the Security Documents and **“Finance Party”** means any of them;<sup>4</sup>

**“Finance Party Discharge Date”** means the date on which all of the Finance Party Obligations have been fully and irrevocably paid or discharged and no further Finance Party Obligations are capable of becoming outstanding;

**“Finance Party Obligations”** means any obligations owed to the Finance Parties in connection with the Finance Documents;

**“Generator’s Proceeds Account”** means the account [called “[●]”] held by the Generator at [*insert name of bank*] with the account number [●] and sort code [●] or such other account and bank as the Generator and the Security Trustee may notify to the CfD Counterparty from time to time;<sup>5</sup>

**“IC Documents”** has the meaning given to that term in the Contract;

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<sup>2</sup> Note to draft: Definition to conform to underlying funding arrangements.

<sup>3</sup> Note to draft: Definition to conform to underlying funding arrangements.

<sup>4</sup> Note to draft: Definition to conform to underlying funding arrangements.

<sup>5</sup> Note to draft: Definition to conform to underlying funding arrangements.

**“Lenders”** means each Lender under the Facilities Agreement;<sup>6</sup>

**“Novation Agreement”** means a novation agreement entered into pursuant to Clause 9.3 (*Substitution Procedure*) between the CfD Counterparty, the Generator and the Substitute substantially in the form set out in Annex 2 (*Form of Novation Agreement*);

**“Novation Date”** has the meaning given to that term in Clause 9.3(b) (*Substitution Procedure*);

**“Novation Notice”** means a notice given by the Security Trustee to the CfD Counterparty pursuant to Clause 9.1 (*Proposed Substitution*) specifying:

- (a) the identity of the proposed Substitute; and
- (b) the Proposed Novation Date;

**“Party”** means a party to this Deed;

**“Proposed Novation Date”** means the date proposed by the Security Trustee in a Novation Notice for the novation to a Substitute of the Generator’s rights and obligations under the Contract;

**“Proposed Step-In Date”** means the date proposed by the Security Trustee in a Step-In Notice upon which the Appointed Representative shall give a Step-In Undertaking as contemplated by Clause 6.2 (*Step-In Undertaking*);

**“Representative”** means:

- (a) the Facility Agent, the Security Trustee, any Finance Party and/or any of their Affiliates;
- (b) an administrator, administrative receiver, receiver, receiver and manager or any other insolvency official of the Generator and/or any or all of its assets appointed under the Finance Documents;
- (c) a person directly or indirectly owned or controlled by the Facility Agent, the Security Trustee and/or the Finance Parties or any of them; or
- (d) any other person approved by the CfD Counterparty;

**“Security Documents”** means any documents creating or evidencing any existing or future security interest granted by the Generator to the Security Trustee to secure the payment and discharge of any or all Finance Party Obligations;

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<sup>6</sup> Note to draft: Definition to conform to underlying funding arrangements.

**“Step-In Date”** means the date on which the Appointed Representative gives a Step-In Undertaking to the CfD Counterparty as contemplated by Clause 6.2 (*Step-In Undertaking*);

**“Step-In Decision Period”** means a period commencing on the date of receipt by the Security Trustee from the CfD Counterparty of any CfD Counterparty Enforcement Notice and ending on the first to occur of the Step-In Date, the Novation Date and the date falling one hundred and twenty (120) days after the commencement of the Step-In Decision Period;

**“Step-In Notice”** has the meaning given to that term in Clause 6.1 (*Step-In Notice*);

**“Step-In Period”** means the period from the Step-In Date to and including the first to occur of:

- (a) the expiry of the notice period in any notice given under Clause 8 (*Step-Out*);
- (b) the Novation Date;
- (c) the Finance Party Discharge Date; and
- (d) the date of any termination or revocation of the Contract by the CfD Counterparty in accordance with this Deed and the Contract;

**“Step-In Undertaking”** means an undertaking substantially in the form set out in Annex 1 (*Form of Step-In Undertaking*) given by the Appointed Representative;

**“Step-Out Date”** means the date upon which a Step-In Period ends;

**“Step-Out Notice”** has the meaning given to that term in Clause 8(a) (*Step-Out*);

**“Substitute”** means a person nominated by the Security Trustee pursuant to Clause 9.1 (*Proposed Substitution*) or Clause 9.2 (*Objection to Substitute*), as the case may be, as the transferee of the Generator’s rights and obligations under the Contract;

**“Transfer”** has the meaning given to that term in the Contract;

**“Transfer Scheme”** has the meaning give to that term in the Contract; and

**“Supplier Obligation Regulations”** has the meaning given to that term in the Contract.

## 1.2 Interpretation

- (a) Unless a contrary indication appears, any reference in this Deed to:
  - (i) the **“CfD Counterparty”**, the **“Security Trustee”**, the **“Generator”**, any **“Lender”**, any **“Finance Party”** or any **“Appointed Representative”** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

- (ii) an agreement includes a deed and instrument;
  - (iii) an agreement is a reference to it as amended, supplemented, restated, novated or replaced from time to time;
  - (iv) a provision of law is a reference to that provision as amended, extended or re-enacted and includes all laws and official requirements made under or deriving validity from it;
  - (v) any "**obligation**" of any person under this Deed or any other agreement or document shall be construed as a reference to an obligation expressed to be assumed by or imposed on it under this Deed or, as the case may be, that other agreement or document (and "**due**", "**owing**" and "**payable**" shall be similarly construed);
  - (vi) a "**Clause**", "**paragraph**" or "**Annex**" is a reference to a clause or paragraph of, or an annex to, this Deed;
  - (vii) a "**person**" includes any individual, firm, company, corporation, unincorporated organisation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or any other entity;
  - (viii) time is a reference to time in London, England; and
  - (ix) words in the singular shall be interpreted as including the plural, and *vice versa*.
- (b) The words "**include**" and "**including**" shall be construed without limitation to the generality of the preceding words.
  - (c) Headings are for ease of reference only.

## 2. CONSENT TO SECURITY AND PAYMENT INSTRUCTIONS

### 2.1 Consent to Security

- (a) The Generator hereby gives notice to the CfD Counterparty that, under or pursuant to the Security Documents, the Generator has assigned or charged by way of security to the Security Trustee its rights, title and interest in and to the Contract.
- (b) The CfD Counterparty acknowledges receipt of notice of, and consents to, the grant of the security interests referred to in paragraph (a) above.
- (c) The CfD Counterparty acknowledges that neither the Security Trustee nor any Finance Party shall have any obligations or liabilities to the CfD Counterparty (whether in place of the Generator or otherwise) in respect of the Contract as a result of any security interest created under the Security Documents except to the extent that the Security Trustee or such Finance Party incurs such

obligations or liabilities pursuant to Clause 6 (*Step-In*), Clause 7 (*Step-In Period*), Clause 8 (*Step-Out*) or Clause 9 (*Novation*).

## **2.2 No other Security Interests**

The CfD Counterparty confirms that, as at the date of this Deed, it has not received notice of any other security interest granted over the Generator's rights, title and interest in and to the Contract [other than [●]].<sup>7</sup> The CfD Counterparty agrees to notify the Security Trustee as soon as reasonably practicable if it receives any such notice.

## **2.3 Payment of Monies**

- (a) Each of the Generator and the Security Trustee irrevocably authorises and instructs the CfD Counterparty, and the CfD Counterparty agrees, to pay the full amount of each sum which it is obliged at any time to pay to the Generator under or in respect of the Contract (whether before or after termination of the Contract) to the Generator's Proceeds Account or[, following the occurrence of an Event of Default and at any time thereafter,]<sup>8</sup> to such other account in the United Kingdom that the Security Trustee may direct in writing to the CfD Counterparty on not less than ten (10) Business Days' notice.
- (b) Each payment made in accordance with paragraph (a) above shall constitute a good discharge *pro tanto* of the obligation of the CfD Counterparty to make the relevant payment to the Generator.
- (c) The authority and instructions set out in paragraph (a) above shall not be revoked or varied by the Generator without the prior written consent of the Security Trustee, copied to the CfD Counterparty.

## **2.4 Contract**

The Parties agree and acknowledge that the exercise of the rights of the Security Trustee or the Appointed Representative, as the case may be (a) under the Contract during the Step-in Period; and (b) in connection with the security interests granted by the Generator shall not amend, waive or suspend the provisions of the Contract and the rights of the CfD Counterparty under the Contract, except as expressly set out under this Deed and any Step-In Undertaking.

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<sup>7</sup> Note to draft: To be included if this is in fact the case.

<sup>8</sup> Note to draft: Delete/include as applicable.

## **2.5 Statement as to Event of Default conclusive**

The CfD Counterparty may treat any statement or notice from the Security Trustee or the Lenders that an Event of Default has occurred as conclusive evidence of the occurrence of the Event of Default.

## **3. NOTIFICATION BY CFD COUNTERPARTY**

### **3.1 Notification of Default**

- (a) The CfD Counterparty shall, as soon as reasonably practicable, send to the Security Trustee a copy of any notice of default under the Contract served by the CfD Counterparty on the Generator.
- (b) The CfD Counterparty shall have no obligation to notify the Security Trustee of a default under the Contract where the CfD Counterparty has not served a notice of default on the Generator.

### **3.2 Cure Right**

The Security Trustee may, at any time outside a Step-In Period, take or procure the taking of any action on behalf of the Generator in circumstances where:

- (a) the Generator's failure to take such action would be a breach of the Contract or would be or could reasonably be expected to contribute towards the occurrence of a Contract Default; or
- (b) the Generator has breached the Contract or a Contract Default has arisen,

and any such action will be deemed to have been taken by the Generator for the purposes of the Contract and any breach or Contract Default will be cured, remedied or will not arise (as appropriate) if such breach or Contract Default would have been cured or remedied or would not have arisen (as appropriate) if the Generator had taken such action itself.

### **3.3 CfD Counterparty Enforcement Action**

Subject to Clause 7.2 (*CfD Counterparty Enforcement Action during a Step-In Period*), the CfD Counterparty shall not take any CfD Counterparty Enforcement Action without first giving a CfD Counterparty Enforcement Notice to the Security Trustee.

### **3.4 No Waiver**

The provisions of this Clause 3 shall not constitute any waiver as against the Generator of the grounds for the intended exercise of the CfD Counterparty's rights to take any CfD Counterparty Enforcement Action or any of its other rights regarding such CfD Counterparty Enforcement Action and the giving of a CfD Counterparty Enforcement Notice shall not release the Generator from its obligations or liabilities under the Contract.

#### **4. NOTIFICATION BY THE SECURITY TRUSTEE**

##### **4.1 Notice of Event of Default**

The Security Trustee shall, as soon as reasonably practicable, send to the CfD Counterparty a copy of any notice of an Event of Default served by or on behalf of the Lenders on the Generator.

##### **4.2 Notices from the Security Trustee**

After receiving notification of an Event of Default from the Security Trustee, the CfD Counterparty shall accept as validly given by the Generator any notices or demands pursuant to and in accordance with the Contract given or made by the Security Trustee or Appointed Representative, as the case may be, provided, in each case, such notice or demand would have been validly given had it been given by the Generator itself. The Generator consents to the giving of such notices or demands and acknowledges and agrees that the service of such notices or demands by the Security Trustee or Appointed Representative, as the case may be, shall not affect the rights and remedies of the CfD Counterparty under the Contract.

#### **5. STEP-IN DECISION PERIOD**

##### **5.1 Suspension of Rights and Remedial Action**

During a Step-In Decision Period the CfD Counterparty shall not take any CfD Counterparty Enforcement Action (other than any CfD Counterparty Enforcement Action taken pursuant to Clause 5.3 (*Revival of Remedies*) in relation to any prior Step-In Decision Period).

##### **5.2 Statement of Amounts Due**

- (a) As soon as reasonably practicable, and in any event within thirty (30) days, after the commencement of a Step-In Decision Period, the CfD Counterparty shall give the Security Trustee a statement of any amounts owed by the Generator to the CfD Counterparty and any outstanding performance obligations of the Generator under the Contract of which the CfD Counterparty is aware as at the date of the CfD Counterparty Enforcement Notice.
- (b) For the avoidance of doubt, a failure by the CfD Counterparty to include in any such statement an amount owed or a performance obligation outstanding under the Contract shall not limit in any way the obligations or liabilities of the Generator under the Contract or the obligations or liabilities of the Security Trustee or any Appointed Representative or Substitute under or pursuant to this Deed.

##### **5.3 Revival of Remedies**

If a CfD Counterparty Enforcement Notice has been given and:

- (a) neither the Step-In Date nor the Novation Date has occurred before expiry of the Step-In Decision Period; or
- (b) the Step-In Date has occurred before expiry of the Step-In Decision Period but a Step-Out Date has subsequently occurred without there being a Novation Date,

the CfD Counterparty shall be entitled to take CfD Counterparty Enforcement Action without serving a further CfD Counterparty Enforcement Notice if the default, event or circumstance in respect of which the CfD Counterparty gave the CfD Counterparty Enforcement Notice is subsisting or has not been remedied or cured (whether by the Generator, Security Trustee or any other person).

## **6. STEP-IN**

### **6.1 Step-In Notice**

- (a) At any time during a Step-In Decision Period, the Security Trustee may give notice to the CfD Counterparty (a “**Step-In Notice**”) specifying:
  - (i) the Appointed Representative who will give a Step-In Undertaking to the CfD Counterparty; and
  - (ii) the Proposed Step-In Date (which shall be a date no earlier than five (5) Business Days after the date of the Step-In Notice).
- (b) The Proposed Step-In Date must fall on or prior to the expiry of the Step-In Decision Period.
- (c) The Security Trustee may revoke a Step-In Notice at any time prior to the Step-In Date by notice to the CfD Counterparty, provided that the relevant Step-In Decision Period shall be deemed to have expired on delivery of such notice to the CfD Counterparty.

### **6.2 Step-In Undertaking**

Unless otherwise agreed by the CfD Counterparty in its sole and absolute discretion, the Security Trustee shall procure that the Appointed Representative gives a Step-In Undertaking to the CfD Counterparty on the Proposed Step-In Date.

## **7. STEP-IN PERIOD**

### **7.1 Step-In Period**

During the Step-In Period:

- (a) the CfD Counterparty shall deal only with the Appointed Representative and not the Generator and the CfD Counterparty shall have no liability to the Generator for compliance with the instructions of the Appointed Representative or the Security Trustee in priority to those of the Generator;



- (b) the CfD Counterparty agrees that payment by the Appointed Representative to the CfD Counterparty of any sums due under the Contract, or performance by the Appointed Representative of any other of the Generator's obligations under the Contract, shall comprise good discharge *pro tanto* of the Generator's payment and other obligations under the Contract; and
- (c) the CfD Counterparty shall owe its obligations under the Contract to the Generator and the Appointed Representative jointly but performance by the CfD Counterparty in favour of the Appointed Representative alone shall be a good discharge *pro tanto* of its obligations under the Contract.

## 7.2 CfD Counterparty Enforcement Action during a Step-In Period

- (a) During the Step-In Period, the CfD Counterparty shall be entitled to take CfD Counterparty Enforcement Action if:
  - (i) the Appointed Representative breaches the terms of the Step-In Undertaking; and
  - (ii) such breach would, save for the terms of Clause 5.1 (*Suspension of Rights and Remedial Action*), entitle the CfD Counterparty to take the relevant CfD Counterparty Enforcement Action under or in connection with the Contract.
- (b) The provisions of Clause 3.3 (*CfD Counterparty Enforcement Action*) shall not apply to any CfD Counterparty Enforcement Action taken pursuant to this Clause 7.2.

## 8. STEP-OUT

- (a) The Appointed Representative or the Security Trustee shall give the CfD Counterparty at least ten (10) Business Days' prior written notice of the date on which the Appointed Representative will step out (a "**Step-Out Notice**").
- (b) Upon the Step-Out Date (howsoever occurring):
  - (i) all of the Appointed Representative's obligations and liabilities to the CfD Counterparty under the Step-In Undertaking will be cancelled, other than those for which the Appointed Representative is liable under the Step-In Undertaking and which arose or accrued prior to the Step-Out Date;
  - (ii) all of the Appointed Representative's rights against the CfD Counterparty under the Step-In Undertaking will be cancelled, other than those which arose or accrued prior to the Step-Out Date; and
  - (iii) without prejudice to sub-paragraph (i) above, the Appointed Representative will be released from all obligations and liabilities to the CfD Counterparty under the Contract and this Deed.

- (c) The Generator shall continue to be bound by the terms of the Contract notwithstanding the occurrence of the Step-Out Date and the CfD Counterparty shall continue to be entitled to exercise and enforce all of its rights and remedies under the Contract as against the Generator.

## 9. NOVATION

### 9.1 Proposed Substitution

- (a) Subject to paragraph (b) below, at any time:
  - (i) during a Step-In Decision Period or a Step-In Period; or
  - (ii) during which an Event of Default is subsisting (and the CfD Counterparty may treat as conclusive evidence that an Event of Default is subsisting any notice served by the Security Trustee pursuant to this paragraph (a)),

the Security Trustee may give a Novation Notice to the CfD Counterparty.

- (b) The Security Trustee shall give the CfD Counterparty not less than fifteen (15) Business Days' prior notice of the Proposed Novation Date.

### 9.2 Objection to Substitute

- (a) The CfD Counterparty may only object to a proposed Substitute (i) under Clause 9.2 (b) below; or (ii) if the entry into a Novation Agreement or the Contract with the proposed Substitute would be unenforceable or illegal and the CfD Counterparty gives notice of its objection to the Security Trustee within ten (10) Business Days of receipt by the CfD Counterparty of the Novation Notice, in which case the Security Trustee may propose an alternative Substitute.
- (b) The CfD Counterparty shall not be obliged to enter into a Novation Agreement after the earlier of 31 December 2015 and the date on which the definition of an "eligible generator" first comes into force by virtue of section 10(3) of the Energy Act 2013 except in accordance with regulations made under section 10 of that Act which permit the novated Contract to take effect as a CFD (within the meaning of section 6 of that Act).

### 9.3 Substitution Procedure

- (a) On the Proposed Novation Date or such later date (if any) as the identity of the Substitute is determined pursuant to Clause 9.2 (*Objection to Substitute*) the CfD Counterparty and the Generator shall each enter into a Novation Agreement with the Substitute.
- (b) The novation of the Generator's rights and obligations under the Contract pursuant to a Novation Agreement shall be effective from the date (the "**Novation Date**") which is the latest of the Proposed Novation Date, such later date (if any) as the identity of the Substitute is determined pursuant to Clause

9.2 (*Objection to Substitute*) and the date upon which each of the following conditions is satisfied, namely:

- (i) the CfD Counterparty having received, in form and content satisfactory to the CfD Counterparty acting reasonably:
    - (A) a certified copy of the constitutional documents and certificate of incorporation and any certificate of incorporation on change of name of the Substitute; and
    - (B) evidence of compliance by the Substitute with “know your customer” or similar identification procedures or checks under all applicable laws and regulations pursuant to the transactions contemplated by the Novation Agreement, the Contract and the other IC Documents;
  - (ii) the CfD Counterparty having received a legal opinion addressed to the CfD Counterparty, in form and content reasonably satisfactory to the CfD Counterparty, from the legal advisers to the Substitute confirming that the Substitute:
    - (A) is duly formed and validly existing under the laws of the jurisdiction of its formation; and
    - (B) has the power to enter into and perform, and has taken all necessary action to authorise its entry into and performance of, the Contract and the other IC Documents;
  - (iii) the CfD Counterparty having received written confirmation from the CfD Settlement Services Provider that:
    - (A) it has received the CfD Settlement Required Information which is required from the Substitute prior to the Proposed Novation Date or such later date, as the case may be; and
    - (B) the Substitute has in place the systems and processes which are necessary for the continued provision of the CfD Settlement Required Information;
  - (iv) the Substitute being or having become the legal and beneficial owner of the Facility, subject only to any third party rights arising by reason of any security interest created or subsisting over or in respect of the Facility; and
  - (v) any collateral required to be in place under Condition 53 (*Collateral Requirement*) or 54 (*Acceptable Collateral*) of the Contract having been provided by or on behalf of the Substitute.
- (c) The CfD Counterparty shall notify the Security Trustee and the Substitute of the Novation Date as soon as reasonably practicable after it has occurred.

- (d) At the Security Trustee's cost, the CfD Counterparty shall, subject to and in accordance with Condition 77.7(B) (*Permitted assignment by the Generator*) of the Contract, enter into a direct agreement with the Security Trustee (or such other representative of the lenders lending to such Substitute) and the Substitute on substantially the same terms as this Deed and effective from the Novation Date.

## **10. DURATION**

This Deed shall commence on the date hereof and shall continue in full force and effect until the first to occur of:

- (a) the Finance Party Discharge Date;
- (b) expiry of the term of the Contract; and
- (c) the termination or revocation of the Contract (in accordance with the Contract and this Deed),

in each case without prejudice to any accrued rights and obligations arising pursuant to this Deed existing at the date of termination. The Security Trustee shall promptly notify the CfD Counterparty of the occurrence of the Finance Party Discharge Date.

## **11. CHANGES TO PARTIES**

### **11.1 Benefit of Deed**

This Deed shall benefit and be binding on the Parties, their respective successors and any permitted assignee or transferee of all or some of a Party's rights and obligations under this Deed.

### **11.2 Assignment**

Save as provided in Clause 9 (*Novation*) or Clause 11.3 (*Assignment by the Security Trustee*), neither the Security Trustee nor the Generator may assign, transfer, novate or otherwise dispose of all or any of their respective rights, benefits or obligations under this Deed without the prior consent of the other Parties.

### **11.3 Assignment by the Security Trustee**

The Security Trustee may assign or transfer its rights under this Deed to any successor Security Trustee without the consent of the CfD Counterparty.

### **11.4 Generator's Acknowledgement**

The Generator joins in this Deed to acknowledge and consent to the arrangements set out in it and agrees not knowingly to do or omit to do anything that may prevent either of the other Parties from enforcing its rights under this Deed.

## **11.5 Transfer Scheme**

Upon a Transfer by the Secretary of State in accordance with Condition 77.2 of the Contract, each Party shall at its own cost do or procure the doing of all things and execute or procure the execution of all documents necessary to ensure that the rights and liabilities of the Secretary of State under this Deed become those of the person to whom the rights and liabilities of the Secretary of State under the Contract shall have been transferred under the Transfer Scheme and that the Secretary of State is released from such liabilities with effect from such Transfer.

## **12. NOTICES**

### **12.1 Communications in Writing**

Any communications to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### **12.2 Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is as follows:

#### **(a) CfD Counterparty**

Address: [●]

Fax No: [●]

Attention: [●]

#### **(b) Security Trustee**

Address: [●]

Fax No: [●]

Attention: [●]

#### **(c) Generator**

Address: [●]

Fax No: [●]

Attention: [●]

or any substitute address, fax number or department or officer as the Party may notify to the other Parties on not less than five (5) Business Days' notice.

### 12.3 Delivery

Any communication or document made or delivered to a Party under or in connection with this Deed will only be effective:

- (a) if by way of fax, when received in legible form; or
- (b) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post (postage prepaid) in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 12.2 (*Addresses*), if addressed to that department or officer.

## 13. MISCELLANEOUS

### 13.1 Limited Recourse

- (a) Notwithstanding any other provision of this Deed, but subject to paragraph (b) below:
  - (i) the liability of the CfD Counterparty pursuant to this Deed shall not exceed the aggregate of:
    - (a) the amounts from time to time received and held by the CfD Counterparty, and allocated to this Deed, pursuant to the Supplier Obligation Regulations; and
    - (b) any other funds of the type referred to in Condition 69.4(E) (*CfD Counterparty payment undertakings*) of the Contract from time to time received and held by the CfD Counterparty, and allocated to this Deed, whether pursuant to the Supplier Obligation Regulations or otherwise; and
  - (ii) the CfD Counterparty shall not be in default pursuant to this Deed in not making any payment that is due and owing if and to the extent that it shall not have received the amounts and other funds referred to in paragraph (a) above which are necessary to make such payment, but if and to the extent that such payment is not made, the CfD Counterparty shall continue to owe an amount equal to the amount of the payment due and owing but not paid and shall make such payment promptly (and in any event within two (2) Business Days) after and to the extent of its receipt of such corresponding and allocated amounts and other funds.
- (b) Paragraph (a) above shall not apply if and for so long as:
  - (i) the Secretary of State is the CfD Counterparty; and
  - (ii) regulations have not been made under paragraph 6 of Schedule 2 to the Energy Act 2013 which make provision for electricity suppliers to

pay the Secretary of State for the purpose of enabling payments to be made under investment contracts (as contemplated by paragraph 7(1) of Schedule 2 to the Energy Act 2013).

### **13.2 Amendments**

This Deed may not be amended, waived, supplemented or otherwise varied unless in writing and signed by or on behalf of all of the Parties.

### **13.3 Remedies and Waivers**

No failure to exercise, nor any delay in exercising, any power, right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

### **13.4 Partial Invalidity**

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

### **13.5 No Partnership**

Neither this Deed nor any other agreement or arrangement of which it forms part, nor the performance by the Parties of their respective obligations under any such agreement or arrangement, shall constitute a partnership between the Parties.

### **13.6 Counterparts**

This Deed may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

### **13.7 Third Party Beneficiaries**

- (a) Save as provided in paragraph (b) below, this Deed is intended for the sole and exclusive benefit of the Parties.
- (b) The Contracts (Rights of Third Parties) Act 1999 is expressly excluded save for:
  - (i) any rights of any Appointed Representative on and after the issue of a Step-In Undertaking by that Appointed Representative; or
  - (ii) any rights of any Substitute on and after any Novation Date under or in connection with Clause 9 (*Novation*),

in each case, as if they were a party to this Deed.

- (c) This Deed may be varied in any way and at any time by the Parties without the consent of any third party.

### **13.8 Entire Agreement**

This Deed and the Contract constitute the entire agreement between the Parties with respect to the subject matter of this Deed.

### **13.9 Effect of this Deed**

- (a) The Parties acknowledge and agree that the express or implied terms and conditions of this Deed shall, in the event of any inconsistency or conflict with the express or implied terms and conditions of the Contract, prevail over the relevant terms and conditions of the Contract.
- (b) Nothing in this Deed or the arrangements contemplated hereby shall prejudice the rights of any of the Finance Parties under the Finance Documents or any Security Documents or shall be construed as obliging the Security Trustee to exercise any of its rights under the Security Documents or under this Deed.

