

ANNEX [X]

INDUSTRIAL CARBON CAPTURE AGREEMENT

Note: this Annex is subject to the "Disclaimer" section at the front of the update document to which it is annexed.

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INTRODUCTORY NOTES

This document is a preliminary and indicative draft of the "front-end" of the Industrial Carbon Capture ("**ICC**") Contract (the "**ICC Agreement**"). It provides a framework of the principal terms and conditions that will or are expected to be included in the ICC Agreement. It does not constitute definitive drafting of the ICC Agreement's terms.

This document should be read in conjunction with the documents '**An update on business models for Carbon Capture, Usage and Storage**', December 2020 ("**Main Document**"), '**An update on the business model for Industrial Carbon Capture**', May 2021 ("**May Update Document**") and '**An update on the business model for Industrial Carbon Capture**', October 2021 ("**October Update Document**") and the ICC Contract Heads of Terms dated October 2021.

This document does not indicate any willingness or agreement on the part of the Department for Business, Energy & Industrial Strategy ("**BEIS**") to enter into, or procure entry into, the ICC Agreement. This document does not constitute an offer and is not capable of acceptance.

In connection with the above, given this document is preliminary and indicative only, the provisions set out herein are subject to further consideration and development by BEIS. Those provisions and terms which require particular consideration and development (including where BEIS is yet to make decisions relating to policy matters, commercial issues, risk allocation and the allocation of the ICC Agreement) have been square bracketed (with footnotes) in this document. BEIS reserves the right to review and amend these square bracketed provisions and