## **14. GOVERNING LAW AND JURISDICTION**

- (a) This Deed and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with the laws of England.
- (b) The Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligations arising out of or in connection with this Deed).

**IN WITNESS WHEREOF** this Deed has been duly executed and delivered as a deed on the date stated at the beginning of this Deed. <sup>9</sup>

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<sup>9</sup> Note to draft: execution blocks to be amended as appropriate.



**CfD Counterparty**

**EXECUTED** and delivered as a **DEED** for and )  
 on behalf of the Secretary of State for Energy )  
 and Climate Change ) .....  
 Authorised signatory

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation: .....

**Security Trustee**

**EXECUTED** and delivered as a **DEED** by )  
 [•] )  
 acting by its director/duly appointed attorney ) .....  
 Director/Attorney

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation: .....

**Generator**

**EXECUTED** and delivered as a **DEED** by )  
[•] )  
acting by its director/duly appointed attorney ) .....  
Director/Attorney

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation: .....

**Annex 1**  
**Form of Step-In Undertaking**

*[From the Appointed Representative]*

[Addressed to the CfD Counterparty]

For the attention of: [ ]

**[Date]**

Dear Sirs,

**DIRECT AGREEMENT (the “Agreement”)**

1. In accordance with clause 6 (*Step-In*) of the Agreement, we undertake to you that we will:
  - (a) pay, or procure payment, to you within three (3) Business Days of the date hereof any sum that is due and payable to you by the Generator but unpaid as of the date hereof;
  - (b) pay, or procure payment, to you any sum which becomes due and payable by the Generator to you pursuant to the terms of the Contract during the Step-In Period which is not paid by the Generator on the due date;
  - (c) perform or discharge, or procure the performance or discharge of, all outstanding performance obligations of the Generator which have arisen or fallen due prior to the date hereof:
    - (i) within ten (10) Business Days of the date hereof; or
    - (ii) if the performance or discharge of any obligation is being disputed pursuant to the provisions of the Contract, within ten (10) Business Days of the same being agreed or finally determined; and
  - (f) perform or discharge, or procure the performance or discharge of, any performance obligations of the Generator under the Contract which arise during the Step-In Period,

in each case in accordance with and subject to the terms of the Contract as if we were a party to the Contract in place of the Generator.
2. This Step-In Undertaking may be terminated by the giving of a Step-Out Notice to you in accordance with clause 8 (*Step-Out*) of the Agreement and shall automatically terminate upon the Step-Out Date, save that we shall continue to be liable to you for outstanding obligations and liabilities arising prior to termination in accordance with clause 8(b) (*Step-Out*) of the Agreement.

3. All capitalised terms used in this letter shall have the meanings given them in the Agreement.
4. This Step-In Undertaking and any non-contractual obligations arising out or in connection with it are governed by and shall be construed in accordance with the laws of England and the courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with it.

Yours faithfully,

.....  
For and on behalf of  
[Appointed Representative]

## Annex 2

### Form of Novation Agreement

**THIS NOVATION AGREEMENT** is dated [●] and made as a deed

**BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE** of 3 Whitehall Place, London SW1A 2AW;
- (2) *[insert name and details of the generator]*, a company incorporated under the laws of [England and Wales] whose registered office is [●] and whose company number is [●] (the “**Generator**”); and
- (3) *[insert name and details of the substitute]*, a company incorporated under the laws of [England and Wales] whose registered office is [●] and whose company number is [●] (the “**Substitute**”)

(together referred to as the “**Parties**”).

**BACKGROUND**

- (A) The Generator, the Secretary of State as CfD Counterparty and the Security Trustee have entered into an agreement (the “**Direct Agreement**”) dated [●] pursuant to which the Security Trustee has the right to require the rights and obligations of the Generator under the Contract to be novated to a Substitute.
- (B) The Substitute has been identified as the Substitute for the purposes of clause 9 (*Novation*) of the Direct Agreement.
- (C) This is the Novation Agreement referred to in clause 9.3 (*Substitution Procedure*) of the Direct Agreement.

**IT IS AGREED** as follows:

**1. Definitions and Interpretation**

Unless a contrary indication appears, words and expressions defined, or defined by reference, in the Direct Agreement have the same meanings in this Agreement.

**2. CfD Counterparty Release and Discharge**

With effect from the Novation Date, the CfD Counterparty releases and discharges the Generator from all liabilities, duties and obligations of every description, whether deriving from contract, common law, statute or otherwise, whether present or future,

actual or contingent, ascertained or disputed, owing to the CfD Counterparty and arising out of or in respect of the Contract, save for the Generator's obligations under Condition 70 (*Confidentiality*) of the Contract<sup>10</sup>.

### **3. Generator Release and Discharge**

With effect from the Novation Date, the Generator releases and discharges the CfD Counterparty from all liabilities, duties and obligations of every description, whether deriving from contract, common law, statute or otherwise, whether present or future, actual or contingent, ascertained or disputed, owing to the Generator and arising out of or in respect of the Contract.

### **4. Substitute Assumption of Liabilities**

The Substitute undertakes to assume all the liabilities, duties and obligations of the Generator of every description contained in the Contract, whether deriving from contract, common law, statute or otherwise, whether present or future, actual or contingent, ascertained or unascertained or disputed, and agrees to perform all the duties and to discharge all the liabilities and obligations of the Generator under the Contract and to be bound by their terms and conditions in every way as if the Substitute were named in the Contract as a party in place of the Generator from the date of the Contract.

### **5. CfD Counterparty Agreement to Perform**

The CfD Counterparty agrees to perform all its duties and to discharge all its obligations under the Contract and to be bound by all the terms and conditions of the Contract in every way as if the Substitute were named in the Contract as a party in place of the Generator from the date of the Contract.

### **6. Replacement of Generator by Substitute**

As from the Novation Date, reference to the Generator (by whatsoever name known) in the Contract shall be deleted and replaced by reference to the Substitute.

### **7. Outstanding CfD Counterparty Claims**

The CfD Counterparty shall not take any CfD Counterparty Enforcement Action by reason of any event notified in a CfD Counterparty Enforcement Notice or any act or omission by the Security Trustee, any Appointed Representative and/or the Generator occurring prior to the Novation Date provided that the foregoing shall be without prejudice to the CfD Counterparty's remedies (including without limitation the right to take CfD Counterparty Enforcement Action) in respect of:

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<sup>10</sup> Note to draft: cross-reference relevant confidentiality provisions of the Contract.

- (A) outstanding amounts properly due and payable to the CfD Counterparty on the Novation Date and which remain unpaid on the expiry of three (3) Business Days' notice from the CfD Counterparty to the Substitute that such amounts are due and payable; and
- (B) to the extent not covered by paragraph (A) above, any breach of a Step-In Undertaking or the Contract by an Appointed Representative, the Generator or the Security Trustee occurring prior to the Novation Date which has not been remedied upon the expiry of ten (10) Business Days' notice from the CfD Counterparty to the Substitute that such breach has not been remedied.

## **8. Continuance of the Contract**

It is hereby agreed and declared that the Contract shall continue in full force and effect and that, as from the Novation Date, the terms and conditions of the Contract have only changed to the extent set out in this Agreement.

## **9. Further Assurance**

The Parties shall perform such further acts and execute and deliver such further documents as may be required by law or reasonably requested by each other to implement the purposes of and to perfect this Agreement.

## **10. Contract (Rights of Third Parties) Act 1999**

This Agreement does not create any rights under the Contract (Rights of Third Parties) Act 1999 enforceable by any person who is not a party to it.

## **11. Variations**

No variation of this Agreement shall be effective unless it is in writing and is signed by or on behalf of each of the parties to this Agreement.

## **12. Notices**

Any notices to be served on the Substitute pursuant to the Contract shall be served in accordance with Condition 78 (*Notices*)<sup>11</sup> of the Contract and to:

*[insert Substitute contact details]*

## **13. Counterparts**

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<sup>11</sup> Note to draft: cross-reference relevant notices provisions of the Contract.

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original but all the counterparts together shall constitute one and the same instrument.

#### 14. Governing Law and Jurisdiction

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with the laws of England and the Parties hereby submit to the exclusive jurisdiction of the courts of England.

**IN WITNESS WHEREOF** this Agreement has been executed and delivered as a deed on the date first stated above.<sup>12</sup>

#### CfD Counterparty

**EXECUTED** and delivered for and on behalf of )  
the Secretary of State for Energy and Climate )  
Change ) .....  
Authorised Signatory

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation: .....

---

<sup>12</sup> Note to draft: execution blocks to be amended as appropriate.



**Generator**

**EXECUTED** and delivered as a **DEED** by )  
 [•] )  
 acting by its director/duly appointed attorney ) .....  
 Director/Attorney

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation: .....

**Substitute**

**EXECUTED** and delivered as a **DEED** by )  
 [•] )  
 acting by its director/duly appointed attorney ) .....  
 Director/Attorney

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation: .....

## Annex 4 BMRP

### 1. APPLICATION

This Annex 4 (*BMRP*) shall apply to the Investment Contract only if it is expressed to apply to the Investment Contract in the IC Agreement.

### 2. DEFINITIONS: ANNEX 4

#### 2.1 In this Annex 4 (*BMRP*):

**“5-TD Sample Period”** means a period of five (5) consecutive Trading Days;

**“5-TD Trade Number Percentage”** means, in respect of a price source, the number of Baseload Forward Season Contracts in respect of electricity to be delivered within Great Britain conducted on or reported by such price source in a 5-TD Sample Period expressed as a percentage of the total number of Baseload Forward Season Contracts in respect of electricity to be delivered within Great Britain conducted on or reported by all of the Calculation Price Sources during such 5-TD Sample Period and, where such price source conducts or reports Baseload Forward Season Contracts less frequently than every Trading Day, the number of Baseload Forward Season Contracts attributable to each Trading Day shall be the number of Baseload Forward Season Contracts conducted or reported on each Price Source Live Day allocated equally to each Trading Day from and including each Price Source Live Day to and excluding the next occurring Price Source Live Day;

**“5-TD Volume Percentage”** means, in respect of a price source, the volume (expressed in MWh) of Baseload Forward Season Contracts in respect of electricity to be delivered within Great Britain conducted on or reported by such price source in a 5-TD Sample Period expressed as a percentage of the volume (expressed in MWh) of Baseload Forward Season Contracts in respect of electricity to be delivered within Great Britain conducted on or reported by all of the Calculation Price Sources during such 5-TD Sample Period and, where such price source conducts or reports Baseload Forward Season Contracts less frequently than every Trading Day, the volume of Baseload Forward Season Contracts attributable to each Trading Day shall be the volume of Baseload Forward Season Contracts conducted or reported on each Price Source Live Day allocated equally to each Trading Day from and including each Price Source Live Day to and excluding the next occurring Price Source Live Day;

**“Baseload CfD”** means a FiT Contract for Difference to which Part 5A (*Payment calculations: Baseload Technologies*) of these Conditions is expressed to apply and **“Baseload CfDs”** shall be construed accordingly;

**“Baseload Contract Period”** has the meaning given to that term in paragraph 1(C)(i) of Part B;

**“Baseload Forward Season Contract”** means a contract relating to the delivery of a firm volume of energy in each Settlement Unit within the Season immediately following the Season in which such contract is entered into (whether physically or cash settled);

**“Baseload Forward Season Index”** means an index or other source of prices of Baseload Forward Season Contracts from which the Baseload Forward Season Trading Day Price can be calculated and **“Baseload Forward Season Indices”** shall be construed accordingly;

**“Baseload Forward Season Trading Day Price”** means the volume weighted average price for all Baseload Forward Season Contracts reported by a Baseload Price Source in respect of Trading Day (i) calculated, subject to Condition 15.3 (where applicable), in accordance with the following formula:

$$\text{Baseload Forward Season Trading Day Price} = \frac{\sum_{n=1}^t (P_t \times V_t)}{\sum_{n=1}^t (V_t)}$$

where:

$n$  is a whole number integer representing a Baseload Forward Season Contract on the relevant Trading Day (i);

$t$  is the total number of Baseload Forward Season Contracts entered into on the relevant Trading Day (i), as reported by the relevant Baseload Price Source;

$P_t$  is the price (£/MWh) of Baseload Forward Season Contract (t); and

$V_t$  is the volume (MWh) of Baseload Forward Season Contract (t);

**“Baseload Generator”** means, at the relevant time, an eligible generator party to a Baseload CfD and **“Baseload Generators”** shall be construed accordingly;

**“Baseload Market Reference Price”** has the meaning given to that term in Condition 15.2;

**“Baseload Price Sources”** means the Baseload Forward Season Indices to be used in the calculation of the Baseload Market Reference Price, being the Initial BMRP Indices or such other replacement or supplementary Baseload Forward Season Indices which are required to be so used as a result of the operation of the provisions of Part A, and **“Baseload Price Source”** shall be construed accordingly.

**“BMRP Annual Review”** means a review of the BMRP Review Price Sources conducted by the CfD Counterparty pursuant to, and within the parameters specified in, paragraph 1 (*BMRP Annual Reviews*) of Part A;

**“BMRP Annual Review Cut-Off Date”** means, in relation to each BMRP Annual Review, 20 September in the calendar year in which the BMRP Review Commencement Date occurs;

**“BMRP Annual Review Dispute Notice”** has the meaning given to that term in paragraph 4.1(A) of Part A;

**“BMRP Annual Review Implementation Date”** has the meaning given to that term in paragraph 1.6 of Part A;

**“BMRP Annual Review Outcome Notice”** has the meaning given to that term in paragraph 1.6 of Part A;

**“BMRP Dispute”** means a BMRP Price Source Dispute or a BMRP Principles Review Dispute;

**“BMRP Dispute Generator”** has the meaning given to that term in paragraph 4.1 of Part A;

**“BMRP Dispute Notice”** has the meaning given to that term in paragraph 4.1 of Part A;

**“BMRP Dispute Threshold Criterion”** has the meaning given to that term in paragraph 4.13 of Part A;

**“BMRP Dispute Validity Notice”** has the meaning given to that term in paragraph 4.3 of Part A;

**“BMRP Expert Appointment Threshold”** has the meaning given to that term in paragraph 4.9 of Part A;

**“BMRP Inclusion Criteria”** in respect of a price source, means that:

- (A) the 5-TD Trade Number Percentage in respect of such price source in each 5-TD Sample Period during the BMRP Review Calculation Period is at least five per cent. (5%);
- (B) the 5-TD Volume Percentage in respect of such price source in each 5-TD Sample Period during the BMRP Review Calculation Period is at least five per cent. (5%);
- (C) such price source has at all times during the BMRP Review Calculation Period, no fewer than ten (10) registered market participants; and
- (D) such price source reports prices of Baseload Forward Season Contracts at least once per calendar month during the BMRP Review Calculation Period,

and **“BMRP Inclusion Criterion”** shall be construed accordingly;

**“BMRP Mechanism Amendment”** has the meaning given to that term in paragraph 2.6 of Part A;

**“BMRP Price Source Dispute”** means a Dispute relating to the outcome of a BMRP Annual Review;

**“BMRP Principles”** means the principles set out in paragraph 1 (*BMRP Principles*) of Part B;

**“BMRP Principles Prioritisation”** means the prioritisation of the BMRP Principles provided for in paragraph 2 (*Prioritisation of BMRP Principles*) of Part B;

**“BMRP Principles Request Criterion”** has the meaning given to that term in paragraph 2.3 of Part A;

**“BMRP Principles Request Notice”** has the meaning given to that term in paragraph 2.2 of Part A;

**“BMRP Principles Request Validity Notice”** has the meaning given to that term in paragraph 2.5 of Part A;

**“BMRP Principles Review”** means a review conducted by the CfD Counterparty pursuant to, and within the parameters specified in, paragraph 2 (*BMRP Principles Reviews*) of Part A;

**“BMRP Principles Review Dispute”** means a Dispute in relation to the outcome of a BMRP Principles Review;

**“BMRP Principles Review Dispute Notice”** has the meaning given to that term in paragraph 4.1(B) of Part A;

**“BMRP Principles Review Implementation Date”** has the meaning given to that term in paragraph 2.12(C) of Part A;

**“BMRP Principles Review Notice”** has the meaning given to that term in paragraph 2.8 of Part A;

**“BMRP Principles Review Outcome Notice”** has the meaning given to that term in paragraph 2.12 of Part A;

**“BMRP Principles Review Proposals”** has the meaning given to that term in paragraph 2.12(B) of Part A;

**“BMRP Principles Review Response Deadline”** has the meaning given to that term in paragraph 2.8(C) of Part A;

**“BMRP Principles Review Response Notice”** has the meaning given to that term in paragraph 2.9 of Part A;

**“BMRP Principles Review Trigger”** has the meaning given to that term in paragraph 2.1 of Part A;

**“BMRP Quality Criteria”** in respect of a price source, means the CfD Counterparty having determined that, as at the BMRP Review Commencement Date (in the case of a BMRP Annual Review) or as at the BMRP Principles Review Response Deadline (in the case of a BMRP Principles Review):

- (A) the underlying data used to compile or prepare such price source:
  - (i) is subject to reasonable procedures to ensure its accuracy and completeness;
  - (ii) is subject to reasonable procedures to ensure its retention by the administrator for a period of at least two (2) years such that it is capable of audit; and
  - (iii) consists only of verifiable transaction data and does not include data which is the product of a subjective judgement;
- (B) the methodology used by the administrator to prepare and compile such price source:
  - (i) is appropriately documented;
  - (ii) is not subject to subjective judgement; and
  - (iii) may only be changed in accordance with documented change control procedures which provide adequate protection against conflicts of interest which exist or are reasonably likely to arise in connection with such methodology; and
- (C) the administrator of such price source and the submitters to such price source have effective organisational and administrative arrangements in place to identify and manage conflicts of interest and to protect commercial confidentiality,

and “**BMRP Quality Criterion**” shall be construed accordingly;

“**BMRP Review**” means a BMRP Annual Review or a BMRP Principles Review (as the context requires) and “**BMRP Reviews**” shall be construed accordingly;

“**BMRP Review Calculation Period**” means:

- (A) in respect of each BMRP Annual Review, the twelve (12) month period ending on (and including) the day immediately prior to the BMRP Review Commencement Date; and
- (B) in respect of each BMRP Principles Review, the twelve (12) month period ending on (and including) the day immediately prior to the BMRP Principles Review Response Deadline;

“**BMRP Review Commencement Date**” has the meaning given to that term in paragraph 1.2 of Part A;

“**BMRP Review Price Sources**” has the meaning given to that term in paragraph 1.8 of Part A;

**“Calculation Price Source”** means a price source which is determined pursuant to a BMRP Review to have met the BMRP Quality Criteria;

**“Calculation Season”** means a Season for which the Baseload Market Reference Price is calculated;

**“Excluded 5-TD Sample Period”** has the meaning given to that term in paragraph 1.6(C)(ii)(b) of Part A;

**“Fallback Baseload Price”** means a price calculated in accordance with the methodology contained in Part C;

**“Initial BMRP Indices”** means the LEBA Baseload Index and the NASDAQ Baseload Index;

**“LEBA Baseload Index”** means the Baseload Forward Season Index reported by the London Energy Brokers’ Association;

**“NASDAQ Baseload Index”** means the Baseload Forward Season Index reported by NASDAQ OMX Commodities A.S.;

**“Price Source Live Day”** means, in respect of a price source, a day where Baseload Forward Season Contracts are conducted or reported;

**“Proposed BMRP Expert”** has the meaning given to that term in paragraph 4.3(B) of Part A;

**“Reference Price Sample Period”** means each Trading Day falling within the Season before the Calculation Season;

**“Trading Day”** means any day on which trading on the markets from which the Baseload Price Sources are derived ordinarily takes place;

**“Year-Ahead Basis”** has the meaning given to that term in paragraph 3.1(A) of Part A;

**“Year-Ahead Switch Effective Date”** has the meaning given to that term in paragraph 3.1(B)(ii) of Part A; and

**“Year-Ahead Switch Notice”** has the meaning given to that term in paragraph 3.1 of Part A.

**Part A**  
**BMRP Review Procedures**

**1. BMRP ANNUAL REVIEWS**

***Requirement to undertake BMRP Annual Reviews***

- 1.1 Subject to paragraphs 1.3 and 1.4, the CfD Counterparty shall conduct a BMRP Annual Review in each year during the Term.
- 1.2 Subject to paragraph 1.3, the CfD Counterparty shall commence each BMRP Annual Review on 01 October (or, if such date is not a Business Day, the first (1<sup>st</sup>) Business Day thereafter) (the “**BMRP Review Commencement Date**”).
- 1.3 The CfD Counterparty shall not be required to perform a BMRP Annual Review before 01 October 2015.
- 1.4 The CfD Counterparty shall not be required to conduct a BMRP Annual Review pursuant to paragraph 1.1 if, as at the BMRP Review Commencement Date, a BMRP Principles Review is being conducted.

***Purpose of a BMRP Annual Review***

- 1.5 The purpose of each BMRP Annual Review shall be for the CfD Counterparty to determine whether:
  - (A) the BMRP Quality Criteria are met in respect of each BMRP Review Price Source; and
  - (B) the BMRP Inclusion Criteria are met in respect of each BMRP Review Price Source which meets the BMRP Quality Criteria

***Notification of outcome of BMRP Annual Review***

- 1.6 The CfD Counterparty shall, no later than 01 January in the year immediately following the relevant BMRP Review Commencement Date, notify the Generator of the outcome of the BMRP Annual Review (a “**BMRP Annual Review Outcome Notice**”). Each BMRP Annual Review Outcome Notice shall:
  - (A) be substantially in the form set out in Part AAA of Annex 9 (*Pro forma notices*);
  - (B) (i) identify each BMRP Review Price Source which is, subject to and in accordance with paragraphs 1.7 and 1.7(B), to be a Baseload Price Source; or (ii) if the CfD Counterparty has determined that no BMRP Review Price Source meets the BMRP Inclusion Criteria and the BMRP Quality Criteria, contain a statement to that effect;
  - (C) set out:



- (i) in respect of each BMRP Review Price Source, either:
  - (a) a statement that such price source meets the BMRP Quality Criteria; or
  - (b) a summary of the reasons for the CfD Counterparty having determined that such price source does not meet all or any of the BMRP Quality Criteria;
- (ii) in respect of each BMRP Review Price Source that meets the BMRP Quality Criteria:
  - (a) a statement that such price source meets the BMRP Inclusion Criteria; or
  - (b) (i) a list of the 5-TD Sample Periods in respect of which such price source has not met all or any of the BMRP Inclusion Criteria (each such 5-TD Sample Period being an “**Excluded 5-TD Sample Period**”); (ii) (if such price source did not meet the BMRP Inclusion Criterion in paragraph (A) of the definition thereof) the 5-TD Trade Number Percentage in each Excluded 5-TD Sample Period; (iii) (if such price source did not meet the BMRP Inclusion Criterion in paragraph (B) of the definition thereof) the 5-TD Volume Percentage in each Excluded 5-TD Sample Period; and (iv) (if such price source did not meet the BMRP Inclusion Criterion in paragraph (C) or (D) of the definition thereof) a statement to that effect; and
- (D) set out the date on which the results of the BMRP Annual Review shall be utilised to calculate the Baseload Market Reference Price, such date being the first (1<sup>st</sup>) day of the Season commencing immediately after the BMRP Review Commencement Date (a “**BMRP Annual Review Implementation Date**”).

***Implementation of outcome of BMRP Annual Review***

- 1.7 Each BMRP Review Price Source which is, pursuant to a BMRP Annual Review, determined by the CfD Counterparty:
- (A) to meet the BMRP Inclusion Criteria and the BMRP Quality Criteria shall, with effect from the relevant BMRP Annual Review Implementation Date, be a Baseload Price Source; or
  - (B) not to have met (or to have ceased to meet) the BMRP Inclusion Criteria or the BMRP Quality Criteria shall, with effect from the BMRP Annual Review Implementation Date, cease to be used as a Baseload Price Source, provided that if this paragraph 1.7(B) would result in there being no Baseload Price Source:

- (i) (subject to paragraph (ii)) the Baseload Price Sources prior to the commencement of the relevant BMRP Annual Review shall remain unamended pending the outcome of a BMRP Principles Review; or
- (ii) if a BMRP Principles Review Trigger falling within paragraph 2.1(A)(iii) has occurred, the Fallback Baseload Price shall be used as the Baseload Price Source for the purposes of calculating the Baseload Market Reference Price pending the outcome of a BMRP Principles Review.

***The BMRP Review Price Sources***

1.8 Subject to paragraph 1.9, the “**BMRP Review Price Sources**” shall be:

- (A) the Baseload Price Sources as at the relevant BMRP Review Commencement Date; and
- (B) all other Baseload Forward Season Indices of which the CfD Counterparty is aware at the BMRP Review Commencement Date (including any such index or price source notified by the Generator to the CfD Counterparty no later than the BMRP Annual Review Cut-Off Date).

1.9 The CfD Counterparty may elect to exclude any index or price source as a BMRP Review Price Source if:

- (A) the Generator notifies the CfD Counterparty of a Baseload Forward Season Index which it wishes the CfD Counterparty to assess as part of a BMRP Annual Review but such notification is received (or deemed to have been received) by the CfD Counterparty after the BMRP Annual Review Cut-Off Date;
- (B) the CfD Counterparty considers that the fees which would be payable by the CfD Counterparty to the person administering, maintaining, operating, producing or publishing such Baseload Forward Season Index, either:
  - (i) for the purposes of conducting the BMRP Annual Review (including in connection with the CfD Counterparty’s assessment of whether such index or price source meets the BMRP Inclusion Criteria and the BMRP Quality Criteria); or
  - (ii) (subject to the outcome of the BMRP Annual Review) for the utilisation of such index or price source as a Baseload Price Source,

are commercially unreasonable;

- (C) the CfD Counterparty, having used reasonable endeavours to do so, is unable to access the data and information necessary to enable the CfD Counterparty to assess whether such Baseload Forward Season Index fulfils the BMRP Inclusion Criteria and the BMRP Quality Criteria; or

- (D) the CfD Counterparty considers that it will not, using reasonable endeavours, be able to ensure that the CfD Settlement Services Provider has sufficiently robust, regular and timely access to the data of the Baseload Forward Season Index to permit its use in the calculation of the Baseload Market Reference Price.

### ***BMRP Annual Review: Disputes***

- 1.10 Paragraph 4 (*BMRP Reviews: Dispute Process*) shall apply to any Dispute relating to this paragraph 1 (*BMRP Annual Reviews*).

## **2. BMRP PRINCIPLES REVIEWS**

### ***Requirement to undertake BMRP Principles Reviews***

- 2.1 The CfD Counterparty:

- (A) shall conduct a BMRP Principles Review if:
- (i) either: (a) the CfD Counterparty determines as part of a BMRP Annual Review that no BMRP Review Price Source meets the BMRP Inclusion Criteria and the BMRP Quality Criteria; or (b) (if there is a valid Dispute relating to the outcome of a BMRP Annual Review) an Expert determines that no BMRP Review Price Source meets the BMRP Inclusion Criteria and the BMRP Quality Criteria;
  - (ii) the splitting of the GB electricity market has been proposed or effected by the relevant Competent Authority;
  - (iii) the volume (in MWh) of Baseload Forward Season Contracts in respect of electricity to be delivered within Great Britain reflected in each Baseload Price Source is nil in any 5-TD Sample Period (excluding any 5-TD Sample Period falling wholly within the period 24 December to 01 January inclusive); or
  - (iv) the BMRP Principles Request Criterion is met; and
- (B) may conduct a BMRP Principles Review if it determines that the Baseload Market Reference Price does not reflect the market price for the sale of electricity delivered within Great Britain,

(each a “**BMRP Principles Review Trigger**”).

- 2.2 If the Generator considers that the calculation of the Baseload Market Reference Price does not comply with all of the BMRP Principles, the Generator may give a notice to the CfD Counterparty requesting the CfD Counterparty to undertake a BMRP Principles Review (a “**BMRP Principles Request Notice**”). A BMRP Principles Request Notice:

- (A) shall be substantially in the form set out in Part BBB of Annex 9 (*Pro forma notices*);

- (B) shall specify which of the BMRP Principles the Generator believes the calculation of the Baseload Market Reference Price does not comply with;
- (C) may include proposals from the Generator with respect to the manner in which the non-compliance with the BMRP Principles should be addressed (including any proposals regarding BMRP Mechanism Amendments which the Generator considers should be effected); and
- (D) shall include Supporting Information, in reasonable detail, which the Generator considers to be relevant to and supportive of the matters in paragraphs (B) and (C).

2.3 For the purposes of paragraph 2.1(A)(iv), the “**BMRP Principles Request Criterion**” is that thirty per cent. (30%) or more of Baseload Generators, by volume or number, have given the CfD Counterparty a BMRP Principles Request Notice in any period of ten (10) consecutive Business Days. For the purposes of determining whether the BMRP Principles Request Criterion is met, the CfD Counterparty shall calculate:

- (A) the number of Baseload Generators which have given a BMRP Principles Request Notice as a percentage of the total number of Baseload Generators; and
- (B) the volume attributable to Baseload CfDs to which Baseload Generators which have given a BMRP Principles Request Notice are party as a percentage of the total volume attributable to Baseload CfDs (and, for this purpose, “**volume**” shall be calculated by the CfD Counterparty using the Maximum Contract Capacity in each relevant Baseload CfD).

#### ***Validity of BMRP Principles Request Notices***

- 2.4 The Generator acknowledges and agrees that all BMRP Principles Request Notices shall be invalid and of no effect if the BMRP Principles Request Criterion is not met.
- 2.5 The CfD Counterparty shall notify the Generator within ten (10) Business Days of the BMRP Principles Request Criterion having been met (a “**BMRP Principles Request Validity Notice**”). A BMRP Principles Request Validity Notice shall be substantially in the form set out in Part CCC of Annex 9 (*Pro forma notices*).

#### ***Purpose of BMRP Principles Review***

- 2.6 If the CfD Counterparty is required or elects to undertake a BMRP Principles Review pursuant to paragraph 2.1, then the purpose of such BMRP Principles Review shall be to assess the extent to which:
  - (A) the calculation of the Baseload Market Reference Price in accordance with Condition 15 (*Baseload Market Reference Price*) (including the components of the formula in Condition 15.2) is compliant with the BMRP Principles and, if the calculation of the Baseload Market Reference Price in accordance with Condition 15 (*Baseload Market Reference Price*) is not compliant with the BMRP Principles, the changes to Condition 15 (*Baseload Market Reference*

*Price*) which the CfD Counterparty considers to be necessary to ensure compliance with all of the BMRP Principles; and

- (B) any of the following would ensure compliance with all of the BMRP Principles:
- (i) an amendment or supplement to, or replacement or removal of, the Baseload Price Sources;
  - (ii) the application of any weighting (whether by volume or number of trades) with respect to any price sources used in the calculation of the Baseload Market Reference Price;
  - (iii) a change to the Season-ahead methodology for calculating the Baseload Market Reference Price; or
  - (iv) a change to the Reference Price Sample Period,

including any consequential changes to Part 5A (*Payment calculations: Baseload Technologies*) and Annex 4 (*BMRP*) which are necessary to give effect to any of the foregoing,

(each such change, or any combination of such changes, a “**BMRP Mechanism Amendment**”).

- 2.7 If the CfD Counterparty considers that it is not possible to effect any BMRP Mechanism Amendment in a manner which will be compliant with all of the BMRP Principles, the CfD Counterparty shall assess which BMRP Mechanism Amendment should be effected in order to comply with the greatest number of BMRP Principles in accordance with the BMRP Principles Prioritisation.

#### ***Notification of BMRP Principles Review***

- 2.8 If the CfD Counterparty is required or elects to undertake a BMRP Principles Review pursuant to paragraph 2.1, the CfD Counterparty shall give a notice to the Generator (a “**BMRP Principles Review Notice**”) and, if the CfD Counterparty has been required to undertake a BMRP Principles Review pursuant to paragraph 2.1(A)(iii), the CfD Counterparty shall issue the BMRP Principles Review Notice within five (5) Business Days of such BMRP Principles Review Trigger having occurred. A BMRP Principles Review Notice shall:

- (A) be substantially in the form set out in Part DDD of Annex 9 (*Pro forma notices*);
- (B) specify the BMRP Principles Review Trigger which has occurred; and
- (C) specify a deadline by which the Generator must provide a BMRP Principles Review Response Notice, such deadline to be no less than ten (10) Business Days after the date on which the BMRP Principles Review Notice is received (or deemed to have been received) by the Generator (the “**BMRP Principles Review Response Deadline**”).

2.9 The Generator shall, as soon as reasonably practicable and not later than the BMRP Principles Review Response Deadline, give a notice to the CfD Counterparty (the “**BMRP Principles Review Response Notice**”). A BMRP Principles Review Response Notice:

- (A) shall:
  - (i) be substantially in the form set out in Part EEE of Annex 9 (*Pro forma notices*); and
  - (ii) include all of the Supporting Information which the Generator wishes the CfD Counterparty to take account of in undertaking the BMRP Principles Review; and
- (B) may include proposals from the Generator with respect to the manner in which the BMRP Principles Review Trigger should be addressed (including any proposals regarding BMRP Mechanism Amendments which the Generator considers should be effected).

2.10 The CfD Counterparty may disregard any BMRP Principles Review Response Notice received (or deemed to have been received) by the CfD Counterparty after the BMRP Principles Review Response Deadline.

***Baseload Price Sources during BMRP Principles Review***

2.11 From the date on which the BMRP Principles Review Notice is given or deemed to have been given:

- (A) (subject to paragraph (B)) the Baseload Price Sources prior to the commencement of the relevant BMRP Principles Review shall remain unamended pending the outcome of a BMRP Principles Review; or
- (B) if a BMRP Principles Review Trigger falling within paragraph 2.1(A)(iii) has occurred, the Fallback Baseload Price shall be used as the Baseload Price Source for the purposes of calculating the Baseload Market Reference Price and  $BQ_{i,j}$  for all Trading Days from and including the BMRP Principles Review Trigger having occurred to and excluding the date on which the BMRP Principles Review Notice is given or deemed to have been given shall be deemed to be zero (0), pending the outcome of a BMRP Principles Review.

***Notification of outcome of BMRP Principles Review***

2.12 The CfD Counterparty shall give a notice to the Generator of the outcome of a BMRP Principles Review (a “**BMRP Principles Review Outcome Notice**”) as soon as reasonably practicable following the conclusion of a BMRP Principles Review. A BMRP Principles Review Outcome Notice shall:

- (A) be substantially in the form set out in Part FFF of Annex 9 (*Pro forma notices*);

- (B) set out the outcome of the BMRP Principles Review (including the details of any BMRP Mechanism Amendments which the CfD Counterparty proposes to effect) (the “**BMRP Principles Review Proposals**”) and, if paragraph 2.7 applies:
  - (i) a summary of the reasons for the CfD Counterparty having determined that it is not possible to effect any BMRP Mechanism Amendment in a manner which complies with all of the BMRP Principles; and
  - (ii) the BMRP Principles which the CfD Counterparty considers will be complied with by virtue of the BMRP Mechanism Amendments being effected; and
- (C) specify the date from which any BMRP Mechanism Amendments are to take effect, such date being:
  - (i) no earlier than three (3) months after the date on which the BMRP Principles Review Outcome Notice is given or deemed to have been given (or such other earlier date as may be agreed by the Parties); and
  - (ii) in the case of BMRP Mechanism Amendments relating to a BMRP Principles Review Trigger pursuant to paragraph 2.1(A)(ii), not before such splitting of the GB electricity market occurs,

and where the CfD Counterparty considers it appropriate to do so, shall coincide with the start of a Season (the “**BMRP Principles Review Implementation Date**”).

### ***BMRP Principles Review: Disputes***

- 2.13 Paragraph 4 (*BMRP Reviews: Dispute Process*) shall apply to any Dispute relating to this paragraph 2 (*BMRP Principles Reviews*).
- 2.14 Subject to paragraph 4.12, the BMRP Mechanism Amendments set out in the BMRP Principles Review Outcome Notice shall take effect on the BMRP Principles Review Implementation Date.

## **3. BMRP YEAR-AHEAD MIGRATION**

- 3.1 If:
  - (A) the Secretary of State has publicly announced that Baseload Generators will be able to enter into FiT Contracts for Difference pursuant to which the Baseload Market Reference Price is to be calculated using:
    - (i) prices quoted on Trading Days that fall before the six (6) month period immediately prior to the period in respect of which the market reference price is being calculated; and

- (ii) contracts relating to the delivery of a firm volume of energy in each Settlement Unit within a Season or longer period,

(a “**Year-Ahead Basis**”); and

- (B) the Baseload Market Reference Price is at that time not calculated on a Year-Ahead Basis,

then the Generator may at any time serve a notice on the CfD Counterparty (a “**Year-Ahead Switch Notice**”). A Year-Ahead Switch Notice shall:

- (i) be substantially in the form set out in Part GGG of Annex 9 (*Pro forma notices*); and
- (ii) specify the date (which must be the first (1<sup>st</sup>) Trading Day of a Season and not less than twenty (20) Business Days from the date of delivery of the Year-Ahead Switch Notice) from which the Generator wishes the calculation of the Baseload Market Reference Price to be conducted on a Year-Ahead Basis (the “**Year-Ahead Switch Effective Date**”).

### 3.2 Upon receipt of a Year-Ahead Switch Notice:

- (A) the Generator shall be deemed to unconditionally accept the provisions in the FiT Contracts for Difference referred to in paragraph 3.1(A) which effect the calculation of the Baseload Market Reference Price on a Year-Ahead Basis; and
- (B) the Year-Ahead Basis shall apply to the calculation of the Baseload Market Reference Price in the Investment Contract with effect from the later of: (i) the Year-Ahead Switch Effective Date; and (ii) the first (1<sup>st</sup>) day of the first Season that immediately follows the date upon which the FiT Contracts for Difference set out in paragraph 3.1(A) come into effect.

## 4. BMRP REVIEWS: DISPUTE PROCESS

### *Procedure for raising a Dispute*

#### 4.1 The Generator may, within twenty (20) Business Days after receipt of:

- (A) a BMRP Annual Review Outcome Notice, give a notice to the CfD Counterparty that it wishes to raise a Dispute in relation to the outcome of such BMRP Annual Review (a “**BMRP Annual Review Dispute Notice**”); or
- (B) a BMRP Principles Review Outcome Notice, give a notice to the CfD Counterparty that it wishes to raise a Dispute in relation to the outcome of such BMRP Principles Review (a “**BMRP Principles Review Dispute Notice**”),,

(a BMRP Annual Review Dispute Notice and a BMRP Principles Review Dispute Notice each being a “**BMRP Dispute Notice**” and any such Generator, a “**BMRP Dispute Generator**”). Each BMRP Dispute Notice shall:



- (i) be substantially in the form set out in Part HHH of Annex 9 (*Pro forma notices*); and
- (ii) comply with the requirements of a Dispute Notice as specified in Condition 55.3(B) to 55.3(G) (inclusive).

#### **Validity of BMRP Dispute Notices**

- 4.2 The Generator acknowledges and agrees that all BMRP Dispute Notices shall be invalid and of no effect if the BMRP Dispute Threshold Criterion in respect of the relevant BMRP Dispute is not met.
- 4.3 The CfD Counterparty shall notify the Generator within ten (10) Business Days of the BMRP Dispute Threshold Criterion having been met (irrespective of whether or not the Generator is a BMRP Dispute Generator) (a “**BMRP Dispute Validity Notice**”). A BMRP Dispute Validity Notice shall:
  - (A) be substantially in the form set out in Part III of Annex 9 (*Pro forma notices*);
  - (B) include a proposal as to the identity, and terms of reference, of an Expert to determine the BMRP Dispute (the “**Proposed BMRP Expert**”) and details of the relevant expertise that the CfD Counterparty considers qualifies him to determine such BMRP Dispute (being a person fulfilling the requirements of Condition 57.2 and having no conflict of interest which prevents him from determining the BMRP Dispute);
  - (C) comply with the requirements of an Expert Determination Notice as specified in Condition 57.1; and
  - (D) comply with the requirements of a Consolidation Notice as specified in Condition 59.2.

#### **Permitted bases of Dispute: BMRP Annual Review**

- 4.4 For the purposes of paragraph 4.1(A), the Generator acknowledges and agrees that it may only raise a Dispute with respect to the outcome of any BMRP Annual Review if there is a manifest error or fraud in any determination by the CfD Counterparty as to whether or not a BMRP Review Price Source meets the BMRP Quality Criteria or the BMRP Inclusion Criteria and that any BMRP Annual Review Dispute Notice which is based upon grounds other than those specified in this paragraph 4.4 shall be invalid and of no effect.

#### **Permitted bases of Dispute: BMRP Principles Review**

- 4.5 For the purposes of paragraph 4.1(B), the Generator acknowledges and agrees that it may only raise a Dispute with respect to the outcome of any BMRP Principles Review if:
  - (A) the CfD Counterparty has acted unreasonably in failing to pay due regard to the Supporting Information which the Generator requested the CfD Counterparty to

take account of in undertaking the BMRP Principles Review (as set out in its BMRP Principles Review Response Notice);

- (B) the CfD Counterparty has proposed to effect a BMRP Mechanism Amendment which was stated in the BMRP Principles Review Outcome Notice to be compliant with all of the BMRP Principles and the Generator considers that such BMRP Mechanism Amendment contravenes one (1) or more of the BMRP Principles; or
- (C) the CfD Counterparty has proposed to effect a BMRP Mechanism Amendment on the basis contemplated by paragraph 2.7 and the Generator considers that either:
  - (i) one (1) or more of the proposed BMRP Mechanism Amendments contravenes one (1) of the BMRP Principles which the CfD Counterparty considers would be complied with by virtue of such BMRP Mechanism Amendment being effected; or
  - (ii) an alternative BMRP Mechanism Amendment complies with a greater number of BMRP Principles (in accordance with the BMRP Principles Prioritisation) than the BMRP Mechanism Amendments contained within the BMRP Principles Review Proposals,

and any BMRP Principles Review Dispute Notice which is based upon grounds other than those specified in this paragraph 4.5 shall be invalid and of no effect.

#### ***Resolution of valid BMRP Disputes***

4.6 If:

- (A) the BMRP Dispute Threshold Criterion is met in respect of the relevant BMRP Dispute; and
- (B) the relevant BMRP Dispute complies with paragraph 4.4 (in respect of any BMRP Annual Review Dispute Notice) or 4.5 (in respect of any BMRP Principles Review Dispute Notice) (as the context requires),

then such BMRP Dispute shall be finally resolved in accordance with paragraphs 4.7 and 4.8.

4.7 If paragraph 4.6 applies to any BMRP Dispute:

- (A) Condition 56 (*Resolution by Senior Representatives*) shall not apply to such BMRP Dispute;
- (B) no agreement between the Generator and the CfD Counterparty to settle the relevant BMRP Dispute shall be valid and binding unless such resolution is agreed with all Baseload Generators;
- (C) the Arbitration Procedure shall not apply to such BMRP Dispute;

- (D) the Generator agrees not to raise any objection to the consolidation of such BMRP Dispute in accordance with Condition 59 (*Consolidation of Connected Disputes*);
- (E) the Expert Determination Procedure shall apply to such BMRP Dispute on the basis that:
  - (i) (if the BMRP Expert Appointment Threshold is met) the CfD Counterparty shall be deemed to have satisfied the requirements of, and have given an Expert Determination Notice pursuant to, Condition 57.1 and the Parties will be deemed to have agreed to both the identity and the terms of reference of the Proposed BMRP Expert;
  - (ii) (if the BMRP Expert Appointment Threshold is not met)
    - (a) the CfD Counterparty may within ten (10) Business Days, either:
      - (1) make an alternative proposal as to the identity of an Expert to determine the BMRP Dispute, in which case paragraphs 4.3(B) and 4.7(E)(i), and this paragraph 4.7(E)(ii)(a)(1), shall apply to such proposed Expert as if he were a Proposed BMRP Expert;; or
      - (2) request the LCIA to nominate an Expert for the purposes of determining the BMRP Dispute in accordance with Condition 57.4; and,
    - (b) the terms of reference of the Proposed BMRP Expert (or any Expert nominated by the LCIA pursuant to paragraph 4.7(E)(ii)(a)(2)) shall be determined by the CfD Counterparty in its sole and absolute discretion (having regard to any submissions made to it by any Baseload Generator), and shall be binding on the Parties, provided that such terms of reference are sufficiently broad to enable the Expert to determine the BMRP Dispute;
  - (iii) if the CfD Counterparty and the Baseload Generators fail to agree on the terms of appointment of the Expert within ten (10) Business Days of the identity of the Expert having been agreed (or deemed to have been agreed) pursuant to paragraph 4.7(E)(i) or having been nominated by the LCIA pursuant to paragraph 4.7(E)(ii)(a)(2), such terms shall be determined by the CfD Counterparty in its sole and absolute discretion (having regard to any submissions made to it by any Baseload Generator), and shall be on the parties, provided that the terms of appointment comply with the requirements of paragraph 4.7(E)(iv) and Conditions 57.5(B) and 57.5(C);
  - (iv) Condition 57.5 shall be deemed to have been modified such that the Parties shall use reasonable endeavours to procure that the terms of

appointment of the Expert prohibit the Expert from disclosing any Supporting Information disclosed or delivered by:

- (a) the Generator to the Expert in consequence of, or in respect of, his appointment as the Expert to any other Baseload Generator or the CfD Counterparty; or
- (b) the CfD Counterparty in consequence of, or in respect of, his appointment as the Expert to any Baseload Generator (including the Generator);
- (v) the Expert will be instructed, in establishing or modifying the procedure for the determination of the BMRP Dispute, to afford the Generator an opportunity to make submissions in respect of the BMRP Dispute irrespective of whether or not the Generator is a BMRP Dispute Generator;
- (vi) if the circumstances described in Condition 57.8 arise, paragraphs 4.3(B), 4.7(E)(i) and 4.7(E)(ii) shall apply, *mutatis mutandis*, to the appointment of a replacement Expert
- (vii) for the purposes of Condition 57.11, the Expert shall be: (i) required to include in his determination provision for the allocation of his fees and the costs and expenses of the CfD Counterparty amongst each of the BMRP Dispute Generators in such manner as he, in his absolute discretion, determines is fair and equitable if he makes a determination against the BMRP Dispute Generators; and (ii) permitted to allocate his fees and the costs and expenses of the CfD Counterparty in such manner as he determines is fair and equitable if he makes a determination in favour of the BMRP Dispute Generators; and
- (viii) the Expert shall, notwithstanding any other provision of the Expert Determination Procedure, be instructed to reach a determination which is to be applied to all Baseload CfDs; and
- (F) the Generator acknowledges and agrees that the determination of the Expert in any BMRP Dispute shall be applied to all Baseload CfDs, irrespective of whether the Generator was a party to the BMRP Dispute giving rise to that determination.

4.8 If the BMRP Dispute is a BMRP Principles Review Dispute, the following additional provisions shall apply:

- (A) If the BMRP Principles Review Dispute falls within paragraph 4.5(A), 4.5(B) or 4.5(C)(i), the Expert shall be instructed to determine whether the BMRP Mechanism Amendments contravene the BMRP Principles (or such of the BMRP Principles as were specified by the CfD Counterparty as being complied with by virtue of the proposed implementation of the BMRP Mechanism Amendments) and, if the Expert finds in favour of the Generator, to include within his determination: (i) a BMRP Mechanism Amendment which will comply

with all of the BMRP Principles; or (ii) (if the Expert considers that it is not possible to effect any BMRP Mechanism Amendment in a manner which will be compliant with all of the BMRP Principles) the BMRP Mechanism Amendment which will comply with the greatest number of BMRP Principles in accordance with the BMRP Principles Prioritisation.

- (B) If the BMRP Principles Review Dispute falls within paragraph 4.5(C)(ii), the Expert shall be instructed to determine whether the BMRP Mechanism Amendments proposed by the Generator would result in compliance with a greater number of BMRP Principles (in accordance with the BMRP Principles Prioritisation) than the BMRP Mechanism Amendments contained within the BMRP Principles Review Proposals and, if the Expert finds in favour of the Generator, to stipulate the BMRP Mechanism Amendments which will comply with the greatest number of BMRP Principles in accordance with the BMRP Principles Prioritisation.
- (C) Notwithstanding paragraphs 4.8(A) and 4.8(B), the Expert shall not be permitted to include within his determination any alternative BMRP Mechanism Amendments to those contained within the BMRP Principles Review Proposals unless such proposals contravene one (1) or more principles and the Expert has determined that there is a BMRP Mechanism Amendment which will comply with a greater number of BMRP Principles (in accordance with the BMRP Principles Prioritisation) than the BMRP Principles Review Proposals and, as such, the Expert's role shall not extend to an assessment of whether the BMRP Principles Review Proposals represent an optimal solution in the context of the parameters contemplated by the BMRP Principles.

#### ***BMRP Expert Appointment Threshold***

4.9 For the purposes of paragraphs 4.7(E)(i) and 4.7(E)(ii), the “**BMRP Expert Appointment Threshold**” is that thirty per cent. (30%) or more of Baseload Generators, by volume or number, have consented, or not objected in writing, to both the identity and the terms of reference of the Proposed BMRP Expert. For the purposes of determining whether the BMRP Expert Appointment Threshold is met, the CfD Counterparty shall calculate:

- (A) the number of Baseload Generators which have consented or have been deemed to have consented to the Proposed BMRP Expert as a percentage of the total number of Baseload Generators; and
- (B) the volume attributable to Baseload CfDs to which Baseload Generators which have consented or have been deemed to have consented to the Proposed BMRP Expert as a percentage of the total volume attributable to Baseload CfDs (and, for this purpose, “**volume**” shall be calculated by the CfD Counterparty using the Maximum Contract Capacity in each relevant Baseload CfD).

***Provisions applying pending resolution of a BMRP Dispute***

- 4.10 If there is a valid BMRP Dispute requiring resolution in accordance with the provisions of paragraphs 4.6 to 4.8 then, pending resolution of such BMRP Dispute, paragraphs 4.11 and 4.12 shall apply.
- 4.11 If there is a valid BMRP Dispute relating to a BMRP Annual Review:
- (A) the relevant BMRP Annual Review Outcome Notice shall be deemed to be valid and effective and paragraphs 1.7 and 1.7(B) shall be applied for the purposes of determining the Baseload Price Sources with effect from the BMRP Annual Review Implementation Date; and
  - (B) if the Expert determines that a BMRP Review Price Source:
    - (i) meets the BMRP Inclusion Criteria and the BMRP Quality Criteria, such BMRP Review Price Source shall be a Baseload Price Source with effect from the first (1<sup>st</sup>) day of the Season immediately following the date falling three (3) months after the date on which the Expert has made his determination; or
    - (ii) does not meet the BMRP Inclusion Criteria and the BMRP Quality Criteria, then (subject to the operation of the provisos contained in paragraphs 1.7(B)(i) and 1.7(B)(ii)), such BMRP Review Price Source shall not be used as a Baseload Price Source with effect from the first (1<sup>st</sup>) day of the Season immediately following the date falling three (3) months after the date on which the Expert has made his determination.
- 4.12 If there is a valid BMRP Dispute relating to a BMRP Principles Review:
- (A) the relevant BMRP Principles Review Outcome Notice shall be deemed to be valid and effective and the BMRP Principles Review Proposals shall apply with effect from the BMRP Principles Review Implementation Date; and
  - (B) if the Expert finds in favour of the Generator, the BMRP Mechanism Amendments provided for in the determination of such Expert shall be implemented on a date falling no earlier than three (3) months after the date on which the Expert has made his determination and, where the Expert considers it appropriate to do so, shall coincide with the start of a Season.

***BMRP Dispute Threshold Criterion***

- 4.13 For the purposes of this paragraph 4 (*BMRP Reviews: Dispute Process*), the “**BMRP Dispute Threshold Criterion**” is that thirty per cent. (30%) or more of Baseload Generators, by volume or number, have given the CfD Counterparty a BMRP Dispute Notice in respect of any given BMRP Dispute prior to the date specified in paragraph 4.1. For the purposes of determining whether the BMRP Dispute Threshold Criterion is met, the CfD Counterparty shall calculate:

- (A) the number of Baseload Generators which have given a BMRP Dispute Notice as a percentage of the total number of Baseload Generators; and
- (B) the volume attributable to Baseload CfDs to which Baseload Generators which have given a BMRP Dispute Notice are party as a percentage of the total volume attributable to Baseload CfDs (and, for this purpose, “**volume**” shall be calculated by the CfD Counterparty using the Maximum Contract Capacity in each relevant Baseload CfD).

**Part B**  
**BMRP Principles**

**1. BMRP PRINCIPLES**

The following are the “**BMRP Principles**”:

- (A) Save in respect of a BMRP Principles Review Trigger pursuant to paragraph 2.1(A)(ii) of Part A, the calculation of the Baseload Market Reference Price shall be the same for all Baseload CfDs (provided that if the circumstances contemplated by paragraph 3.1(A) of Part A have arisen, the calculation of the Baseload Market Reference Price shall be the same for, on the one hand, all Baseload CfDs in respect of which the Baseload Market Reference Price is being calculated on a Year-Ahead Basis and, on the other hand, all other Baseload CfDs).
- (B) The calculation of the Baseload Market Reference Price shall reflect the market price for the sale of electricity within Great Britain or, in the event of a BMRP Principles Review Trigger pursuant to paragraph 2.1(A)(ii) of Part A the relevant part of Great Britain.
- (C) The Baseload Market Reference Price shall be calculated using price sources for baseload contracts relating to the delivery of energy over as long as possible a period up to a Season (or a year where the Baseload Market Reference Price is being calculated on a Year-Ahead Basis), provided that, for this purpose, the sample period for the Baseload Market Reference Price calculation:
  - (i) shall not be longer than the duration of delivery of the baseload contracts used in such calculation (the “**Baseload Contract Period**”); and
  - (ii) must commence no earlier than one (1) Baseload Contract Period prior to the start of the period in respect of which the calculation is being performed.
- (D) The Baseload Market Reference Price shall be calculated so as to reflect a reasonable volume of trades from a reasonable number and diverse range of market participants.
- (E) The Baseload Market Reference Price shall be calculated so as not to unduly dampen, dilute, disrupt or otherwise distort components of the energy market in Great Britain that would, absent the existence of FiT Contracts for Difference, contribute to the operational behaviour of the energy market in Great Britain and the pricing thereof.
- (F) The calculation of the Baseload Market Reference Price shall be calculated using price sources for Baseload CfDs which are available to the CfD Counterparty on commercially reasonable terms.



- (G) The Baseload Market Reference Price calculation is to utilise price sources which satisfy the BMRP Quality Criteria.
- (H) The Baseload Market Reference Price calculation is to utilise price sources which satisfy the BMRP Inclusion Criteria.
- (I) If a BMRP Principles Review Trigger falling within paragraph 2.1(A)(ii) of Part A occurs or has occurred, the Baseload Market Reference Price calculation shall pay regard to the physical location of the Facility and the extent to which such physical location and constraints on the delivery of energy into the market thereby imposed may have on the price for the sale of its electricity delivered within Great Britain or the relevant part of Great Britain.

## 2. PRIORITISATION OF BMRP PRINCIPLES

If:

- (A) the application of any combination of the BMRP Principles gives rise to a conflict; or
- (B) it is not possible for a methodology for calculating the Baseload Market Reference Price to satisfy all of the BMRP Principles,

the BMRP Principle first appearing in the list in paragraph 1 (*BMRP Principles*) shall be afforded priority.

**Part C**  
**Fallback Baseload Price Methodology**

1. The CfD Counterparty will, in relation to each Trading Day, source five (5) arm's length quotes from five (5) brokers (each broker to be from a different broking house) for delivery of five (5) MWh in the Calculation Season pursuant to a Baseload Forward Season Contract.
2. The CfD Counterparty will, in relation to each quote, seek to obtain a bid and offer price.
3. If: (i) a broker supplies a bid and offer price, the mean of the bid price and offer price will be the input price; (ii) a broker supplies a bid price but not an offer price, such bid price will be used; and (iii) a broker does not supply a bid price, the input price will be zero (0).
4. The CfD Counterparty will use these prices to calculate the Baseload Market Reference Price in accordance with the formula at Condition 15.2, having excluded any input price which is more than ten per cent. (10%) higher or lower than the median of the broker input prices (excluding, for the purposes of calculating such median, any brokers who do not supply a bid price).

## Annex 5 IMRP

### 1. APPLICATION

This Annex 5 (*IMRP*) shall apply to the Investment Contract only if it is expressed to apply to the Investment Contract in the IC Agreement.

### 2. DEFINITIONS: ANNEX 5

#### 2.1 In this Annex 5 (*IMRP*):

**“5-TD Sample Period”** means a period of five (5) consecutive Trading Days;

**“APX Intermittent Index”** means the APX Power UK Auction index, as administered by APX Holding B.V. (either directly or through one (1) or more of its subsidiaries);

**“Day Ahead Hourly Price”** means the price (expressed in £/MWh) for an Intermittent Day Ahead Contract as reflected in an Intermittent Day Ahead Index or Intermittent Day Ahead Indices (as the context requires);

**“IMRP Dispute”** means a Dispute in relation to the outcome of an IMRP Principles Review;

**“IMRP Dispute Generator”** has the meaning given to that term in paragraph 2.1 of Part A;

**“IMRP Dispute Notice”** has the meaning given to that term in paragraph 2.1 of Part A;

**“IMRP Dispute Threshold Criterion”** has the meaning given to that term in paragraph 2.10 of Part A;

**“IMRP Dispute Validity Notice”** has the meaning given to that term in paragraph 2.3 of Part A;

**“IMRP Expert Appointment Threshold”** has the meaning given to that term in paragraph 2.7 of Part A;

**“IMRP Mechanism Amendment”** has the meaning given to that term in paragraph 1.6 of Part A;

**“IMRP Principles”** means the principles set out in paragraph 1 (*IMRP Principles*) of Part B;

**“IMRP Principles Prioritisation”** means the prioritisation of the IMRP Principles provided for in paragraph 2 (*Prioritisation of IMRP Principles*) of Part B;

**“IMRP Principles Request Criterion”** has the meaning given to that term in paragraph 1.3 of Part A;

**“IMRP Principles Request Notice”** has the meaning given to that term in paragraph 1.2 of Part A;

**“IMRP Principles Request Validity Notice”** has the meaning given to that term in paragraph 1.5 of Part A;

**“IMRP Principles Review”** means a review conducted by the CfD Counterparty pursuant to, and within the parameters specified in, paragraph 1 (*IMRP Principles Reviews*) of Part A;

**“IMRP Principles Review Implementation Date”** has the meaning given to that term in paragraph 1.12(C) of Part A;

**“IMRP Principles Review Notice”** has the meaning given to that term in paragraph 1.8 of Part A;

**“IMRP Principles Review Outcome Notice”** has the meaning given to that term in paragraph 1.12 of Part A;

**“IMRP Principles Review Proposals”** has the meaning given to that term in paragraph 1.12(B) of Part A;

**“IMRP Principles Review Response Deadline”** has the meaning given to that term in paragraph 1.8(C) of Part A;

**“IMRP Principles Review Response Notice”** has the meaning given to that term in paragraph 1.9 of Part A;

**“IMRP Principles Review Trigger”** has the meaning given to that term in paragraph 1.1 of Part A;

**“IMRP Quality Criteria”** in respect of a price source, means the CfD Counterparty having determined that, as at the IMRP Principles Review Response Deadline:

- (A) the underlying data used to compile or prepare such price source:
  - (i) is subject to reasonable procedures to ensure its accuracy and completeness;
  - (ii) is subject to reasonable procedures to ensure its retention by the administrator for a period of at least two (2) years such that it is capable of audit; and
  - (iii) consists only of verifiable transaction data and does not include data which is the product of a subjective judgement;
- (B) the methodology used by the administrator to prepare and compile such price source:
  - (i) is appropriately documented;

- (ii) is not subject to subjective judgement; and
  - (iii) may only be changed in accordance with documented change control procedures which provide adequate protection against conflicts of interest which exist or are reasonably likely to arise in connection with such methodology; and
- (C) the administrator of such price source and the submitters to such price source have effective organisational and administrative arrangements in place to identify and manage conflicts of interest and to protect commercial confidentiality,

and **“IMRP Quality Criterion”** shall be construed accordingly;

**“Initial IMRP Indices”** means the APX Intermittent Index and the N2Ex Intermittent Index;

**“Intermittent CfD”** means a FiT Contract for Difference to which Part 5B (*Payment calculations: Intermittent Technologies*) of these Conditions is expressed to apply and **“Intermittent CfDs”** shall be construed accordingly;

**“Intermittent Day Ahead Contract”** means a contract relating to the delivery of a firm volume of energy in a specified Settlement Unit within a specified day, entered into in the Trading Day preceding such day (or, in respect of the last Settlement Unit of any day which is also the first (1<sup>st</sup>) Settlement Unit of a Trading Day, entered into on such Trading Day) (whether physically or cash settled);

**“Intermittent Day Ahead Index”** means an index of Day Ahead Hourly Prices or another source of Day Ahead Hourly Prices and **“Intermittent Day Ahead Indices”** shall be construed accordingly;

**“Intermittent Generator”** means, at the relevant time, an eligible generator party to an Intermittent CfD and **“Intermittent Generators”** shall be construed accordingly;

**“Intermittent Market Reference Price”** has the meaning given to that term in Condition 20.2;

**“Intermittent Price Sources”** means the Intermittent Day Ahead Indices to be used in the calculation of the Intermittent Market Reference Price, being the Initial IMRP Indices or such other replacement or supplementary Intermittent Day Ahead Indices which are required to be so used as a result of the operation of the provision of Part A, and **“Intermittent Price Source”** shall be construed accordingly;

**“N2Ex Intermittent Index”** means the N2Ex Day-Ahead Auction Market index for physical delivery jointly operated by NASDAQ OMX Commodities A.S. and Nord Pool Spot A.S.;

**“Proposed IMRP Expert”** has the meaning given to that term in paragraph 2.3(B) of Part A; and

**“Trading Day”** means any day on which trading on the market from which the Intermittent Price Sources are derived ordinarily takes place.

**Part A**  
**IMRP Principles Review Procedures**

**1. IMRP PRINCIPLES REVIEWS**

***Requirement to undertake IMRP Principles Reviews***

**1.1 The CfD Counterparty:**

- (A) shall conduct an IMRP Principles Review if:
  - (i) the requirement for the Intermittent Price Sources to publish a GB Day Ahead Hourly Price is materially amended, repealed or replaced;
  - (ii) the splitting of the GB electricity market has been proposed or effected by the relevant Competent Authority;
  - (iii) the volume (in MWh) of Intermittent Day Ahead Contracts in respect of electricity to be delivered within Great Britain reflected in each Intermittent Price Source is nil in any 5-TD Sample Period (excluding any 5-TD Sample Period falling wholly within the period 24 December to 01 January inclusive);
  - (iv) the Intermittent Price Sources cease to be available to the CfD Counterparty on commercially reasonable terms; or
  - (v) the IMRP Principles Request Criterion is met; and
- (B) may conduct an IMRP Principles Review if it determines that the Intermittent Market Reference Price does not reflect the market price for the sale of electricity delivered within Great Britain,

(each an “**IMRP Principles Review Trigger**”).

**1.2** If the Generator considers that the calculation of the Intermittent Market Reference Price does not comply with all of the IMRP Principles, the Generator may give a notice to the CfD Counterparty requesting the CfD Counterparty to undertake an IMRP Principles Review (an “**IMRP Principles Request Notice**”). An IMRP Principles Request Notice:

- (A) shall be substantially in the form set out in Part JJJ of Annex 9 (*Pro forma notices*);
- (B) shall specify which of the IMRP Principles the Generator believes the calculation of the Intermittent Market Reference Price does not comply with;
- (C) may include proposals from the Generator with respect to the manner in which the non-compliance with the IMRP Principles should be addressed (including

any proposals regarding IMRP Mechanism Amendments which the Generator considers should be effected); and

- (D) shall include Supporting Information, in reasonable detail, which the Generator considers to be relevant to and supportive of the matters in paragraphs 1.2(B) and 1.2(C).

1.3 For the purposes of paragraph 1.1(A)(v), the “**IMRP Principles Request Criterion**” is that thirty per cent. (30%) or more of Intermittent Generators, by volume or number, have given the CfD Counterparty an IMRP Principles Request Notice in any period of ten (10) consecutive Business Days. For the purposes of determining whether the IMRP Principles Request Criterion is met, the CfD Counterparty shall calculate:

- (A) the number of Intermittent Generators which have given an IMRP Principles Request Notice as a percentage of the total number of Intermittent Generators; and
- (B) the volume attributable to Intermittent CfDs to which Intermittent Generators which have given an IMRP Principles Request Notice are party as a percentage of the total volume attributable to Intermittent CfDs (and, for this purpose, “**volume**” shall be calculated by the CfD Counterparty using the Maximum Contract Capacity in each relevant Intermittent CfD).

#### ***Validity of IMRP Principles Request Notices***

- 1.4 The Generator acknowledges and agrees that all IMRP Principles Request Notices shall be invalid and of no effect if the IMRP Principles Request Criterion is not met.
- 1.5 The CfD Counterparty shall notify the Generator within ten (10) Business Days of the IMRP Principles Request Criterion having been met (an “**IMRP Principles Request Validity Notice**”). An IMRP Principles Request Validity Notice shall be substantially in the form set out in Part KKK of Annex 9 (*Pro forma notices*).

#### ***Purpose of IMRP Principles Review***

- 1.6 If the CfD Counterparty is required or elects to undertake an IMRP Principles Review pursuant to paragraph 1.1, then the purpose of such IMRP Principles Review shall be to assess the extent to which:
  - (A) the calculation of the Intermittent Market Reference Price in accordance with Condition 20 (*Intermittent Market Reference Price*) (including the components of the formula in Condition 20.2) is compliant with the IMRP Principles and, if the calculation of the Intermittent Market Reference Price in accordance with Condition 20 (*Intermittent Market Reference Price*) is not compliant with the IMRP Principles, the changes to Condition 20 (*Intermittent Market Reference Price*) which the CfD Counterparty considers to be necessary to ensure compliance with all of the IMRP Principles; and



- (B) any of the following would ensure compliance with all of the IMRP Principles:
- (i) an amendment or supplement to, or replacement or removal of, the Intermittent Price Sources;
  - (ii) the application of any weighting (whether by volume or number of trades) with respect to any price sources used in the calculation of the Intermittent Market Reference Price; or
  - (iii) a change to the day-ahead methodology for calculating the Intermittent Market Reference Price,

including any consequential changes to Part 5B (*Payment calculations: Intermittent Technologies*) and Annex 5 (*IMRP*) which are necessary to give effect to any of the foregoing,

(each such change, or any combination of such changes, “**IMRP Mechanism Amendment**”).

- 1.7 If the CfD Counterparty considers that it is not possible to effect any IMRP Mechanism Amendment in a manner which will be compliant with all of the IMRP Principles, the CfD Counterparty shall assess which IMRP Mechanism Amendment should be effected in order to comply with the greatest number of IMRP Principles in accordance with the IMRP Principles Prioritisation.

#### ***Notification of IMRP Principles Review***

- 1.8 If the CfD Counterparty is required or elects to undertake an IMRP Principles Review pursuant to paragraph 1.1, the CfD Counterparty shall give a notice to the Generator (an “**IMRP Principles Review Notice**”). An IMRP Principles Review Notice shall:

- (A) be substantially in the form set out in Part LLL of Annex 9 (*Pro forma notices*);
- (B) specify the IMRP Principles Review Trigger which has occurred; and
- (C) specify a deadline by which the Generator must provide an IMRP Principles Review Response Notice, such deadline to be no less than ten (10) Business Days after the date on which the IMRP Principles Review Notice is received (or deemed to have been received) by the Generator (the “**IMRP Principles Review Response Deadline**”).

- 1.9 The Generator shall, as soon as reasonably practicable and not later than the IMRP Principles Review Response Deadline, give a notice to the CfD Counterparty (the “**IMRP Principles Review Response Notice**”). An IMRP Principles Review Response Notice:

- (A) shall:
  - (i) be substantially in the form set out in Part MMM of Annex 9 (*Pro forma notices*); and

- (ii) include all of the Supporting Information which the Generator wishes the CfD Counterparty to take account of in undertaking the IMRP Principles Review; and
  - (B) may include proposals from the Generator with respect to the manner in which the IMRP Principles Review Trigger should be addressed (including any proposals regarding IMRP Mechanism Amendments which the Generator considers should be effected).
- 1.10 The CfD Counterparty may disregard any IMRP Principles Review Response Notice received (or deemed to have been received) by the CfD Counterparty after the IMRP Principles Review Response Deadline.

***Intermittent Price Sources during IMRP Principles Review***

- 1.11 From the date on which the IMRP Principles Review Notice is given or deemed to have been given, the Intermittent Price Sources prior to the commencement of the relevant IMRP Principles Review shall remain unamended pending the outcome of an IMRP Principles Review.

***Notification of outcome of IMRP Principles Review***

- 1.12 The CfD Counterparty shall give a notice to the Generator of the outcome of an IMRP Principles Review (an “**IMRP Principles Review Outcome Notice**”) as soon as reasonably practicable following the conclusion of an IMRP Principles Review. An IMRP Principles Review Outcome Notice shall:
- (A) be substantially in the form set out in Part NNN of Annex 9 (*Pro forma notices*);
  - (B) set out the outcome of the IMRP Principles Review (including the details of any IMRP Mechanism Amendments which the CfD Counterparty proposes to effect) (the “**IMRP Principles Review Proposals**”) and, if paragraph 1.7 applies:
    - (i) a summary of the reasons for the CfD Counterparty having determined that it is not possible to effect any IMRP Mechanism Amendment in a manner which complies with all of the IMRP Principles; and
    - (ii) the IMRP Principles which the CfD Counterparty considers will be complied with by virtue of the IMRP Mechanism Amendments being effected; and
  - (C) specify the date from which any IMRP Mechanism Amendments are to take effect, such date being:
    - (i) no earlier than three (3) months after the date on which the IMRP Principles Review Outcome Notice is given or deemed to have been given (or such other earlier date as may be agreed by the Parties); and

- (ii) in the case of IMRP Mechanism Amendments relating to a IMRP Principles Review Trigger pursuant to paragraph 1.1(A)(ii), not before such splitting of the GB electricity market occurs,

and where the CfD Counterparty considers it appropriate to do so, to coincide with the start of a Season (the “**IMRP Principles Review Implementation Date**”).

### ***IMRP Principles Review: Disputes***

- 1.13 Paragraph 2 (*IMRP Reviews: Dispute Process*) shall apply to any Dispute relating to this paragraph 1 (*IMRP Principles Reviews*).
- 1.14 Subject to paragraphs 2.8 and 2.9, the IMRP Mechanism Amendments set out in the IMRP Principles Review Outcome Notice shall take effect on the IMRP Principles Review Implementation Date.

## **2. IMRP REVIEWS: DISPUTE PROCESS**

### ***Procedure for raising a Dispute***

- 2.1 The Generator may, within twenty (20) Business Days after receipt of an IMRP Principles Review Outcome Notice, give a notice to the CfD Counterparty that it wishes to raise a Dispute in relation to the outcome of such IMRP Principles Review (being an “**IMRP Dispute Notice**” and any such Generator, an “**IMRP Dispute Generator**”). Each IMRP Dispute Notice shall:
  - (A) be substantially in the form set out in Part OOO of Annex 9 (*Pro forma notices*); and
  - (B) comply with the requirements of a Dispute Notice as specified in Condition 55.3(B) to 55.3(G) (inclusive).

### ***Validity of IMRP Dispute Notices***

- 2.2 The Generator acknowledges and agrees that all IMRP Dispute Notices shall be invalid and of no effect if the IMRP Dispute Threshold Criterion in respect of the relevant BMRP Dispute is not met.
- 2.3 The CfD Counterparty shall notify the Generator within ten (10) Business Days of the IMRP Dispute Threshold Criterion having been met (irrespective of whether or not the Generator is an IMRP Dispute Generator) (an “**IMRP Dispute Validity Notice**”). An IMRP Dispute Validity Notice shall:
  - (A) be substantially in the form set out in Part PPP of Annex 9 (*Pro forma notices*);
  - (B) include a proposal as to the identity, and terms of reference of an Expert to determine the IMRP Dispute (the “**Proposed IMRP Expert**”) and details of the relevant expertise that the CfD Counterparty considers qualifies him to determine such IMRP Dispute (being a person fulfilling the requirements of

Condition 57.2 and having no conflict of interest which prevents him from determining the IMRP Dispute);

- (C) comply with the requirements of an Expert Determination Notice as specified in Condition 57.1; and
- (D) comply with the requirements of a Consolidation Notice as specified in Condition 59.2.

***Permitted bases of Dispute: IMRP Principles Review***

2.4 For the purposes of paragraph 2.1, the Generator acknowledges and agrees that it may only raise a Dispute with respect to the outcome of any IMRP Principles Review if:

- (A) the CfD Counterparty has acted unreasonably in failing to pay due regard to the Supporting Information which the Generator requested the CfD Counterparty to take account of in undertaking the IMRP Principles Review (as set out in its IMRP Principles Review Response Notice);
- (B) the CfD Counterparty has proposed to effect an IMRP Mechanism Amendment which was stated in the IMRP Principles Review Outcome Notice to be compliant with all of the IMRP Principles and the Generator considers that such IMRP Mechanism Amendment contravenes one (1) or more of the IMRP Principles; or
- (C) the CfD Counterparty has proposed to effect an IMRP Mechanism Amendment on the basis contemplated by paragraph 1.7 and the Generator considers that either:
  - (i) one (1) or more of the proposed IMRP Mechanism Amendments contravenes one (1) of the IMRP Principles which the CfD Counterparty considers would be complied with by virtue of such IMRP Mechanism Amendment being effected; or
  - (ii) an alternative IMRP Mechanism Amendment complies with a greater number of IMRP Principles (in accordance with the IMRP Principles Prioritisation) than the IMRP Mechanism Amendments contained within the IMRP Principles Review Proposals,

and any IMRP Dispute Notice which is based upon grounds other than those specified in this paragraph 2.4 shall be invalid and of no effect.

***Resolution of valid IMRP Disputes***

2.5 If:

- (A) the IMRP Dispute Threshold Criterion is met in respect of any IMRP Dispute; and
- (B) the relevant IMRP Dispute complies with paragraph 2.4,

then such IMRP Dispute shall be finally resolved in accordance with paragraph 2.6.

2.6 If paragraph 2.5 applies to any IMRP Dispute:

- (A) Condition 56 (*Resolution by Senior Representatives*) shall not apply to such IMRP Dispute;
- (B) no agreement between the Generator and the CfD Counterparty to resolve the relevant IMRP Dispute shall be valid and binding unless such resolution is agreed with all Intermittent Generators;
- (C) the Arbitration Procedure shall not apply to such IMRP Dispute;
- (D) the Generator agrees not to raise any objection to the consolidation of such IMRP Dispute in accordance with Condition 59 (*Consolidation of Connected Disputes*);
- (E) the Expert Determination Procedure shall apply to such IMRP Dispute on the basis that:
  - (i) (if the IMRP Expert Appointment Threshold is met) the CfD Counterparty shall be deemed to have satisfied the requirements of, and have given an Expert Determination Notice pursuant to, Condition 57.1 and the Parties will be deemed to have agreed to both the identity and the terms of reference of the Proposed IMRP Expert;
  - (ii) (if the IMRP Expert Appointment Threshold is not met):
    - (a) the CfD Counterparty may within ten (10) Business Days, either
      - (1) make an alternative proposal as to the identity of an Expert to determine the IMRP Dispute, in which case paragraphs 2.3(B) and 2.6(E)(i), and this paragraph 2.6(E)(ii)(a)(1), shall apply to such proposed Expert as if he were a Proposed IMRP Expert; or
      - (2) request the LCIA to nominate an Expert for the purposes of determining the IMRP Dispute in accordance with Condition 57.4; and
    - (b) the terms of reference of the Proposed IMRP Expert (or any Expert nominated by the LCIA pursuant to paragraph 2.6(E)(ii)(a)(2) shall be determined by the CfD Counterparty in its sole and absolute discretion (having regard to any submissions made to it by any Intermittent Generator), and shall be binding on the Parties, provided that such terms of reference are sufficiently broad to enable the Expert to determine the IMRP Dispute,

- (iii) if the CfD Counterparty and the Intermittent Generators fail to agree on the terms of appointment of the Expert within ten (10) Business Days of the identity of the Expert having been agreed (or deemed to have been agreed) pursuant to paragraph 2.6(E)(i) or having been nominated by the LCIA pursuant to paragraph 2.6(E)(ii)(a)(2), such terms shall be determined by the CfD Counterparty in its sole and absolute discretion (having regard to any submissions made to it by any Intermittent Generator), and shall be on the parties, provided that the terms of appointment comply with the requirements of paragraph 2.6(E)(iv) and Conditions 57.5(B) and 57.5(C);
  - (iv) Condition 57.5 shall be deemed to have been modified such that the Parties shall use reasonable endeavours to procure that the terms of appointment of the Expert prohibit the Expert from disclosing any Supporting Information disclosed or delivered by:
    - (a) the Generator to the Expert in consequence of, or in respect of, his appointment as the Expert to any other Intermittent Generator or the CfD Counterparty; or
    - (b) the CfD Counterparty in consequence of, or in respect of, his appointment as the Expert to any Intermittent Generator (including the Generator);
  - (v) the Expert will be instructed, in establishing or modifying the procedure for the determination of the IMRP Dispute, to afford the Generator an opportunity to make submissions in respect of the IMRP Dispute irrespective of whether or not the Generator is an IMRP Dispute Generator;
  - (vi) if the circumstances described in Condition 57.8 arise, paragraphs 2.3(B), 2.6(E)(i) and 2.6(E)(ii) shall apply, *mutatis mutandis*, to the appointment of a replacement Expert;
  - (vii) for the purposes of Condition 57.11, the Expert shall be: (i) required to include in his determination provision for the allocation of his fees and the costs and expenses of the CfD Counterparty amongst each of the IMRP Dispute Generators in such manner as he, in his absolute discretion, determines is fair and equitable if he makes a determination against the IMRP Dispute Generators; and (ii) permitted to allocate his fees and the costs and expenses of the CfD Counterparty in such manner as he determines is fair and equitable if he makes a determination in favour of the IMRP Dispute Generators; and
  - (viii) the Expert shall, notwithstanding any other provision of the Expert Determination Procedure, be instructed to reach a determination which is to be applied to all Intermittent CfDs.
- (F) the Generator acknowledges and agrees that the determination of the Expert in any IMRP Dispute shall be applied to all Intermittent CfDs, irrespective of

whether the Generator was a party to the IMRP Dispute giving rise to that determination.

- (G) If the IMRP Dispute falls within paragraph 2.4(A), 2.4(B) or 2.4(C)(i), the Expert shall be instructed to determine whether the IMRP Mechanism Amendments contravene the IMRP Principles (or such of the IMRP Principles as were specified by the CfD Counterparty as being complied with by virtue of the proposed implementation of the IMRP Mechanism Amendments) and, if the Expert finds in favour of the Generator, to include within his determination: (i) an IMRP Mechanism Amendment which will comply with all of the IMRP Principles; or (ii) (if the Expert considers that it is not possible to effect any IMRP Mechanism Amendment in a manner which will be compliant with all of the IMRP Principles) the IMRP Mechanism Amendment which will comply with the greatest number of IMRP Principles in accordance with the IMRP Principles Prioritisation.
- (H) If the IMRP Dispute falls within paragraph 2.4(C)(ii) the Expert shall be instructed to determine whether the IMRP Mechanism Amendments proposed by the Generator would result in compliance with a greater number of IMRP Principles (in accordance with the IMRP Principles Prioritisation) than the IMRP Mechanism Amendments contained within the IMRP Principles Review Proposals and, if the Expert finds in favour of the Generator, to stipulate the IMRP Mechanism Amendments which will comply with the greatest number of IMRP Principles in accordance with the IMRP Principles Prioritisation.
- (I) Notwithstanding paragraphs 2.6(G) and 2.6(H), the Expert shall not be permitted to include within his determination any alternative IMRP Mechanism Amendments to those contained within the IMRP Principles Review Proposals unless such proposals contravene one (1) or more principles and the Expert has determined that there is an IMRP Mechanism Amendment which will comply with a greater number of IMRP Principles (in accordance with the IMRP Principles Prioritisation) than the IMRP Principles Review Proposals and, as such, the Expert's role shall not extend to an assessment of whether the IMRP Principles Review Proposals represent an optimal solution in the context of the parameters contemplated by the IMRP Principles.

#### ***IMRP Expert Appointment Threshold***

- 2.7 For the purposes of paragraphs 2.6(E)(i) and 2.6(E)(ii), the “**IMRP Expert Appointment Threshold**” is that thirty per cent. (30%) or more of Intermittent Generators, by volume or number, have consented, or not objected in writing, to both the identity and terms of reference of the Proposed IMRP Expert. For the purposes of determining whether the IMRP Expert Appointment Threshold is met, the CfD Counterparty shall calculate:
- (A) the number of Intermittent Generators which have consented or have been deemed to have consented to the Proposed IMRP Expert as a percentage of the total number of Intermittent Generators; and
  - (B) the volume attributable to Intermittent CfDs to which Intermittent Generators which have consented or have been deemed to have consented to the

Proposed IMRP Expert as a percentage of the total volume attributable to Intermittent CfDs (and, for this purpose, “**volume**” shall be calculated by the CfD Counterparty using the Maximum Contract Capacity in each relevant Intermittent CfD).

***Provisions applying pending resolution of an IMRP Dispute***

- 2.8 If there is a valid IMRP Dispute requiring resolution in accordance with the provisions of paragraphs 2.5 and 2.6 then, pending resolution of such IMRP Dispute, paragraph 2.9 shall apply.
- 2.9 If there is a valid IMRP Dispute relating to an IMRP Principles Review:
- (A) the relevant IMRP Principles Review Outcome Notice shall be deemed to be valid and effective and the IMRP Principles Review Proposals shall apply with effect from the IMRP Principles Review Implementation Date; and
  - (B) if the Expert finds in favour of the Generator, the IMRP Mechanism Amendments provided for in the determination of such Expert shall be implemented on a date falling no earlier than three (3) months after the date on which the Expert has made his determination and, where the Expert considers it appropriate to do so, shall coincide with the start of a Season.

***IMRP Dispute Threshold Criterion***

- 2.10 For the purposes of this paragraph 2 (*IMRP Reviews: Dispute Process*), the “**IMRP Dispute Threshold Criterion**” is that thirty per cent. (30%) or more of Intermittent Generators, by volume or number, have given the CfD Counterparty an IMRP Dispute Notice in respect of any given IMRP Dispute prior to the date specified in paragraph 2.1. For the purposes of determining whether the IMRP Dispute Threshold Criterion is met the CfD Counterparty shall calculate:
- (A) the number of Intermittent Generators which have given an IMRP Dispute Notice as a percentage of the total number of Intermittent Generators; and
  - (B) the volume attributable to Intermittent CfDs to which Intermittent Generators which have given an IMRP Dispute Notice are party as a percentage of the total volume attributable to Intermittent CfDs (and, for this purpose, “**volume**” shall be calculated by the CfD Counterparty using the Maximum Contract Capacity in each relevant Intermittent CfD).



**Part B**  
**IMRP Principles**

**1. IMRP PRINCIPLES**

The following are the “**IMRP Principles**” for the purposes of the Investment Contract:

- (A) Save in respect of an IMRP Principles Review Trigger pursuant to paragraph 1.1(A)(ii) of Part A, the calculation of the Intermittent Market Reference Price shall be the same for all Intermittent CfDs.
- (B) The calculation of the Intermittent Market Reference Price shall reflect the market price for the sale of electricity within Great Britain or, in the event of an IMRP Principles Review Trigger pursuant to paragraph 1.1(A)(ii) of Part A, the relevant part of Great Britain.
- (C) The Intermittent Market Reference Price shall be calculated using prices in respect of contracts quoted as far in advance of the delivery of energy pursuant to such contracts as possible, provided that, for this purpose, the Intermittent Market Reference Price calculation shall not include prices that are quoted further in advance than Intermittent Day Ahead Contracts.
- (D) The Intermittent Market Reference Price shall be calculated so as to reflect a reasonable volume of trades from a reasonable number and diverse range of market participants.
- (E) The Intermittent Market Reference Price shall be calculated so as not to unduly dampen, dilute, disrupt or otherwise distort components of the energy market in Great Britain that would, absent the existence of FiT Contracts for Difference, contribute to the operational behaviour of the energy market in Great Britain and the pricing thereof.
- (F) The Intermittent Market Reference Price shall be calculated using price sources which are available to the CfD Counterparty on commercially reasonable terms.
- (G) The Intermittent Market Reference Price calculation is to utilise price sources which satisfy the IMRP Quality Criteria.
- (H) If an IMRP Principles Review Trigger falling within paragraph 1.1(A)(ii) of Part A occurs or has occurred, the Intermittent Market Reference Price calculation shall pay regard to the physical location of the Facility and the extent to which such physical location and constraints on the delivery of energy into the market thereby imposed may have on the price for the sale of its electricity delivered within Great Britain or the relevant part of Great Britain.

**2. PRIORITISATION OF IMRP PRINCIPLES**

If:

- (A) the application of any combination of the IMRP Principles gives rise to a conflict;  
or
- (B) it is not possible for a methodology for calculating the Intermittent Market Reference Price to satisfy all of the IMRP Principles,

the IMRP Principle first appearing in the list in paragraph 1 (*IMRP Principles*) shall be afforded priority.

**Annex 6**  
**CHPQM Calculation Methodology**

**1. APPLICATION**

This Annex 6 (*CHPQM Calculation Methodology*) shall apply to the Investment Contract only if the CHP Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement.

**2. CHP QUALIFYING MULTIPLIER**

- 2.1 The “**CHP Qualifying Multiplier**” means, in respect of any Settlement Unit: (i) the decimal fraction identified as such multiplier in a valid CHPQA Guidance Note 44 Certificate or (ii) if the Facility does not have a valid CHPQA Guidance Note 44 Certificate, zero (0).
- 2.2 If a revised, updated, amended or new CHPQA Guidance Note 44 Certificate is issued in relation to the Facility, the Generator shall supply a copy of such CHPQA Guidance Note 44 Certificate to the CfD Counterparty as soon as reasonably practicable and in any event, within ten (10) Business Days of such issuance.

## Annex 7

### FMS arrangements and RQM Calculation Methodology

#### 1. APPLICATION

This Annex 7 (*FMS arrangements and RQM Calculation Methodology*) shall apply to the Investment Contract only if the Renewable Qualifying Multiplier is expressed to apply to the Investment Contract in the IC Agreement.

#### 2. DEFINITIONS: ANNEX 7

In this Annex 7 (*FMS arrangements and RQM Calculation Methodology*):

**“Ancillary Reporting Obligations”** has the meaning given to that term in paragraph 2.5 of Part A;

**“Applicable FMS Procedures”** means whichever of: (i) the Full FMS Procedures; or (ii) the FMS Exempted Procedures are determined to be applicable to the Generator (and the Facility) from time to time in accordance with Part A;

**“Energy Content”** means, in relation to any substance, the energy contained within that substance (whether measured by a calorimeter or determined in some other way), expressed in terms of the substance’s “gross calorific value” within the meaning of British Standard BS 7420:1991 (as such standard may be amended, supplemented, restated or replaced from time to time);

**“FMS Audit Notice”** has the meaning given to that term in paragraph 3.2 of Part A;

**“FMS Audit Right”** has the meaning given to that term in paragraph 3.1 of Part A;

**“FMS Data”** means all Supporting Information delivered and required to be delivered to the CfD Counterparty pursuant to the FMS Procedures to enable and assist the CfD Counterparty:

- (A) to calculate the Renewable Qualifying Multiplier in accordance with:
  - (i) Condition 11 (*Renewable Qualifying Multiplier*); and
  - (ii) Part B;
- (B) where the Facility is a Dual Scheme Facility, to recalculate the Imported Electricity Allowance in accordance with Condition 13.5;
- (C) to assess compliance or non-compliance:
  - (i) by the Generator and the Facility with the FMS Exemption Criteria (where relevant);

- (ii) of the Facility with the Fuelling Criteria; and
- (iii) by the Generator with Part A (including with respect to the FMS Procedures);

**“FMS Exempted Generator”** means the Generator at any time when it and the Facility are deemed pursuant to the operation of Part A to meet the FMS Exemption Criteria;

**“FMS Exempted Procedures”** means such of the FMS Procedures as are expressed to apply to the Generator and the Facility if and for so long as the Generator is an FMS Exempted Generator, being FMS Procedures which shall be limited to those necessary to verify whether the Generator and the Facility are complying with the FMS Exemption Criteria;

**“FMS Exemption Criteria”** means:

- (A) the Facility either: (i) does not use any Fuel with Variable Renewable Content for the generation of electricity; or (ii) uses only Qualifying Waste for the generation of electricity; and
- (B) no Fossil Fuel is used at the Facility to generate electricity (whether for Permitted Ancillary Activities or otherwise);

**“FMS Exemption Non-Compliance Notice”** has the meaning given to that term in paragraph 4.3 of Part A;

**“FMS Procedures”** means the fuel measurement and sampling procedures to be documented and agreed between the CfD Counterparty and the Generator pursuant to paragraph 1 (*Agreement of FMS Procedures*) of Part A, for the purposes of, amongst other things, fulfilling the FMS Purposes, as such procedures and tests may be varied from time to time by agreement between the Generator and the CfD Counterparty;

**“FMS Proposals Notice”** has the meaning given to that term in paragraph 1.1 of Part A;

**“FMS Proposals Response Notice”** has the meaning given to that term in paragraph 1.4 of Part A;

**“FMS Proposals Supporting Information”** has the meaning given to that term in paragraph 1.4(B)(iii) of Part A;

**“FMS Purposes”** means enabling and assisting the CfD Counterparty (including by way of audit, check, examination, inspection or stocktake):

- (A) to calculate the Renewable Qualifying Multiplier in accordance with:
  - (i) Condition 11 (*Renewable Qualifying Multiplier*); and
  - (ii) Part B;

- (B) where the Facility is a Dual Scheme Facility, to recalculate the Imported Electricity Allowance in accordance with Condition 13.5;
- (C) to verify that all FMS Reports (including all of the FMS Data) used for the purposes of calculating the Renewable Qualifying Multiplier are accurate, complete and not misleading; and
- (D) to assess compliance or non-compliance:
  - (i) by the Generator and the Facility with the FMS Exemption Criteria;
  - (ii) of the Facility with the Fuelling Criteria; and
  - (iii) by the Generator with Part A (including with respect to the FMS Procedures);

**“FMS Report”** means the report to be supplied to the CfD Counterparty on a monthly basis pursuant to and in accordance with the Applicable FMS Procedures, and including all the FMS Data;

**“Fossil Fuel”** has the meaning given to that term in the IC Agreement;

**“Fuel with Variable Renewable Content”** means fuel composed wholly or partially of renewable material whose Energy Content can vary over time;

**“Fuelling Criteria”** means the fuel criteria applicable to the Facility, as set out in the IC Agreement;

**“Full FMS Procedures”** means all FMS Procedures except the FMS Exempted Procedures;

**“Full FMS Procedures Effective Date”** has the meaning given to that term in paragraph 4.4 of Part A;

**“Generator FMS Proposals”** has the meaning given to that term in paragraph 1.3(B) of Part A;

**“Permitted Ancillary Activities”** means the cleansing of other fuels from the Facility’s combustion system prior to using Fossil Fuel or Waste to heat the combustion system to its normal temperature, the heating of the Facility’s combustion system to its normal operating temperature or the maintenance of that temperature, the ignition of fuels of low or variable calorific value, emission control, standby generation or the testing of standby generation capacity, corrosion control or fouling reduction;

**“Qualifying Waste”** means unprocessed, municipal Waste which meets the Waste Qualification Criteria;

**“Relevant Waste Proportion”** or **“RWP”** means: (i) any amount (expressed as a decimal as may be agreed from time to time between the Parties to be the Relevant Waste Proportion; (ii) (if paragraph (i) does not apply) such other amount (expressed as

a decimal) as is determined to be the Relevant Waste Proportion in accordance with Part B; and (iii) (if neither paragraph (i) nor paragraph (ii) applies) 0.5;

**“Renewable Qualifying Multiplier Formula”** means the following formula:

$$\text{Renewable Qualifying Multiplier} = \frac{A}{B}$$

where:

*A* is the Energy Content of all of the Fuels with Variable Renewable Content used in generating that Facility’s gross output during the relevant RQM Calculation Month, less the Energy Content of any Fossil Fuel from which those Fuels with Variable Renewable Content are in part composed; and

*B* is the Energy Content of all of the fuels used in generating that Facility’s gross output during that RQM Calculation Month;

**“RQM Calculation Month”** means each calendar month during the Term for which the Renewable Qualifying Multiplier is required to be calculated, provided that: (i) if the Start Date occurs other than on the first (1<sup>st</sup>) day of a calendar month, the first (1<sup>st</sup>) RQM Calculation Month shall be deemed to mean the period from and including the Start Date to and including the last day of the calendar month in which the Start Date occurs; and (ii) if the Specified Expiry Date (or the Termination Date) occurs other than on the last day of a calendar month, the last RQM Calculation Month shall be deemed to mean the period from and including the first (1<sup>st</sup>) day of the calendar month in which the Specified Expiry Date (or Termination Date) occurs to and including the Specified Expiry Date (or Termination Date);

**“RQM Submission Deadline”** means, in relation to each RQM Calculation Month, the final Business Day of the second (2<sup>nd</sup>) calendar month falling immediately after such RQM Calculation Month;

**“RWP Variation Effective Date”** has the meaning given to that term in paragraph 4.3(C) of Part B;

**“RWP Variation Notice”** has the meaning given to that term in paragraph 4.3 of Part B;

**“Third Party FMS Contractor”** means any third party engaged in respect of or otherwise involved with the carrying out or implementation of the FMS Procedures, including the operator or owner of any laboratory or provider of any testing equipment;

**“Waste”** has the meaning given to that term in the IC Agreement; and

**“Waste Qualification Criteria”** shall be deemed to have been met in respect of Waste used at the Facility in any RQM Calculation Month if the CfD Counterparty (in its sole discretion) determines that the proportion of that Waste which during that RQM Calculation Month is (or is derived from) Fossil Fuels does not exceed the Relevant Waste Proportion.

**Part A**  
**FMS arrangements**

**1. AGREEMENT OF FMS PROCEDURES**

***FMS Proposals Notice***

1.1 As soon as reasonably practicable following the Agreement Date, the Generator shall give a notice to the CfD Counterparty (an “**FMS Proposals Notice**”) outlining the FMS Procedures which it proposes be adopted for the purposes of the Investment Contract.

1.2 The Generator may, if:

- (A) the Facility is not a Dual Scheme Facility; and
- (B) it considers that it (and the Facility) will or is reasonably likely to comply with the FMS Exemption Criteria (either with effect from the Start Date or otherwise during the Term),

include FMS Exempted Procedures within the proposed FMS Procedures.

1.3 The FMS Proposals Notice shall:

- (A) be substantially in the form set out in Part QQQ of Annex 9 (*Pro forma notices*); and
- (B) include a proposal for the FMS Procedures (which, if paragraph 1.2 applies, shall include a proposal in respect of FMS Exempted Procedures in addition to the Generator’s proposals for the Full FMS Procedures) (the “**Generator FMS Proposals**”).

***FMS Proposals Response Notice***

1.4 The CfD Counterparty shall, within twenty (20) Business Days of receipt of the FMS Proposals Notice, give a notice to the Generator (an “**FMS Proposals Response Notice**”). An FMS Proposals Response Notice shall:

- (A) be substantially in the form set out in Part RRR of Annex 9 (*Pro forma notices*); and
- (B) specify whether the CfD Counterparty:
  - (i) consents to the Generator FMS Proposals;
  - (ii) does not consent to the Generator FMS Proposals, in which case the CfD Counterparty shall summarise its reasons for not consenting to the Generator FMS Proposals; or



- (iii) considers that it has not been provided with sufficient Supporting Information to determine whether to consent to the Generator FMS Proposals (and, in such circumstances, the CfD Counterparty may request further Supporting Information from the Generator in connection with: (a) the Generator, the Facility and the Generator FMS Proposals; and (b) any potential amendments, modifications, supplements or replacements the CfD Counterparty may require to be made to the FMS Procedures contained within the Generator FMS Proposals) (the “**FMS Proposals Supporting Information**”).

***Agreement between the Parties in respect of Generator FMS Proposals***

- 1.5 If the CfD Counterparty states in the FMS Proposals Response Notice that it consents to the Generator FMS Proposals:

- (A) such proposals shall be adopted for the purposes of the Investment Contract, as the FMS Procedures; and
- (B) the Further Condition Precedent set out in paragraph 2.3 of Part B of Schedule 1 (*Conditions Precedent*) shall be deemed to have been fulfilled (and, as such, Conditions 3.12 to 3.17 shall not apply in respect thereto).

- 1.6 If the CfD Counterparty states in the FMS Proposals Response Notice that: (i) it does not consent to the Generator FMS Proposals; or (ii) it requires the Generator to provide FMS Proposals Supporting Information to enable it to assess whether to consent to the Generator FMS Proposals, the Parties shall, as soon as reasonably practicable, and in any event within fifteen (15) Business Days of:

- (A) the CfD Counterparty giving an FMS Proposals Response Notice to the Generator; or
- (B) (if the CfD Counterparty has requested the Generator to provide FMS Proposals Supporting Information to the CfD Counterparty in its FMS Proposals Response Notice) the Generator having provided such FMS Proposals Supporting Information to the CfD Counterparty,

meet and, in good faith, seek to agree upon the FMS Procedures which the CfD Counterparty is willing to consent to and to be adopted for the purposes of the Investment Contract as the FMS Procedures

- 1.7 Nothing in this paragraph 1 (*Agreement of FMS Procedures*) shall require the CfD Counterparty to consent to the adoption of any Generator FMS Proposals (or any amended, modified, supplement or replaced proposals) as the FMS Procedures for the purposes of the Investment Contract unless and until the CfD Counterparty determines that any such proposals are appropriate to enable and assist the CfD Counterparty:

- (A) to calculate the Renewable Qualifying Multiplier in accordance with:
  - (i) Condition 11 (*Renewable Qualifying Multiplier*); and

- (ii) Part B;
- (B) where the Facility is a Dual Scheme Facility, to reconcile the Imported Electricity Allowance in accordance with Condition 13.5; and
- (C) to assess compliance or non-compliance:
  - (i) by the Generator and the Facility with the FMS Exemption Criteria (where relevant);
  - (ii) of the Facility with the Fuelling Criteria; and
  - (iii) by the Generator with this Part A (including with respect to the FMS Procedures).

## **2. GENERATOR'S FMS OBLIGATIONS**

### ***Conduct of FMS Procedures***

- 2.1 The Generator shall, with effect on and from the Start Date, carry out and implement the Applicable FMS Procedures (or, subject to paragraph 2.3, procure the carrying out and implementation of the Applicable FMS Procedures).
- 2.2 If, at any time, the Generator fails to carry out or implement the Applicable FMS Procedures in full, it shall remedy such non-compliance (or, subject to paragraph 2.3, procure the remedy of such non-compliance) as soon as reasonably practicable.
- 2.3 Without prejudice to the generality of Condition 77 (*Transfers*), the Generator may not sub-contract or delegate any of its obligations to carry out and implement the Applicable FMS Procedures without the prior consent of the CfD Counterparty and, if the Generator effects such a Transfer, it shall ensure that the terms upon which the Third Party FMS Contractor is engaged require it to deliver copies of all FMS Data (including each FMS Report) directly to the Generator and the CfD Counterparty.

### ***Provision of FMS Report***

- 2.4 The Generator shall, with effect from the Start Date, submit an FMS Report (or procure that an FMS Report is submitted) to the CfD Counterparty in respect of each RQM Calculation Month, no later than the relevant RQM Submission Deadline.

### ***Ancillary Reporting Obligations***

- 2.5 The Generator shall, with effect on and from the Start Date:
  - (A) provide the CfD Counterparty with all Information requested by the CfD Counterparty for the FMS Purposes, such Information to be provided promptly, and no later than ten (10) Business Days, or such longer period as is specified by the CfD Counterparty, after the Information is requested; and

- (B) inform the CfD Counterparty as soon as reasonably practicable if it becomes aware that it (or any Third Party FMS Contractor) has failed to comply with any of the FMS Procedures and provide details of the nature of such non-compliance and any remedial action that the Generator is taking or proposes to take,

(together, the “**Ancillary Reporting Obligations**”).

2.6 Subject to paragraph 2.7 the Generator shall ensure that all Information provided to the CfD Counterparty pursuant to paragraph 2.5, including each FMS Report and all FMS Data submitted by it or any Third Party FMS Contractor to the CfD Counterparty, is true, complete and accurate in all material respects and is not misleading.

2.7 Without prejudice to paragraph 2.6, the Generator shall be entitled to include in the Information provided to the CfD Counterparty pursuant to paragraph 2.5 the Generator's good faith estimate of such Information, provided that it has obtained the prior written consent of the CfD Counterparty to:

- (A) such estimates being provided; and
- (B) the way in which such estimates are to be calculated or produced.

### **3. ACCESS RIGHTS**

#### ***Scope of FMS Audit Right***

3.1 The Generator shall grant the CfD Counterparty and any suitably-qualified persons nominated by the CfD Counterparty access to:

- (A) (i) the Facility; (ii) where the Facility is a Dual Scheme Facility, the Generating Station; (iii) any plant, machinery, processing or storage facility associated with the Facility or, where the Facility is a Dual Scheme Facility, the Generating Station; and (iv) any location at which fuel used or to be used at the Facility or, where the Facility is a Dual Scheme Facility, the Generating Station is located, in each case owned, occupied or controlled by the Generator and to which the Generator can lawfully grant access;
- (B) the books and records of the Generator, insofar as they relate to matters pertinent to the FMS Purposes; and
- (C) the directors, officers and employees of the Generator (who will be instructed to give promptly all Supporting Information reasonably requested by the CfD Counterparty (and any suitably-qualified persons nominated by it)),

in each case as the CfD Counterparty considers to be reasonably necessary for the CfD Counterparty to fulfil the FMS Purposes (the “**FMS Audit Right**”).

- 3.2 If the CfD Counterparty intends to exercise the FMS Audit Right it shall give a notice to the Generator (an “**FMS Audit Notice**”). An FMS Audit Notice shall:
- (A) be substantially in the form set out in Part SSS of Annex 9 (*Pro forma notices*);
  - (B) specify that the CfD Counterparty (or suitably-qualified persons nominated by it) intends to exercise the FMS Audit Right; and
  - (C) specify the date by which the Generator must, in accordance with paragraph 3.3, permit the exercise of the FMS Audit Right.
- 3.3 On receipt of an FMS Audit Notice the Generator shall permit the CfD Counterparty to exercise the FMS Audit Right at such time as the CfD Counterparty may nominate, provided that it is no earlier than one (1) Business Day after receipt of the FMS Audit Notice.

***Failure to comply with FMS Audit Right***

- 3.4 If the Generator fails to comply with its obligation to permit the CfD Counterparty to exercise the FMS Audit Right, the CfD Counterparty may elect to suspend payment of any Net Payable Amounts which would otherwise be payable by the CfD Counterparty to the Generator in any period during which the Generator is in non-compliance with such obligation, provided that, prior to effecting any such suspension, the CfD Counterparty shall notify the Generator of: (i) its intention to suspend payment of any Net Payable Amounts; and (ii) the date from which it proposes to effect such suspension.
- 3.5 If the Generator subsequently complies with its obligation to permit the CfD Counterparty to exercise the FMS Audit Right, then the CfD Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of paragraph 3.4. No Compensatory Interest or Default Interest shall be payable in respect of any amount payable pursuant to this paragraph 3.5.

**4. FULFILMENT OF FMS EXEMPTION CRITERIA**

- 4.1 This paragraph 4 (*Fulfilment of FMS Exemption Criteria*) shall not apply if the Facility is a Dual Scheme Facility.
- 4.2 If the Generator or the Facility is not satisfying the FMS Exemption Criteria at any time during which the Generator is relying upon the satisfaction of the FMS Exemption Criteria to carry out and implement the FMS Exempted Procedures rather than the Full FMS Procedures, the Generator shall notify the CfD Counterparty immediately of the same.
- 4.3 If the CfD Counterparty determines that the Generator or the Facility (as relevant) is not satisfying the FMS Exemption Criteria at any time during which the Generator is relying upon the satisfaction of the FMS Exemption Criteria to carry out and implement the FMS Exempted Procedures rather than the Full FMS Procedures (irrespective of whether or not such determination is made as a result of a notification having been given by the Generator to the CfD Counterparty pursuant to paragraph 4.1), the CfD

Counterparty may give a notice to the Generator (an “**FMS Exemption Non-Compliance Notice**”). An FMS Exemption Non-Compliance Notice shall:

- (A) be substantially in the form set out in Part TTT of Annex 9 (*Pro forma notices*);
- (B) contain a statement that the Generator or the Facility (as relevant) is not complying with the FMS Exemption Criteria;
- (C) summarise the CfD Counterparty’s reasons for concluding that the Generator or the Facility (as relevant) is not complying with the FMS Exemption Criteria; and
- (D) specify the date from which the CfD Counterparty has determined that the Generator or the Facility (as relevant) has ceased to comply with the FMS Exemption Criteria.

4.4 The Generator may not dispute the validity of any FMS Exemption Non-Compliance Notice and shall, on receipt of an FMS Exemption Non-Compliance Notice, comply with the Full FMS Procedures with effect from the start of the first (1<sup>st</sup>) RQM Calculation Month after such FMS Exemption Non-Compliance Notice was received (or deemed to have been received) (the “**Full FMS Procedures Effective Date**”).

4.5 If the CfD Counterparty gives the Generator an FMS Exemption Non-Compliance Notice, the Generator may not subsequently revert to the carrying out and implementation of the FMS Exempted Procedures without the prior written consent of the CfD Counterparty.

**Part B**  
**RQM calculations**

**1. CALCULATION OF RENEWABLE QUALIFYING MULTIPLIER**

***Basis of calculation***

- 1.1 The “**Renewable Qualifying Multiplier**” for each RQM Calculation Month shall be the multiplier (expressed as a decimal) calculated in respect of that RQM Calculation Month in accordance with the methodology set out in this paragraph 1 (*Calculation of Renewable Qualifying Multiplier*).
- 1.2 The Renewable Qualifying Multiplier shall, except as expressly provided in this Part B, be the same for every Settlement Unit falling within an RQM Calculation Month.

***Calculation methodology***

- 1.3 Subject to paragraph 1.4, and paragraphs 5 (*Failure to comply with Fuelling Criteria*) and 6 (*Failure to comply with Generator’s FMS obligations*), the Renewable Qualifying Multiplier in each RQM Calculation Month shall be:
- (A) if paragraph 2 (*Deemed RQM: FMS Exempted Generator*) applies, the Renewable Qualifying Multiplier specified in that paragraph;
  - (B) if: (i) paragraph 2 (*Deemed RQM: FMS Exempted Generator*) does not apply; and (ii) paragraph 3 (*Deemed RQM: Strike Price below Market Reference Price*) applies, the Renewable Qualifying Multiplier specified in paragraph 3 (*Deemed RQM: Strike Price below Market Reference Price*);
  - (C) if: (i) neither paragraph 2 (*Deemed RQM: FMS Exempted Generator*) nor paragraph 3 (*Deemed RQM: Strike Price below Market Reference Price*) applies; and (ii) paragraph 4 (*Deemed RQM: Utilisation of Qualifying Waste*) applies, the Renewable Qualifying Multiplier calculated in accordance with the provisions of paragraph 4 (*Deemed RQM: Utilisation of Qualifying Waste*);
  - (D) if none of paragraphs 2 (*Deemed RQM: FMS Exempted Generator*), 3 (*Deemed RQM: Strike Price below Market Reference Price*) or 4 (*Deemed RQM: Utilisation of Qualifying Waste*) applies, and:
    - (i) the FMS Report relating to such RQM Calculation Month has been delivered to the CfD Counterparty, the Renewable Qualifying Multiplier as calculated by the application of the Renewable Qualifying Multiplier Formula to the FMS Data;
    - (ii) the FMS Report relating to such RQM Calculation Month has not been delivered to the CfD Counterparty, the Renewable Qualifying Multiplier as calculated by the application of the Renewable Qualifying Multiplier

Formula to the FMS Data contained in the FMS Report most recently received by the CfD Counterparty; or

- (iii) the CfD Counterparty has not received any FMS Reports (or in any other circumstance agreed between the Parties), such other Renewable Qualifying Multiplier as may be agreed between the CfD Counterparty and the Generator from time to time or, in the absence of such agreement, the Assumed RQM.

### **Recalculations**

1.4 If, in respect of any RQM Calculation Month, the CfD Counterparty has calculated a Renewable Qualifying Multiplier in accordance with paragraph 1.3, the CfD Counterparty may or, where specified in this Part B, shall recalculate the Renewable Qualifying Multiplier in circumstances in which:

- (A) revised or updated FMS Data for that month is provided or becomes available to the CfD Counterparty including, in particular:
  - (i) where an FMS Report (including the FMS Data) is provided to the CfD Counterparty for an RQM Calculation Month (either before or after the RQM Submission Deadline), in which case the Renewable Qualifying Multiplier for that RQM Calculation Month shall be calculated in accordance with paragraph 1.3(D)(i) (in substitution for the calculation methodology provided for in paragraph 1.3(D)(ii) or 1.3(D)(iii)); or
  - (ii) as a result of the exercise by the CfD Counterparty of the FMS Audit Right;
- (B) paragraph 5 (*Failure to comply with Fuelling Criteria*) applies to the calculation of the Renewable Qualifying Multiplier in respect of that RQM Calculation Month;
- (C) paragraph 6 (*Failure to comply with Generator's FMS obligations*) applies to the calculation of the Renewable Qualifying Multiplier in respect of that RQM Calculation Month;
- (D) the Renewable Qualifying Multiplier has been calculated by the CfD Counterparty in accordance with either:
  - (i) paragraph 2 (*Deemed RQM: FMS Exempted Generator*); or
  - (ii) paragraph 4 (*Deemed RQM: Utilisation of Qualifying Waste*),

and: (a) the conditions to the application of the relevant paragraph are subsequently agreed or determined not to have been met; and (b) the CfD Counterparty receives FMS Data which enables it to calculate the Renewable Qualifying Multiplier without reliance upon the deemed Renewable Qualifying Multiplier value provided for in the relevant paragraph; or

- (E) the Renewable Qualifying Multiplier has been calculated by the CfD Counterparty in accordance with paragraph 3 (*Deemed RQM: Strike Price below Market Reference Price*) and the conditions to the application of the relevant paragraph are subsequently agreed or determined not to have been met.

- 1.5 If the Renewable Qualifying Multiplier for any RQM Calculation Month is recalculated in accordance with paragraph 1.4, Condition 11 (*Renewable Qualifying Multiplier*) shall be applied by the CfD Counterparty for the purposes of determining the appropriate RQM Adjustment Amount.

## **2. DEEMED RQM: FMS EXEMPTED GENERATOR**

- 2.1 Subject to paragraph 2.2, the Renewable Qualifying Multiplier shall, in relation to each RQM Calculation Month in respect of which the Generator has notified the CfD Counterparty that it wishes to be treated as, and the FMS Data evidences that the Generator is, an FMS Exempted Generator, be one (1), unless the provisions in paragraph 4 (*Deemed RQM: Utilisation of Qualifying Waste*) apply.
- 2.2 This paragraph 2 (*Deemed RQM: FMS Exempted Generator*) shall not apply if the Facility is a Dual Scheme Facility.

## **3. DEEMED RQM: STRIKE PRICE BELOW MARKET REFERENCE PRICE**

- 3.1 Subject to paragraph 3.2 if, in any RQM Calculation Month, the Strike Price is lower than the Market Reference Price in any one or more Settlement Units during that RQM Calculation Month:
  - (A) the CfD Counterparty may, at its election, deem the Renewable Qualifying Multiplier to be either one (1) or, alternatively, the Assumed RQM; and
  - (B) (if an election is made by the CfD Counterparty pursuant to paragraph (A)) the CfD Counterparty may, at its election, apply the deemed Renewable Qualifying Multiplier either to:
    - (i) each Settlement Unit in respect of which the Strike Price is lower than the Market Reference Price; or
    - (ii) all of the Settlement Units in such RQM Calculation Month.
- 3.2 The CfD Counterparty may only make an election to deem the Renewable Qualifying Multiplier as provided for in paragraph 3.1 if the Generator:
  - (A) does not comply with any of the Fuelling Criteria in the relevant RQM Calculation Month, unless the provisions in paragraph 5.2 apply;
  - (B) does not comply with any of the Applicable FMS Procedures in respect of the relevant RQM Calculation Month; or



- (C) fails to provide the FMS Report (including the FMS Data) in respect of the relevant RQM Calculation Month.

#### 4. DEEMED RQM: UTILISATION OF QUALIFYING WASTE

##### *Deemed Renewable Qualifying Multiplier value*

- 4.1 Subject to paragraph 4.2, if, in any RQM Calculation Month, the only fuel used for the generation of electricity at the Facility is Qualifying Waste, the Renewable Qualifying Multiplier shall be deemed to be the Relevant Waste Proportion.
- 4.2 This paragraph 4 (*Deemed RQM: Utilisation of Qualifying Waste*) shall not apply if the Facility is a Dual Scheme Facility.

##### *Variation of deemed Renewable Qualifying Multiplier value*

- 4.3 The CfD Counterparty may give notice to the Generator (a “**RWP Variation Notice**”) which shall:
  - (A) be substantially in the form set out in Part UUU of Annex 9 (*Pro forma notices*);
  - (B) specify a revised Relevant Waste Proportion; and
  - (C) specify the date, such date to be not less than thirty (30) Business Days following the receipt (or deemed receipt) of the RWP Variation Notice, from which the revised Relevant Waste Proportion shall be effective (the “**RWP Variation Effective Date**”).
- 4.4 On receipt of a RWP Variation Notice, the Generator shall notify the CfD Counterparty (no later than ten (10) Business Days after receipt of the RWP Variation Notice) that either:
  - (A) it consents to the revised Relevant Waste Proportion applying with effect from the RWP Variation Effective Date, in which case paragraph 4.1 shall, subject to the requirements of that paragraph, continue to apply for the purposes of calculating the Renewable Qualifying Multiplier; or
  - (B) it does not consent to the revised Relevant Waste Proportion applying with effect from the RWP Variation Effective Date, in which case paragraph 4.1 shall cease to apply for the purposes of calculating the Renewable Qualifying Multiplier.

If the Generator fails to notify the CfD Counterparty whether it consents to the revised Relevant Waste Proportion specified in the RWP Variation Notice within the period specified in this paragraph 4.4, it shall be deemed not to have consented to the revised Relevant Waste Proportion and paragraph 4.4(B) shall apply.

## 5. FAILURE TO COMPLY WITH FUELLING CRITERIA

5.1 Subject to paragraphs 3 (*Deemed RQM: Strike Price below Market Reference Price*) and 5.2, if the Generator fails to comply with any of the Fuelling Criteria in any RQM Calculation Month, then the CfD Counterparty may elect to calculate or recalculate the Renewable Qualifying Multiplier for that RQM Calculation Month on the following basis.

- (A) If the non-compliance is the only incidence of non-compliance with the Fuelling Criteria in any twelve (12) month period, the Renewable Qualifying Multiplier which would otherwise apply in the RQM Calculation Month in which such non-compliance occurred in accordance with paragraph 1 (*Calculation of Renewable Qualifying Multiplier*) may be multiplied by 0.9.
- (B) If the non-compliance is the second (2<sup>nd</sup>) incidence of non-compliance with the Fuelling Criteria in any twelve (12) month period, the Renewable Qualifying Multiplier which would otherwise apply in the RQM Calculation Month in which such second (2<sup>nd</sup>) non-compliance occurred in accordance with paragraph 1 (*Calculation of Renewable Qualifying Multiplier*) may be multiplied by 0.8.
- (C) If there have been more than two (2) incidences of non-compliance with the Fuelling Criteria in any twelve (12) month period, the Renewable Qualifying Multiplier which would otherwise apply in the RQM Calculation Month in which such third or subsequent non-compliance occurred in accordance with paragraph 1 (*Calculation of Renewable Qualifying Multiplier*) may be deemed to be zero (0).

5.2 The CfD Counterparty shall not make an election to deem the Renewable Qualifying Multiplier in accordance with paragraph 3 (*Deemed RQM: Strike Price below Market Reference Price*) or to calculate or recalculate the Renewable Qualifying Multiplier for any RQM Calculation Month in accordance with paragraph 5.1 if the Generator fails to comply with any of the Fuelling Criteria in a RQM Calculation Month solely by virtue of any action of the Generator which is required in order for it to comply with its Generation Licence and the Generator shall provide the CfD Counterparty with all information which the CfD Counterparty requires to evidence that such action is required to so comply.

## 6. FAILURE TO COMPLY WITH GENERATOR'S FMS OBLIGATIONS

### *Failure to comply with FMS Procedures*

6.1 Subject to paragraph 3 (*Deemed RQM: Strike Price below Market Reference Price*), if the Generator fails to carry out and implement the Applicable FMS Procedures (or, subject to paragraph 2.3 of Part A, procure the carrying out and implementation of the Applicable FMS Procedures) in respect of any RQM Calculation Month, then the CfD Counterparty shall have the right, but not the obligation, to elect to calculate or recalculate the Renewable Qualifying Multiplier for that RQM Calculation Month on the following basis.

- (A) If the non-compliance with the Applicable FMS Procedures is of a minor or inadvertent nature, and the CfD Counterparty otherwise determines that such

non-compliance did not have a material impact on the calculation of the Renewable Qualifying Multiplier, then:

- (i) if the non-compliance is the only incidence of non-compliance with the Applicable FMS Procedures in any twelve (12) month period, the Renewable Qualifying Multiplier which would otherwise apply in the RQM Calculation Month in which such non-compliance occurred in accordance with paragraph 1 (*Calculation of Renewable Qualifying Multiplier*) may be multiplied by 0.9;
  - (ii) if the non-compliance is the second (2<sup>nd</sup>) incidence of non-compliance with the Applicable FMS Procedures in any twelve (12) month period, the Renewable Qualifying Multiplier which would otherwise apply in the RQM Calculation Month in which such second (2<sup>nd</sup>) non-compliance occurred in accordance with paragraph 1 (*Calculation of Renewable Qualifying Multiplier*) may be multiplied by 0.8; or
  - (iii) if there have been more than two (2) incidences of non-compliance with the Applicable FMS Procedures in any twelve (12) month period, the Renewable Qualifying Multiplier which would otherwise apply in the RQM Calculation Month in which such third or subsequent non-compliance occurred in accordance with paragraph 1 (*Calculation of Renewable Qualifying Multiplier*) may be multiplied by 0.5.
- (B) If the non-compliance with the Applicable FMS Procedures does not fall within paragraph 6.1(A), then the Renewable Qualifying Multiplier may be deemed to be zero (0). Any failure by the Generator to carry out and implement the Full FMS Procedures (or, subject to paragraph 2.3 of Part A, procure the carrying out and implementation of the Full FMS Procedures) with effect from the Full FMS Procedures Effective Date shall, without limitation, be deemed to fall within this paragraph 6.1(B).

- 6.2 If, at any time, the Generator subsequently remedies any failure to comply with its obligations to carry out and implement the Applicable FMS Procedures (or, subject to paragraph 2.3 of Part A, procure the carrying out and implementation of the Applicable FMS Procedures) in respect of an RQM Calculation Month to which paragraph 6.1(A) applies, then the CfD Counterparty shall recalculate the Renewable Qualifying Multiplier in respect of such RQM Calculation Month. No Compensatory Interest or Default Interest shall be payable in respect of any resulting RQM Adjustment Amount.

***Failure to deliver FMS Report***

- 6.3 Subject to paragraph 3 (*Deemed RQM: Strike Price below Market Reference Price*), if the Generator fails to provide the CfD Counterparty with the FMS Report (including the FMS Data) in respect of any RQM Calculation Month on or prior to the corresponding RQM Submission Deadline, the CfD Counterparty may deem the Renewable Qualifying Multiplier to be zero (0).
- 6.4 If the Generator subsequently delivers the FMS Report (including the FMS Data) to the CfD Counterparty (or procures that the FMS Reports (including the FMS Data) is

delivered to the CfD Counterparty by a Third Party FMS Contractor) in respect of an RQM Calculation Month to which paragraph 6.3 applies, then the CfD Counterparty shall recalculate the Renewable Qualifying Multiplier in respect of such RQM Calculation Month. No Compensatory Interest or Default Interest shall be payable in respect of any resulting RQM Adjustment Amount.

**Annex 8**  
**Sustainability Criteria**

*[To be inserted in accordance with the IC Agreement.]*

**Annex 9**  
**Pro forma notices**

**Part A**  
**Directors' Certificate**

**[Company Name]**  
**[Unique Reference Number: [●]]**  
**(the "Company")**

**INVESTMENT CONTRACT – DIRECTORS' CERTIFICATE**

To: **[●]** (the "CfD Counterparty")

I, **[●]**, being a Director of the Company, refer to the investment contract entered into by the Company and the CfD Counterparty on **[●]** (the "**Agreement**"). Terms defined in or incorporated into the Agreement have the same meanings when used in this Certificate.

I hereby certify that, having made all due and careful enquiries **[to insert description of matters being certified]**.

This Certificate is governed by and construed in accordance with English law.

.....  
Name: **[●]**  
Position: Director  
Dated: **[●]**

.....  
Name: **[●]**  
Position: Director  
Dated: **[●]**

**OR:**

.....  
Name: [●]  
Position: Director  
Dated: [●]

in the presence of:

.....  
Witness's name: [●]  
Occupation: [●]  
Address: [●]  
Dated: [●]

**Part B**  
**Operational CP Notice**

**To:** [●] (the “CfD Counterparty”)  
[Address]

**From:** [●] (the “Generator”)  
[Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – OPERATIONAL CP NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.12(B).
3. This is an Operational CP Notice.
4. We consider that the following Operational Condition Precedent has been fulfilled: [●].
5. We enclose Supporting Information we consider to be relevant to evidence the fulfilment of the Operational Condition Precedent.
6. We enclose a Directors’ Certificate certifying that the information in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....  
For and on behalf of  
the **Generator**



**Part C**  
**CP Response Notice**

**To:** [●] (the “Generator”)  
[Unique reference number: [●]]

**From:** [●] (the “CfD Counterparty”)  
[Address]

**Dated:** [●]

**INVESTMENT CONTRACT – CP RESPONSE NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition [3.14(B)(i)]/[3.14(B)(ii)].
3. This is a CP Response Notice in relation to the Operational CP Notice dated [●].
4. *[We consider that the Operational Condition Precedent to which the Operational CP Notice relates has been fulfilled.]/[We have not been provided with sufficient Supporting Information to determine whether the Operational Condition Precedent to which the Operational CP Notice relates has been fulfilled and require the following Operational Condition Precedent Evidence: [●].]*

Yours faithfully,

.....  
For and on behalf of  
the **CfD Counterparty**

**Part D**  
**Additional CP Response Notice**

To:     **[•]** (the “Generator”)  
          **[Unique reference number: [•]]**

From:   **[•]** (the “CfD Counterparty”)  
          **[Address]**

Dated: **[•]**

**INVESTMENT CONTRACT – ADDITIONAL CP RESPONSE NOTICE**

Dear Sirs,

1.     We refer to the agreement dated **[•]** between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2.     We further refer you to Condition 3.15(B)(ii).
3.     This is an Additional CP Response Notice in relation to the CP Response Notice dated **[•]**.
4.     We consider that you have **[not]** fulfilled the Operational Condition Precedent.

Yours faithfully,

.....  
For and on behalf of  
the **CfD Counterparty**

**Part E**  
**Operational CP Non-Compliance Notice**

**To:** [●] (the “CfD Counterparty”)  
 [Address]

**From:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – OPERATIONAL CP NON-COMPLIANCE NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.16.
3. This is an Operational CP Non-Compliance Notice.
4. The Affected Operational CP is: [●].
5. *[The Affected Operational CP [[will not]]/[is not reasonably likely to] be fulfilled by the Longstop Date.]/[, which we previously notified to you as fulfilled, is no longer fulfilled.]]*
6. We enclose Supporting Information which we consider to be relevant to this notice.
7. We *[have taken]/[are proposing to take]* the following remedial action: [●].
8. We enclose a Directors’ Certificate certifying that the information in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....  
 For and on behalf of  
 the **Generator**

**Part F**  
**Start Date Notice**

**To:**     [•] (the “CfD Counterparty”)  
          [Address]

**From:** [•] (the “Generator”)  
          [Unique reference number: [•]]

**Dated:** [•]

**INVESTMENT CONTRACT – START DATE NOTICE**

Dear Sirs,

1.     We refer to the agreement dated [•] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2.     We further refer you to Condition 3.24.
3.     This is a Start Date Notice.
4.     We propose that the Start Date shall be: [•].
5.     We enclose a Directors' Certificate certifying that the information specified in Condition 3.29(C) is, as at the date of this notice, true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....  
For and on behalf of  
the **Generator**

**Part G**  
**Milestone Requirement Notice**

**To:** [●] (the “CfD Counterparty”)  
 [Address]

**From:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – MILESTONE REQUIREMENT NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 4.1.
3. This is a Milestone Requirement Notice.
4. *[We enclose invoices, payment receipts and other Supporting Information which we consider to be relevant to evidence expenditure of ten per cent. (10%) or more of the Total Project Pre-Commissioning Costs, being £[●].]/[We enclose information as is listed as the Project Commitments and the following Supporting Information which we consider to be relevant to evidence compliance or fulfilment of the Project Commitments: [●].]*
5. We enclose a Directors' Certificate certifying that the information in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....  
 For and on behalf of  
 the **Generator**

**Part H**  
**Milestone Assessment Response Notice**

**To:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**From:** [●] (the “CfD Counterparty”)  
 [Address]

**Dated:** [●]

**INVESTMENT CONTRACT – MILESTONE ASSESSMENT RESPONSE NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition [4.3(B)(i)]/[4.3(B)(ii)].
3. This is a Milestone Assessment Response Notice in relation to the Milestone Requirement Notice dated [●].
4. *[We consider that a Milestone Requirement has been complied with and fulfilled.]/[We have not been provided with sufficient Supporting Information to determine whether you have complied with and fulfilled a Milestone Requirement and require the following Requested Milestone Supporting Information: [●].]*

Yours faithfully,

.....  
 For and on behalf of  
 the **CfD Counterparty**

**Part I**  
**Further Milestone Assessment Response Notice**

**To:** [●] (the “Generator”)  
*[Unique reference number: [●]]*

**From:** [●] (the “CfD Counterparty”)  
*[Address]*

**Dated:** [●]

**INVESTMENT CONTRACT – FURTHER MILESTONE ASSESSMENT RESPONSE NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 4.4(B)(ii).
3. This is a Further Milestone Assessment Response Notice in relation to the Milestone Requirement Notice dated [●] and the Milestone Assessment Response Notice dated [●].
4. We consider that you have **[not]** complied with and fulfilled the Milestone Requirement.

Yours faithfully,

.....  
 For and on behalf of  
 the **CfD Counterparty**

**Part J**  
**RCE Notice**

**To:** [●] (the “CfD Counterparty”)  
[Address]

**From:** [●] (the “Generator”)  
[Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – RCE NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 5.1.
3. This is an RCE Notice.
4. The amount by which the Installed Capacity Estimate should be reduced to take into account the Relevant Construction Event is [●] MW and the RCE-Adjusted Installed Capacity Estimate is [●] MW.
5. We enclose the following Supporting Information which we consider to be relevant to evidence:
  - (i) the existence or occurrence of the Construction Event and our basis for concluding that the Construction Event constitutes a Relevant Construction Event;
  - (ii) our basis for concluding that, as a result of the existence or occurrence of the Relevant Construction Event, the Installed Capacity Estimate is required to be reduced to the RCE-Adjusted Installed Capacity Estimate: [●]; and
  - (iii) we enclose evidence of a change in the assets comprising the Facility arising in connection with the Relevant Construction Event.



6. We enclose a Directors' Certificate certifying that the information in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....  
For and on behalf of  
the **Generator**

**Part K**  
**RCE Response Notice**

**To:** [●] (the “Generator”)  
[Unique reference number: [●]]

**From:** [●] (the “CfD Counterparty”)  
[Address]

**Dated:** [●]

**INVESTMENT CONTRACT – RCE RESPONSE NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 5.3.
3. This is an RCE Response Notice.
4. *[We consider that a Relevant Construction Event has occurred. We [do not] accept the RCE-Adjusted Installed Capacity Estimate specified in the RCE Notice dated [●].]/[We do not consider that a Relevant Construction Event has occurred.]*
5. *[We have not been provided with sufficient Supporting Information to determine [whether a Relevant Construction Event has occurred]/[whether to accept the RCE-Adjusted Installed Capacity Estimate], and we require the following RCE Supporting Information: [●]]*

Yours faithfully,

.....  
For and on behalf of  
the **CfD Counterparty**

**Part L**  
**ICE Adjustment Notice**

**To:** [●] (the “CfD Counterparty”)  
[Address]

**From:** [●] (the “Generator”)  
[Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – ICE ADJUSTMENT NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 6.1.
3. This is an ICE Adjustment Notice.
4. The Installed Capacity will be lower than the Installed Capacity Estimate by: [●] MW.
5. The Revised ICE is: [●] MW.
6. We enclose evidence of a change in the assets comprising the Facility arising in connection with the Revised ICE.

Yours faithfully,

.....  
For and on behalf of  
the **Generator**

**Part M**  
**Final Installed Capacity Notice**

**To:** [●] (the “CfD Counterparty”)  
 [Address]

**From:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – FINAL INSTALLED CAPACITY NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 7.1.
3. This is a Final Installed Capacity Notice.
4. The Final Installed Capacity was [●] MW.
5. We enclose Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the Final Installed Capacity including details of the assets comprising the Facility at the Longstop Date.

Yours faithfully,

.....  
 For and on behalf of  
 the **Generator**

**Part N**  
**Final Installed Capacity Response Notice**

**To:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**From:** [●] (the “CfD Counterparty”)  
 [Address]

**Dated:** [●]

**INVESTMENT CONTRACT – FINAL INSTALLED CAPACITY RESPONSE NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition [7.3(B)(i)]/[7.3(B)(ii)].
3. This is a Final Installed Capacity Response Notice.
4. *[We agree with the Final Installed Capacity specified in the Final Installed Capacity Notice dated [●].]/[We have not been provided with sufficient Supporting Information to determine the Final Installed Capacity. We require the following Final Installed Capacity Supporting Information: [●].]*

Yours faithfully,

.....  
 For and on behalf of  
 the **CfD Counterparty**

**Part O**  
**Billing Statement Dispute Notice**

**To:** [●]

**From:** [●]

**Dated:** [●]

**INVESTMENT CONTRACT – BILLING STATEMENT DISPUTE NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between [●] as the CfD Counterparty and [●] as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 22.3.
3. This is a Billing Statement Dispute Notice. The Billing Statement[s] to which the dispute relates [is]/[are] [●].
4. Our [name]/[unique identifier] is [●].
5. The [name]/[unique identifier] of the Facility is [●].
6. The Billing Statement items to which the dispute relates are [●].
7. The amount in dispute is [●]. The apportionment of this amount in relation to the relevant Billing Statement items is [●].
8. ***[We consider that the following Billing Statement dispute should be [consolidated with]/[joined to] this dispute: [●].]***
9. We believe the correct position is [●]. Our reasons for believing this is the correct position are [●].
10. We intend to rely on the following Supporting Information, copies of which are enclosed: [●].

11. We enclose the following additional Information which we consider relevant in relation to the dispute: **[•]**.

Yours faithfully,

.....  
For and on behalf of  
**[•]**

**Part P**  
**Metering Breach Notice**

**To:** [●] (the “Generator”)  
[Unique reference number: [●]]

**From:** [●] (the “CfD Counterparty”)  
[Address]

**Dated:** [●]

**INVESTMENT CONTRACT – METERING BREACH NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 30.2.
3. This is a Metering Breach Notice.
4. We consider that you are in breach of the following Metering Compliance Obligation: [●].
5. We enclose the following Supporting Information as evidence of the breach of such Metering Compliance Obligation: [●].

Yours faithfully,

.....  
For and on behalf of  
the **CfD Counterparty**



**Part Q**  
**Metering Breach Response Notice**

**To:** [●] (the “CfD Counterparty”)  
 [Address]

**From:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – METERING BREACH RESPONSE NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition [30.3(B)(i)]/[30.3(B)(ii)].
3. This is a Metering Breach Response Notice.
4. We **[do not]** accept that there has been a breach of the Metering Compliance Obligation as specified in the Metering Breach Notice dated [●].
5. **[There has been a breach of the relevant Metering Compliance Obligation from the following date: [●].]**

Yours faithfully,

.....  
 For and on behalf of  
 the **Generator**

**Part R**  
**Metering Inspection Notice**

**To:** [●] (the “Generator”)  
*[Unique reference number: [●]]*

**From:** [●] (the “CfD Counterparty”)  
*[Address]*

**Dated:** [●]

**INVESTMENT CONTRACT – METERING INSPECTION NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 30.12.
3. This is a Metering Inspection Notice.
4. We *[intend]/[nominate [●]]* to exercise the Metering Access Right.
5. The date by which you must, in accordance with Condition 30.13, permit the exercise of the Metering Access Right is [●].

Yours faithfully,

.....  
 For and on behalf of  
 the **CfD Counterparty**

**Part S**  
**CfD Counterparty QCiL Notice**

**To:** [●] (the “Generator”)  
[Unique reference number: [●]]

**From:** [●] (the “CfD Counterparty”)  
[Address]

**Dated:** [●]

**INVESTMENT CONTRACT – CFD COUNTERPARTY QCIL NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 32.1.
3. This is a CfD Counterparty QCiL Notice.
4. We enclose reasonable details of the Qualifying Change in Law which we consider **[has been implemented, occurred or become effective]/[is shortly to be implemented, occur or become effective]**.
5. The **[QCIL Effective Date]/[Expected QCIL Effective Date]** is [●].
6. We believe the Change in Law **[constitutes]/[will constitute]** a Qualifying Change in Law for the following reasons: [●]. We consider the Qualifying Change in Law to be **[a Discriminatory]/[a Specific]/[an Other]** Change in Law.
7. **[We consider that the Notified Change in Law will give rise to or result in QCiL Operating [Costs]/[Savings].]**
8. **[We consider that the Notified Change in Law will give rise to or result in QCiL Capital [Costs]/[Savings].]**
9. **[We consider that the Notified Change in Law will give rise to or result in an Adjusted Output Period. Our AOP Estimate is [●].]**
10. **[We consider that the Notified Change in Law will give rise to or result in a QCiL Construction Event.]**

11. ***[We consider that the Notified Change in Law will give rise to or result in a QCiL Operations Cessation Event.]***

Yours faithfully,

.....  
For and on behalf of  
the **CfD Counterparty**

**Part T**  
**Generator QCiL Response Notice**

**To:** [●] (the “CfD Counterparty”)  
 [Address]

**From:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – GENERATOR QCIL RESPONSE NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 32.2.
3. This is a Generator QCiL Response Notice in response to the CfD Counterparty QCiL Notice dated [●].
4. *[We consider that the Notified Change in Law [is]/[will be] a Qualifying Change in Law.]/[We do not consider that the Notified Change in Law [is]/[will be] a Qualifying Change in Law and enclose Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of that conclusion.]*
5. *[We agree with the [QCIL Effective Date]/[Expected QCIL Effective Date] specified in the CfD Counterparty QCiL Notice.]/[We do not agree with the [QCIL Effective Date]/[Expected QCIL Effective Date] specified in the CfD Counterparty QCiL Notice and we consider the [QCIL Effective Date]/[Expected QCIL Effective Date] to be [●].]*
6. *[We consider that the Notified Change in Law will give rise to or result in QCiL Operating [Costs]/[Savings]. Our good faith estimate of the QCiL Operating [Costs]/[Savings] is [●]. Our good faith estimates as to the profile of the [incurrence of]/[making or receipt of] such QCiL Operating [Costs]/[Savings] are [●]. We enclose Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of these conclusions.]*
7. *[We consider that the Notified Change in Law will give rise to or result in QCiL Capital [Costs]/[Savings]. Our good faith estimate of the QCiL Capital [Costs]/[Savings] is [●]. Our good faith estimates as to the profile of the [incurrence of]/[making or receipt of] such QCiL Capital [Costs]/[Savings] are [●]. We enclose*

***Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of these conclusions.]***

8. ***[We consider that the Notified Change in Law will give rise to or result in an Adjusted Output Period. Our AOP Estimate is [●] and our good faith estimate of the impact of the Notified Change in Law on the Estimated Facility Generation is [●]. We enclose Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of these conclusions.]***
9. ***[We consider that the Notified Change in Law will give rise to or result in a QCiL Construction Event. Our good faith estimate of the QCiL Construction Event Costs and QCiL Construction Event Savings is [●] and [●] respectively. We enclose Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of these conclusions.]***
10. ***[We consider that the Notified Change in Law will give rise to or result in a QCiL Operations Cessation Event. Our good faith estimate of the QCiL Operations Cessation Event Costs and QCiL Operations Cessation Event Savings is [●] and [●] respectively. We enclose Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of these conclusions.]***
11. We enclose Supporting Information evidencing, in reasonable detail, the steps that we ***[have taken]/[and]/[propose to take]*** to comply with the QCiL Mitigation Obligation and the Reasonable and Prudent Standard.
12. We enclose a Directors' Certificate certifying the matters specified in Condition 32.4.

Yours faithfully,

.....  
For and on behalf of  
the **Generator**

**Part U**  
**Generator QCiL Notice**

**To:** [●] (the “CfD Counterparty”)  
[Address]

**From:** [●] (the “Generator”)  
[Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – GENERATOR QCIL NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 32.5.
3. This is a Generator QCiL Notice.
4. We enclose reasonable details of the Qualifying Change in Law which we consider ***[has been implemented, occurred or become effective]/[is shortly to be implemented, occur or become effective]***.
5. The ***[QCIL Effective Date]/[Expected QCIL Effective Date]*** is [●].
6. We believe the Notified Change in Law ***[constitutes]/[will constitute]*** a Qualifying Change in Law for the following reasons: [●]. We consider the Qualifying Change in Law to be ***[a Discriminatory]/[a Specific]/[an Other]*** Change in Law. We enclose Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of that conclusion.
7. ***[We consider that the Notified Change in Law will give rise to or result in QCiL Operating [Costs]/[Savings]. Our good faith estimate of the QCiL Operating [Costs]/[Savings] is [●]. Our good faith estimates as to the profile of the [incurrence of]/[making or receipt of] such QCiL Operating [Costs]/[Savings] are [●]. We enclose Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of these conclusions.]***
8. ***[We consider that the Notified Change in Law will give rise to or result in QCiL Capital [Costs]/[Savings]. Our good faith estimate of the QCiL Capital [Costs]/[Savings] is [●]. Our good faith estimates as to the profile of the [incurrence of]/[making or receipt of] such QCiL Capital [Costs]/[Savings] are [●]. We enclose***

***Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of these conclusions.]***

9. ***[We consider that the Notified Change in Law will give rise to or result in an Adjusted Output Period. Our AOP Estimate is [●] and our good faith estimate of the impact of the Notified Change in Law on the Estimated Facility Generation is [●]. We enclose Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of these conclusions.]***
10. ***[We consider that the Notified Change in Law will give rise to or result in a QCiL Construction Event. Our good faith estimate of the QCiL Construction Event Costs and QCiL Construction Event Savings is [●] and [●] respectively. We enclose Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of these conclusions.]***
11. ***[We consider that the Notified Change in Law will give rise to or result in a QCiL Operations Cessation Event. Our good faith estimate of the QCiL Operations Cessation Event Costs and QCiL Operations Cessation Event Savings is [●] and [●] respectively. We enclose Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of these conclusions.]***
12. We enclose Supporting Information evidencing, in reasonable detail, the steps that we ***[have taken]/[and]/[propose to take]*** to comply with the QCiL Mitigation Obligation and the Reasonable and Prudent Standard.
13. We enclose a Directors' Certificate certifying the matters specified in Condition 32.6.

Yours faithfully,

.....  
For and on behalf of  
the **Generator**



**Part V**  
**CfD Counterparty QCiL True-Up Notice**

**To:** [●] (the “Generator”)  
*[Unique reference number: [●]]*

**From:** [●] (the “CfD Counterparty”)  
*[Address]*

**Dated:** [●]

**INVESTMENT CONTRACT – CFD COUNTERPARTY QCIL TRUE-UP NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.1.
3. This is a CfD Counterparty QCiL True-Up Notice in respect of *[identify relevant Qualifying Change in Law]*.
4. We hereby require you to confirm the QCiL True-Up Information.

Yours faithfully,

.....  
 For and on behalf of  
 the **CfD Counterparty**

**Part W**  
**QCIL True-Up Response Notice**

**To:** [●] (the “CfD Counterparty”)  
 [Address]

**From:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – QCIL TRUE-UP RESPONSE NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.3.
3. This is a QCIL True-Up Response Notice in response to the CfD Counterparty QCIL True-Up Notice dated [●].
4. We enclose the QCIL True-Up Information.
5. We confirm that *[we are not entitled to recover and have not recovered any amount falling within the description in Condition 37.6 or 37.7]/[the amount of [●] has been recovered pursuant to Conditions 37.6 or 37.7].*
7. We enclose the following Supporting Information, in reasonable detail, as we consider to be relevant to and supportive of the information contained in or enclosed with this notice: [●].
8. We enclose a Directors’ Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....  
 For and on behalf of  
 the **Generator**

**Part X**  
**Generator QCiL True-Up Notice**

**To:** [●] (the “CfD Counterparty”)  
 [Address]

**From:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – GENERATOR QCIL TRUE-UP NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.5.
3. This is Generator QCiL True-Up Notice in respect of *[identify Qualifying Change in Law]*.
4. We enclose the QCiL True-Up Information.
6. We confirm that *[we are not entitled to recover and have not recovered any amount falling within the description in Condition 37.6 or 37.7]/[the amount of [●] has been recovered pursuant to Condition 37.6 or 37.7]*.
7. We enclose such Supporting Information, in reasonable detail, as we consider to be relevant to and supportive of our conclusions in respect of Condition 35.5.
8. We enclose a Directors’ Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....  
 For and on behalf of  
 the **Generator**

**Part Y**  
**QSE Notice**

**To:** [●] (the “CfD Counterparty”)  
[Address]

**From:** [●] (the “Generator”)  
[Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – QSE NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 36.1.
3. This is a QSE Notice.
4. We consider that a Qualifying Shutdown Event has occurred, the relevant details of which are: [●].
5. The Qualifying Shutdown Event occurred on [●].
6. Our good faith estimate of the QCiL Operations Cessation Event Costs and the QCiL Operations Cessation Event Savings is [●] and [●] respectively.
7. We enclose Supporting Information evidencing, in reasonable detail, which we consider to be relevant and supportive of the foregoing.
8. We enclose a Directors’ Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading, in each case by reference to the facts and circumstances then existing.

Yours faithfully,

.....  
For and on behalf of  
the **Generator**

**Part Z**  
**Change in Applicable Law Request Notice**

**To:** [●] (the “CfD Counterparty”)  
 [Address]

**From:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – CHANGE IN APPLICABLE LAW REQUEST NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 38.2.
3. This is a Change in Applicable Law Request Notice.
4. We consider that a Change in Applicable Law *[has been implemented, occurred or become effective]/[is expected to be implemented, occur or become effective]* because [●].
5. The date on which the Change in Applicable Law *[was implemented was]/[is expected to be implemented, occur or become effective is]* [●].
6. We consider that the Change in Applicable law *[results]/[will result]* in one (1) or more of the Required CiL Amendment Objectives ceasing to be met for the following reasons: [●].
7. *[We believe that the Required CiL Amendment(s) are [●].]*
8. We enclose the following Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the matters in paragraphs [●] above.

Yours faithfully,

.....  
 For and on behalf of  
 the **Generator**

**Part AA**  
**Change in Applicable Law Request Validity Notice**

**To:**     **[●]** (the “**Generator**”)  
          **[Unique reference number: [●]]**

**From:** **[●]** (the “**CfD Counterparty**”)  
          **[Address]**

**Dated:** **[●]**

**INVESTMENT CONTRACT – CHANGE IN APPLICABLE LAW REQUEST VALIDITY NOTICE**

Dear Sirs,

1.     We refer to the agreement dated **[●]** between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2.     We further refer you to Condition 38.5.
3.     This is a Change in Applicable Law Request Validity Notice.
4.     The Change in Applicable Law Request Criterion has been met.

Yours faithfully,

.....  
For and on behalf of  
the **CfD Counterparty**

**Part BB**  
**Change in Applicable Law Review Notice**

**To:**     **[●]** (the “**Generator**”)  
          **[Unique reference number: [●]]**

**From:** **[●]** (the “**CfD Counterparty**”)  
          **[Address]**

**Dated:** **[●]**

**INVESTMENT CONTRACT – CHANGE IN APPLICABLE LAW REVIEW NOTICE**

Dear Sirs,

1.     We refer to the agreement dated **[●]** between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2.     We further refer you to Condition 38.6.
3.     This is a Change in Applicable Law Review Notice.
4.     The following Change in Applicable Law Review Trigger has occurred: **[●]**.
5.     The Change in Applicable Law Review Response Deadline is: **[●]**.

Yours faithfully,

.....  
For and on behalf of  
the **CfD Counterparty**

**Part CC**  
**Change in Applicable Law Review Response Notice**

**To:**     **[•]** (the “CfD Counterparty”)  
          **[Address]**

**From:** **[•]** (the “Generator”)  
          **[Unique reference number: [•]]**

**Dated:** **[•]**

**INVESTMENT CONTRACT – CHANGE IN APPLICABLE LAW REVIEW RESPONSE NOTICE**

Dear Sirs,

1.     We refer to the agreement dated **[•]** between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2.     We further refer you to Condition 38.7.
3.     This is a Change in Applicable Law Review Response Notice in response to the Change in Applicable Law Review Notice dated **[•]**.
4.     We enclose the following Supporting Information which we wish you to take account of in undertaking the Change in Applicable Law Review: **[•]**.
5.     ***[We believe that the Required CiL Amendment(s) are [•].]***

Yours faithfully,

.....  
For and on behalf of  
the **Generator**



**Part DD**  
**Change in Applicable Law Review Outcome Notice**

**To:** [●] (the “Generator”)  
*[Unique reference number: [●]]*

**From:** [●] (the “CfD Counterparty”)  
*[Address]*

**Dated:** [●]

**INVESTMENT CONTRACT – CHANGE IN APPLICABLE LAW REVIEW OUTCOME NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 38.9.
3. This is a Change in Applicable Law Review Outcome Notice.
4. We enclose a summary of the outcome of the Change in Applicable Law Review. *[The Required CiL Amendments are as follows: [●].]*
5. *[The date from which the Required CiL Amendments will take effect is: [●].]*

Yours faithfully,

.....  
 For and on behalf of  
 the **CfD Counterparty**

**Part EE**  
**Change in Applicable Law Dispute Notice**

**To:** [●] (the “CfD Counterparty”)  
 [Address]

**From:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – CHANGE IN APPLICABLE LAW DISPUTE NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 39.1.
3. This is a Change in Applicable Law Dispute Notice.
4. The subject matter of the Dispute is [●]. The issues to be resolved are [●].
5. The relevant [Condition]/[paragraph] to which the Dispute relates is [●].
6. We believe the correct position is [●]. Our reasons for believing this is the correct position are [●].
7. ***[We intend to rely on the following Supporting Information, copies of which are provided: [●].]***
8. The [relief]/[determination]/[remedy]/[recourse] which we seek in relation to the Dispute is [●].

Yours faithfully,

.....  
 For and on behalf of  
 the **Generator**

**Part FF**  
**Change in Applicable Law Dispute Validity Notice**

**To:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**From:** [●] (the “CfD Counterparty”)  
 [Address]

**Dated:** [●]

**INVESTMENT CONTRACT – CHANGE IN APPLICABLE LAW DISPUTE VALIDITY NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 39.3.
3. This is a Change in Applicable Law Dispute Validity Notice in relation to the Change in Applicable Law Dispute Notice dated [●].
4. The Change in Applicable Law Dispute Threshold Criterion has been met.
5. We propose that the Proposed Change in Applicable Law Expert appointed be [●]. We propose that [s]he be appointed on the following terms: [●]. We believe that the Proposed Change in Applicable Law Expert has the relevant expertise which qualifies [him]/[her] to determine the relevant Change in Applicable Law Dispute for the following reasons: [●].
6. We enclose a Consolidation Notice in relation to the Change in Applicable Law Dispute.

Yours faithfully,

.....  
 For and on behalf of  
 the **CfD Counterparty**

**Part GG**  
**Generator GT Notice**

**To:** [●] (the “CfD Counterparty”)  
[Address]

**From:** [●] (the “Generator”)  
[Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – GENERATOR GT NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 41.1.
3. This is a Generator GT Notice.
4. We consider that a Generation Tax Change in Law has been implemented, occurred or become effective, the relevant details of which are: [●].
5. The Generation Tax Effective Date is [●].
6. We consider that the relevant Generation Tax Change in Law will or is likely to give rise to a Generation Tax Liability for the following reasons: [●] and our actual or good faith estimate of the Generation Tax Liability is [●].
7. We enclose Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the foregoing.
8. We enclose a Directors’ Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading, in each case by reference to the facts and circumstances then existing.

Yours faithfully,

.....  
For and on behalf of  
the **Generator**

**Part HH**  
**CfD Counterparty GT Notice**

**To:** [●] (the “Generator”)  
[Unique reference number: [●]]

**From:** [●] (the “CfD Counterparty”)  
[Address]

**Dated:** [●]

**INVESTMENT CONTRACT – CFD COUNTERPARTY GT NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 41.7.
3. This is a CfD Counterparty GT Notice.
4. We enclose reasonable details of the Generation Tax Change in Law which we consider has been implemented, occurred or become effective.
5. The Generation Tax Effective Date is [●].

Yours faithfully,

.....  
For and on behalf of  
the **CfD Counterparty**

**Part II**  
**Generator GT Claim Notice**

**To:** [●] (the “CfD Counterparty”)  
[Address]

**From:** [●] (the “Generator”)  
[Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – GENERATOR GT CLAIM NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 42.3.
3. This is a Generator GT Claim Notice.
4. We confirm that:
  - (A) the relevant period for the purposes of Condition 42.5 is the period from [●] to [●];
  - (B) we incurred and/or paid a Generation Tax Liability during the relevant period as a result of a Generation Tax Change in Law;
  - (C) the Generation Tax Liability we incurred and/or paid, and the computation thereof, in respect of the relevant period is [●];
  - (C) our Generation Tax Liability in respect of the relevant period that has otherwise been made good without cost to us is [●]; and
  - (D) the Metered Output in respect of each Settlement Unit in the relevant period is [●].
5. We enclose Supporting Information which we consider to be relevant to and supportive of the foregoing.

6. We enclose Supporting Information evidencing, in reasonable detail, the steps that we ***[have taken]/[and]/[propose to take]*** to comply with the Generation Tax Mitigation Obligation and the Reasonable and Prudent Standard.
7. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading, in each case by reference to the facts and circumstances then existing.

Yours faithfully,

.....  
For and on behalf of  
the **Generator**

**Part JJ**  
**Balancing System Charge Report**

**To:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**From:** [●] (the “CfD Counterparty”)  
 [Address]

**Dated:** [●]

**INVESTMENT CONTRACT – BALANCING SYSTEM CHARGE REPORT**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 44.2.
3. This is a Balancing System Charge Report.
4. The Actual Balancing System Charge in respect of the relevant Balancing System Charge Review Period is [●].
5. The Indexed Initial Balancing System Charge is [●].
6. The Balancing System Charge Difference is [●].
7. The Strike Price Adjustment that will apply with effect from the relevant Indexation Anniversary to give effect to the Balancing System Charge Difference is [●].

Yours faithfully,

.....  
 For and on behalf of  
 the **CfD Counterparty**



**Part KK**  
**TLM(D) Charges Report**

**To:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**From:** [●] (the “CfD Counterparty”)  
 [Address]

**Dated:** [●]

**INVESTMENT CONTRACT – TLM(D) CHARGES REPORT**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 45.2.
3. This is a TLM(D) Charges Report.
4. The Actual TLM(D) Charge in respect of the relevant TLM(D) Charges Review Period, is [●] per cent. ([●]%).
5. The Initial TLM(D) Charge, as set out in the IC Agreement, is [●] per cent. ([●]%).
6. The TLM(D) Charges Difference is [●].
7. The Strike Price Adjustment that will apply with effect from the relevant Indexation Anniversary to give effect to the TLM(D) Charges Difference is [●].

Yours faithfully,

.....  
 For and on behalf of  
 the **CfD Counterparty**

**Part LL**  
**Preliminary Annual QCPC Report**

**To:** [●] (the “CfD Counterparty”)  
 [Address]

**From:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – PRELIMINARY ANNUAL QCPC REPORT**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 46.1.
3. This is a Preliminary Annual QCPC Report.
4. This Preliminary Annual QCPC Report relates to Contract Year [●].
5. The following Qualifying CPC Event[s] [has]/[have] occurred: [●].
6. In respect of [●] Qualifying CPC Event:
  - (A) the following circumstances gave rise to the Qualifying CPC Event: [●];
  - (B) limb[s] [●] of the definition of [Qualifying Curtailment]/[Qualifying Partial Curtailment] were satisfied on [●] for the following reasons: [●]; and
  - (C) the following output from the Facility was foregone by reason of the Qualifying CPC Event: [●]MWh.
7. In respect of [●] Qualifying Curtailment:
  - (A) the Defined Curtailment Compensation was £[●];
  - (B) the Curtailment Compensation was £[●];
  - (C) the Curtailment Compensation [Shortfall]/[Excess] was £[●]; and
  - (D) the amount of the difference is: [●].

8. In respect of **[●]** Qualifying Partial Curtailment:
  - (A) the Defined Partial Curtailment Compensation was £**[●]**;
  - (B) the Partial Curtailment Compensation was £**[●]**;
  - (C) the Partial Curtailment Compensation **[Shortfall]/[Excess]** was £**[●]**; and
  - (D) the amount of the difference is **[●]**.
9. ***[In addition, we (or our nominee) [have received]/[are entitled to] the following compensation under the Investment Contract or otherwise in respect of [●]: [●].]***
10. We enclose Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the foregoing.
11. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this report is true, complete and accurate in all material respects, in each case by reference to the facts and circumstances then existing.

Yours faithfully,

.....  
 For and on behalf of  
 the **Generator**

**Part MM**  
**Pre-Start Date Termination Notice**

**To:** [●] (the “Generator”)  
*[Unique reference number: [●]]*

**From:** [●] (the “CfD Counterparty”)  
*[Address]*

**Dated:** [●]

**INVESTMENT CONTRACT – PRE-START DATE TERMINATION NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 49.1.
3. This is a Pre-Start Date Termination Notice.
4. The Pre-Start Date Termination Date is [●].
5. *[The following Termination Event has occurred: [●].]*

Yours faithfully,

.....  
 For and on behalf of  
 the **CfD Counterparty**

**Part NN**  
**Default Termination Notice**

**To:**     **[•]** (the “**Generator**”)  
          **[Unique reference number: [•]]**

**From:** **[•]** (the “**CfD Counterparty**”)  
          **[Address]**

**Dated:** **[•]**

**INVESTMENT CONTRACT – DEFAULT TERMINATION NOTICE**

Dear Sirs,

1.     We refer to the agreement dated **[•]** between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2.     We further refer you to Condition 49.9.
3.     This is a Default Termination Notice.
4.     The Designated Termination Date is **[•]**.
5.     The following Termination Event has occurred: **[•]**.

Yours faithfully,

.....  
For and on behalf of  
the **CfD Counterparty**

**Part OO**  
**QCIL Termination Notice**

**To:**     **[•]** (the “**Generator**”)  
          **[Unique reference number: [•]]**

**From:** **[•]** (the “**CfD Counterparty**”)  
          **[Address]**

**Dated:** **[•]**

**INVESTMENT CONTRACT – QCIL TERMINATION NOTICE**

Dear Sirs,

1.     We refer to the agreement dated **[•]** between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2.     We further refer you to Condition 49.11.
3.     This is a QCIL Termination Notice.
4.     The QCIL Termination Date is **[•]**.

Yours faithfully,

.....  
For and on behalf of  
the **CfD Counterparty**

**Part PP**  
**Termination Amount Notice**

**To:**     **[•]** (the “**Generator**”)  
          **[Unique reference number: [•]]**

**From:** **[•]** (the “**CfD Counterparty**”)  
          **[Address]**

**Dated:** **[•]**

**INVESTMENT CONTRACT – TERMINATION AMOUNT NOTICE**

Dear Sirs,

1.     We refer to the agreement dated **[•]** between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2.     We further refer you to Condition 50.3(B).
3.     This is a Termination Amount Notice.
4.     The Termination Amount is **[•]**.
5.     The principal inputs used by us to calculate such Termination Amount were **[•]**.

Yours faithfully,

.....  
For and on behalf of  
the **CfD Counterparty**

**Part QQ**  
**Second Payment Failure Notice**

**To:** [●] (the “Generator”)  
[Unique reference number: [●]]

**From:** [●] (the “CfD Counterparty”)  
[Address]

**Dated:** [●]

**INVESTMENT CONTRACT – SECOND PAYMENT FAILURE NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 53.1.
3. This is a Second Payment Failure Notice.
4. We hereby give you notice that two (2) Payment Failures have occurred in the past twelve (12) month period, namely on [●] and [●].

Yours faithfully,

.....  
For and on behalf of  
the **CfD Counterparty**



**Part RR**  
**Collateral Posting Notice**

**To:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**From:** [●] (the “CfD Counterparty”)  
 [Address]

**Dated:** [●]

**INVESTMENT CONTRACT – COLLATERAL POSTING NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 53.2.
3. This is a Collateral Posting Notice.
4. We hereby give you notice that there was a Payment Failure on three or more occasions in the past twelve (12) month period.
5. The Billing Periods to which the Payment Failures relate are: [●].
6. The Collateral Amount is [●].
7. The Collateral Posting Date is [●].
8. The Initial Collateral Repayment Date is [●].
9. The details of the Reserve Account are as follows: [●]

Yours faithfully,

.....  
 For and on behalf of  
 the **CfD Counterparty**

**Part SS**  
**Replacement Collateral Notice**

**To:** [●] (the “Generator”)  
*[Unique reference number: [●]]*

**From:** [●] (the “CfD Counterparty”)  
*[Address]*

**Dated:** [●]

**INVESTMENT CONTRACT – REPLACEMENT COLLATERAL NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 53.3.
3. This is a Replacement Collateral Notice.
4. We hereby give you notice that a Payment Failure occurred after the Collateral Posting Notice dated [●] and before the applicable Initial Collateral Repayment Date.
5. The Billing Periods to which the Payment Failures relate are: [●].
6. The Replacement Collateral Repayment Date shall be: [●].

Yours faithfully,

.....  
 For and on behalf of  
 the **CfD Counterparty**

**Part TT**  
**Letter of Credit Details Notice**

**To:** [●] (the “CfD Counterparty”)  
 [Address]

**From:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – LETTER OF CREDIT DETAILS NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 54.3(B).
3. **[We have delivered to you a Letter of Credit today]/[We intend to [deliver]/[renew] a [replacement] Letter of Credit on [●]]** and this is a Letter of Credit Details Notice.
4. We hereby notify you of the terms of such Letter of Credit:
  - (A) The Qualifying Issuer is: [●]
  - (B) The credit rating of the Qualifying Issuer is: [●]
  - (C) The relevant contact details for the Qualifying Issuer’s **[representative]/[relationship manager]** are: [●]
  - (D) The Letter of Credit is for an amount of: £ [●]
  - (E) The term of the **[renewed]/[delivered]/[replacement]** Letter of Credit is: [●]

Yours faithfully,

.....  
 For and on behalf of  
 the **Generator**

**Part UU**  
**Collateral Correction Notice**

**To:** [●] (the “Generator”)  
*[Unique reference number: [●]]*

**From:** [●] (the “CfD Counterparty”)  
*[Address]*

**Dated:** [●]

**INVESTMENT CONTRACT – COLLATERAL CORRECTION NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 54.5.
3. This is a Collateral Correction Notice.
4. The following Posted Collateral is not Acceptable Collateral: [●]. The reason(s) preventing such collateral from constituting Acceptable Collateral are: [●].
5. The Deficient Collateral Amount is [●].

Yours faithfully,

.....  
 For and on behalf of  
 the **CfD Counterparty**

**Part VV**  
**Dispute Notice**

**To:** [●]

**From:** [●]

**Dated:** [●]

**INVESTMENT CONTRACT – DISPUTE NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between [●] as the CfD Counterparty and [●] as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 55.3.
3. This is a Dispute Notice.
4. The subject matter of the Dispute is [●]. The issues to be resolved are [●].
5. The relevant Condition to which the Dispute relates is [●].
6. We believe the correct position is [●]. Our reasons for believing this is the correct position are [●].
7. *[We consider that the following dispute or claim relating to or arising out of another FiT Contract for Difference should be [consolidated with]/[joined to] this Dispute: [●].]*
8. *[We intend to rely on the following Supporting Information, copies of which are provided: [●].]*
9. The *[relief]/[determination]/[remedy]/[recourse]* which we seek in relation to the Dispute is [●].
10. We *[do not]* believe the Dispute should (without a Senior Representatives Settlement being reached) be referred for *[determination in accordance with the Expert Determination Procedure]/[resolution in accordance with the Arbitration Procedure]*.

11. Our Senior Representative is **[•]**.

Yours faithfully,

.....  
For and on behalf of  
**[•]**

**Part WW**  
**Expert Determination Notice**

**To:** [●]

**From:** [●]

**Dated:** [●]

**INVESTMENT CONTRACT – EXPERT DETERMINATION NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between [●] as the CfD Counterparty and [●] as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 57.1.
3. This is an Expert Determination Notice.
4. The subject matter of the Dispute is [●].
5. The issues to be resolved are [●].
6. The relevant Condition to which the Dispute relates is [●].
7. We believe the correct position is [●]. Our reasons for believing this is the correct position are [●].
8. ***[We consider that the following dispute or claim relating to or arising out of another FiT Contract for Difference should be [consolidated with]/[joined to] this Dispute: [●].]***
9. ***[We intend to rely on the following Supporting Information, copies of which are provided: [●].]***
10. The ***[relief]/[determination]/[remedy]/[recourse]*** which we seek in relation to the Dispute is [●].

11. We propose that the Expert appointed be [●]. We propose that [s]he be appointed on the following terms: [●]. We believe that the proposed Expert has the relevant expertise which qualifies [him]/[her] to determine the relevant Expert Dispute for the following reasons: [●].

Yours faithfully,

.....  
For and on behalf of  
[●]



**Part XX**  
**Expert Determination Response Notice**

**To:** [●]

**From:** [●]

**Dated:** [●]

**INVESTMENT CONTRACT – EXPERT DETERMINATION RESPONSE NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between [●] as the CfD Counterparty and [●] as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 57.3.
3. This is an Expert Determination Response Notice.
4. We ***[do not]*** accept the Expert proposed in the Expert Determination Notice dated [●]. ***[We propose [●] as an alternative Expert.]***
5. We ***[do not]*** accept the terms of reference proposed in the Expert Determination Notice dated [●]. ***[We propose the following alternative terms of reference: [●].]***

Yours faithfully,

.....  
 For and on behalf of  
 [●]

**Part YY**  
**Consolidation Notice**

**To:** *[All the parties to a Connected Dispute]*

**From:** *[•]*

**Dated:** *[•]*

**INVESTMENT CONTRACT – CONSOLIDATION NOTICE**

Dear Sirs,

1. We refer to the agreement dated *[•]* between *[•]* as the CfD Counterparty and *[•]* as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 59.2.
3. This is a Consolidation Notice.
4. The subject matter of the Dispute is *[•]*.
5. We believe that the following dispute*[s]* *[is]/[are]* Connected Dispute*[s]*: *[•]*.
6. Our reasons for believing that the Dispute*[s]* should be consolidated with the Connected Dispute*[s]* are *[•]*.
7. ***[We intend to rely on the following Supporting Information, copies of which are provided: [•].]***
8. This notice *[is being]/[will be]* provided to the *[Expert]/[Arbitrator(s)]* of the Connected Dispute*[s]* ***[forthwith upon appointment of the [Expert]/[Arbitrator(s)]]***.

Yours faithfully,

.....  
 For and on behalf of  
*[•]*

**Part ZZ**  
**Amendment Notification**

**To:** [●] (the “Generator”)  
[Unique reference number: [●]]

**From:** [●] (the “CfD Counterparty”)  
[Address]

**Dated:** [●]

**INVESTMENT CONTRACT – AMENDMENT NOTIFICATION**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.1 of Annex 2 (*Change Control Procedure*).
3. This is an Amendment Notification.
4. The Proposed Amendment is [●].
5. The Proposed Amendment Effective Date is [●].
6. We consider the Proposed Amendment to be a **[Material Amendment]/[Technical Amendment]**.
7. **[We consider the Proposed Amendment to be a Technical Amendment and we [do not] believe the Proposed Amendment is a General Amendment.]/[We consider the Proposed Amendment to be a General Amendment and we [do not] believe it applies to all FiT Contracts for Difference [and believe it applies only to those of [a specified category]/[specified categories], being [●]].]**
8. We enclose the following Supporting Information we consider necessary to enable you to evaluate the Proposed Amendment: [●].

Yours faithfully,

.....  
For and on behalf of  
the **CfD Counterparty**

**Part AAA**  
**BMRP Annual Review Outcome Notice**

**To:** [●] (the “Generator”)  
*[Unique reference number: [●]]*

**From:** [●] (the “CfD Counterparty”)  
*[Address]*

**Dated:** [●]

**INVESTMENT CONTRACT – BMRP ANNUAL REVIEW OUTCOME NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.6 of Part A of Annex 4 (*BMRP*).
3. This is a BMRP Annual Review Outcome Notice.
4. *[The following BMRP Review Price Source[s] [is]/[are] to be [a] Baseload Price Source[s]: [●].]/[We have determined that no BMRP Review Price Source meets the BMRP Inclusion Criteria and the BMRP Quality Criteria.]*
5. *[BMRP Review Price Source [●] meets the BMRP Quality Criteria.]/[We enclose a summary of the reasons for determining that BMRP Review Price Source [●] does not meet all or any of the BMRP Quality Criteria: [●].]*
6. *[BMRP Review Price Source [●] meets the BMRP Inclusion Criteria: [●].]/[BMRP Review Price Source [●] does not meet [all]/[any] of the BMRP Inclusion Criteria. [The Excluded 5-TD Sample Period[s] in respect of BMRP Review Price Source [●] [is]/[are] as follows: [●].]/[The 5-TD Trade Number Percentage in Excluded 5-TD Sample Period [●] was: [●].]/[The 5-TD Volume Percentage in Excluded 5-TD Sample Period [●] was: [●].]/[The BMRP Review Price Source [●] did not meet the BMRP Inclusion Criterion in paragraph (C) or (D) of the definition of BMRP Inclusion Criteria.]]*

8. The BMRP Annual Review Implementation Date is: **[●]**.

Yours faithfully,

.....  
For and on behalf of  
the **CfD Counterparty**

**Part BBB**  
**BMRP Principles Request Notice**

**To:** [●] (the “CfD Counterparty”)  
 [Address]

**From:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – BMRP PRINCIPLES REQUEST NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.2 of Part A of Annex 4 (*BMRP*).
3. This is a BMRP Principles Request Notice.
4. We believe the calculation of the Baseload Market Reference Price does not comply with the following BMRP Principle[s]: [●].
5. ***[We propose that the non-compliance with the BMRP Principle[s] should be addressed as follows: [●].]***
6. We enclose the following Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the matters in paragraph[s] 4 ***[and 5]*** above.

Yours faithfully,

.....  
 For and on behalf of  
 the **Generator**

**Part CCC**  
**BMRP Principles Request Validity Notice**

**To:**     **[•]** (the “**Generator**”)  
          **[Unique reference number: [•]]**

**From:** **[•]** (the “**CfD Counterparty**”)  
          **[Address]**

**Dated:** **[•]**

**INVESTMENT CONTRACT – BMRP PRINCIPLES REQUEST VALIDITY NOTICE**

Dear Sirs,

1.     We refer to the agreement dated **[•]** between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2.     We further refer you to paragraph 2.5 of Part A of Annex 4 (*BMRP*).
3.     This is a BMRP Principles Request Validity Notice.
4.     The BMRP Principles Request Criterion has been met.

Yours faithfully,

.....  
For and on behalf of  
the **CfD Counterparty**

**Part DDD**  
**BMRP Principles Review Notice**

**To:** [●] (the “Generator”)  
*[Unique reference number: [●]]*

**From:** [●] (the “CfD Counterparty”)  
*[Address]*

**Dated:** [●]

**INVESTMENT CONTRACT – BMRP PRINCIPLES REVIEW NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.8 of Part A of Annex 4 (*BMRP*).
3. This is a BMRP Principles Review Notice.
4. The following BMRP Principles Review Trigger has occurred: [●].
5. The BMRP Principles Review Response Deadline is: [●].

Yours faithfully,

.....  
 For and on behalf of  
 the **CfD Counterparty**



**Part EEE**  
**BMRP Principles Review Response Notice**

**To:** [●] (the “CfD Counterparty”)  
 [Address]

**From:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – BMRP PRINCIPLES REVIEW RESPONSE NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.9 of Part A of Annex 4 (*BMRP*).
3. This is a BMRP Principles Review Response Notice in response to the BMRP Principles Review Notice dated [●].
4. We enclose the following Supporting Information which we wish you to take account of in undertaking the BMRP Principles Review: [●].
5. ***[We propose that the BMRP Principles Review Trigger should be addressed as follows: [●].]***

Yours faithfully,

.....  
 For and on behalf of  
 the **Generator**

**Part FFF**  
**BMRP Principles Review Outcome Notice**

**To:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**From:** [●] (the “CfD Counterparty”)  
 [Address]

**Dated:** [●]

**INVESTMENT CONTRACT – BMRP PRINCIPLES REVIEW OUTCOME NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.12 of Part A of Annex 4 (*BMRP*).
3. This is a BMRP Principles Review Outcome Notice.
4. We enclose a summary of the outcome of the BMRP Principles Review. ***[The BMRP Principles Review Proposals are as follows: [●].]***
5. ***[We enclose a summary of the reasons for determining that it is not possible to effect any BMRP Mechanism Amendment (or combination of BMRP Mechanism Amendments) in a manner which complies with all of the BMRP Principles. We consider that the following BMRP Principles will be complied with by virtue of the BMRP Mechanism Amendments being effected: [●].]***
6. The BMRP Principles Review Implementation Date is: [●].

Yours faithfully,

.....  
 For and on behalf of  
 the **CfD Counterparty**

**Part GGG**  
**Year-Ahead Switch Notice**

**To:** [●] (the “CfD Counterparty”)  
 [Address]

**From:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – YEAR-AHEAD SWITCH NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 3.1 of Part A of Annex 4 (*BMRP*).
3. This is a Year-Ahead Switch Notice.
4. The Year-Ahead Switch Effective Date shall be: [●]

Yours faithfully,

.....  
 For and on behalf of  
 the **Generator**

**Part HHH**  
**BMRP Dispute Notice**

**To:** [●] (the “CfD Counterparty”)  
[Address]

**From:** [●] (the “Generator”)  
[Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – BMRP DISPUTE NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 4.1 of Part A of Annex 4 (*BMRP*).
3. This is a BMRP [Annual Review]/[Principles Review] Dispute Notice.
4. The subject matter of the Dispute is [●]. The issues to be resolved are [●].
5. The relevant [Condition]/[paragraph] to which the Dispute relates is [●].
6. We believe the correct position is [●]. Our reasons for believing this is the correct position are [●].
7. ***[We intend to rely on the following Supporting Information, copies of which are provided: [●].]***
8. The [relief]/[determination]/[remedy]/[recourse] which we seek in relation to the Dispute is [●].

Yours faithfully,

.....  
For and on behalf of  
the **Generator**

**Part III**  
**BMRP Dispute Validity Notice**

**To:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**From:** [●] (the “CfD Counterparty”)  
 [Address]

**Dated:** [●]

**INVESTMENT CONTRACT – BMRP DISPUTE VALIDITY NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 4.3 of Part A of Annex 4 (*BMRP*).
3. This is a BMRP Dispute Validity Notice in relation to the BMRP Dispute Notice dated [●].
4. The BMRP Dispute Threshold Criterion has been met.
5. We propose that the Proposed BMRP Expert appointed be [●]. We propose that [s]he be appointed on the following terms: [●]. We believe that the Proposed BMRP Expert has the relevant expertise which qualifies [him]/[her] to determine the relevant BMRP Dispute for the following reasons: [●].
6. We enclose a Consolidation Notice in relation to the BMRP Dispute.

Yours faithfully,

.....  
 For and on behalf of  
 the **CfD Counterparty**

**Part JJJ**  
**IMRP Principles Request Notice**

**To:** [●] (the “CfD Counterparty”)  
 [Address]

**From:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – IMRP PRINCIPLES REQUEST NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.2 of Part A of Annex 5 (*IMRP*).
3. This is an IMRP Principles Request Notice.
4. We believe the calculation of the Intermittent Market Reference Price does not comply with the following IMRP Principle[s]: [●].
5. ***[We propose that the non-compliance with the IMRP Principle[s] should be addressed as follows: [●].]***
6. We enclose the following Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the matters in paragraph[s] 4 ***[and 5]*** above.

Yours faithfully,

.....  
 For and on behalf of  
 the **Generator**

**Part KKK**  
**IMRP Principles Request Validity Notice**

**To:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**From:** [●] (the “CfD Counterparty”)  
 [Address]

**Dated:** [●]

**INVESTMENT CONTRACT – IMRP PRINCIPLES REQUEST VALIDITY NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.5 of Part A of Annex 5 (*IMRP*).
3. This is an IMRP Principles Request Validity Notice.
4. The IMRP Principles Request Criterion has been met.

Yours faithfully,

.....  
 For and on behalf of  
 the **CfD Counterparty**

**Part LLL**  
**IMRP Principles Review Notice**

**To:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**From:** [●] (the “CfD Counterparty”)  
 [Address]

**Dated:** [●]

**INVESTMENT CONTRACT – IMRP PRINCIPLES REVIEW NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.8 of Part A of Annex 5 (*IMRP*).
3. This is an IMRP Principles Review Notice.
4. The following IMRP Principles Review Trigger has occurred: [●].
5. The IMRP Principles Review Response Deadline is: [●].

Yours faithfully,

.....  
 For and on behalf of  
 the **CfD Counterparty**



**Part MMM**  
**IMRP Principles Review Response Notice**

**To:** [●] (the “CfD Counterparty”)  
 [Address]

**From:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – IMRP PRINCIPLES REVIEW RESPONSE NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.9 of Part A of Annex 5 (*IMRP*).
3. This is an IMRP Principles Review Response Notice in response to the IMRP Principles Review Notice dated [●].
4. We enclose the following Supporting Information which we wish you to take account of in undertaking the IMRP Principles Review.
5. ***[We propose that the IMRP Principles Review Trigger should be addressed as follows: [●].]***

Yours faithfully,

.....  
 For and on behalf of  
 the **Generator**

**Part NNN**  
**IMRP Principles Review Outcome Notice**

**To:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**From:** [●] (the “CfD Counterparty”)  
 [Address]

**Dated:** [●]

**INVESTMENT CONTRACT – IMRP PRINCIPLES REVIEW OUTCOME NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.12 of Part A of Annex 5 (*IMRP*).
3. This is an IMRP Principles Review Outcome Notice.
4. We enclose a summary of the outcome of the IMRP Principles Review. *[The IMRP Principles Review Proposals are as follows: [●].]*
5. *[We enclose a summary of the reasons for determining that it is not possible to effect any IMRP Mechanism Amendment (or combination of IMRP Mechanism Amendments) in a manner which complies with all of the IMRP Principles. We consider that the following IMRP Principles will be complied with by virtue of the IMRP Mechanism Amendments being effected: [●].]*
6. The IMRP Principles Review Implementation Date is: [●].

Yours faithfully,

.....  
 For and on behalf of  
 the **CfD Counterparty**

**Part 000**  
**IMRP Dispute Notice**

**To:** [●] (the “CfD Counterparty”)  
[Address]

**From:** [●] (the “Generator”)  
[Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – IMRP DISPUTE NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.1 of Part A of Annex 5 (*IMRP*).
3. This is an IMRP Dispute Notice.
4. The subject matter of the Dispute is [●]. The issues to be resolved are [●].
5. The relevant [Condition][paragraph] to which the Dispute relates is [●].
6. We believe the correct position is [●]. Our reasons for believing this is the correct position are [●].
7. ***[We intend to rely on the following Supporting Information, copies of which are provided: [●].]***
8. ***The [relief]/[determination]/[remedy]/[recourse] which we seek in relation to the Dispute is [●].***

Yours faithfully,

.....  
For and on behalf of  
the **Generator**

**Part PPP**  
**IMRP Dispute Validity Notice**

**To:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**From:** [●] (the “CfD Counterparty”)  
 [Address]

**Dated:** [●]

**INVESTMENT CONTRACT – IMRP DISPUTE VALIDITY NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.3 of Part A of Annex 5 (*IMRP*).
3. This is an IMRP Dispute Validity Notice in relation to the IMRP Dispute Notice dated [●].
4. The IMRP Dispute Threshold Criterion has been met.
5. We propose that the Proposed IMRP Expert appointed be [●]. We propose that [s]he be appointed on the following terms: [●]. We believe that the Proposed IMRP Expert has the relevant expertise which qualifies [him]/[her] to determine the relevant IMRP Dispute for the following reasons: [●].
6. We enclose a Consolidation Notice in relation to the IMRP Dispute.

Yours faithfully,

.....  
 For and on behalf of  
 the **CfD Counterparty**

**Part QQQ**  
**FMS Proposals Notice**

**To:** [●] (the “CfD Counterparty”)  
 [Address]

**From:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**Dated:** [●]

**INVESTMENT CONTRACT – FMS PROPOSALS NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.1 of Part A of Annex 7 (*FMS arrangements and RQM Calculation Methodology*).
3. This is an FMS Proposals Notice.
4. ***[We consider that we (and the Facility) will or are reasonably likely to comply with the FMS Exemption Criteria.]***
5. Our Generator FMS Proposals ***[(including our proposals in respect of FMS Exempted Procedures)]*** are as follows: [●].

Yours faithfully,

.....  
 For and on behalf of  
 the **Generator**

**Part RRR**  
**FMS Proposals Response Notice**

**To:** [●] (the “Generator”)  
*[Unique reference number: [●]]*

**From:** [●] (the “CfD Counterparty”)  
*[Address]*

**Dated:** [●]

**INVESTMENT CONTRACT – FMS PROPOSALS RESPONSE NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.4 of Part A of Annex 7 (*FMS arrangements and RQM Calculation Methodology*).
3. This is an FMS Proposals Response Notice.
4. We **[do not]** consent to the Generator FMS Proposals set out in the FMS Proposals Notice dated [●]. ***[Our reasons for not consenting to the Generator FMS Proposals are as follows: [●].]***
5. ***[We have not been provided with sufficient Supporting Information to determine whether to consent to the Generator FMS Proposals [and we therefore request the following FMS Proposals Supporting Information: [●].]]***

Yours faithfully,

.....  
 For and on behalf of  
 the **CfD Counterparty**

**Part SSS**  
**FMS Audit Notice**

**To:** [●] (the “Generator”)  
[Unique reference number: [●]]

**From:** [●] (the “CfD Counterparty”)  
[Address]

**Dated:** [●]

**INVESTMENT CONTRACT – FMS AUDIT NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 3.2 of Part A of Annex 7 (*FMS arrangements and RQM Calculation Methodology*).
3. This is an FMS Audit Notice.
4. We [*intend*]/[*nominate* [●]] to exercise the FMS Audit Right.
5. The date by which you must, in accordance with paragraph 3.3 of Part A of Annex 7 (*FMS arrangements and RQM Calculation Methodology*), permit the exercise of the FMS Audit Right is [●].

Yours faithfully,

.....  
For and on behalf of  
the **CfD Counterparty**

**Part TTT**  
**FMS Exemption Non-Compliance Notice**

**To:** [●] (the “Generator”)  
 [Unique reference number: [●]]

**From:** [●] (the “CfD Counterparty”)  
 [Address]

**Dated:** [●]

**INVESTMENT CONTRACT – FMS EXEMPTION NON-COMPLIANCE NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 4.3 of Part A of Annex 7 (*FMS arrangements and RQM Calculation Methodology*).
3. This is an FMS Exemption Non-Compliance Notice.
4. We have determined that [you]/[the Facility] are not complying with the FMS Exemption Criteria on the following basis: [●].
5. Our reasons for concluding that [you are]/[the Facility is] not complying with the FMS Exemption Criteria are as follows: [●].
6. We have determined that [you]/[the Facility] ceased to comply with the FMS Exemption Criteria from the following date: [●].

Yours faithfully,

.....  
 For and on behalf of  
 the **CfD Counterparty**



**Part UUU**  
**RWP Variation Notice**

**To:** [●] (the “Generator”)  
[Unique reference number: [●]]

**From:** [●] (the “CfD Counterparty”)  
[Address]

**Dated:** [●]

**INVESTMENT CONTRACT – RWP VARIATION NOTICE**

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 4.3 of Part B of Annex 7 (*FMS arrangements and RQM Calculation Methodology*).
3. This is a RWP Variation Notice.
4. The revised Relevant Waste Proportion is: [●].
5. The RWP Variation Effective Date is: [●].

Yours faithfully,

.....  
For and on behalf of  
the **CfD Counterparty**

## Part VVV

## State Aid Termination Notice

To: [●] (the “CfD Counterparty”)  
[Address]

From: [●] (the “Generator”)  
[Unique reference number: [●]]

Dated: [●]

## INVESTMENT CONTRACT – STATE AID TERMINATION NOTICE

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 49.3 of the Agreement.
3. This is a State Aid Termination Notice.
4. The date of this notice falls within August [2014] [2015] and as at this date the State Aid Condition Precedent has not been fulfilled.
5. We hereby give notice to terminate the Agreement under Condition 49.3 forthwith upon your receipt of this notice.

Yours faithfully,

.....

For and on behalf of

the **Generator**

## Part WWW

## Supplier Obligation Termination Notice

To: [●] (the “CfD Counterparty”)  
[Address]

From: [●] (the “Generator”)  
[Unique reference number: [●]]

Dated: [●]

## INVESTMENT CONTRACT – SUPPLIER OBLIGATION TERMINATION NOTICE

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 49.5 of the Agreement.
3. This is a Supplier Obligation Termination Notice.
4. The date of this notice falls within ten (10) Business Days after the date on which the Supplier Obligation Regulations that have been laid before both Houses of Parliament were first published on the website <http://www.legislation.gov.uk>.
5. We hereby give notice to terminate the Agreement under Condition 49.5 on [●].
6. The differences set out in paragraph 7 below would cause our commercial position under the Agreement to be materially worse than it would have been but for those differences.
7. ***[The differences between (i) the content of the final version of the Supplier Obligation Regulations; and (ii) the content which we reasonably anticipated, on the Agreement Date and on the basis of the Supplier Obligation Consultation Document, the Supplier Obligation Regulations would have had, are as follows:]***

Yours faithfully,

.....

For and on behalf of

the **Generator**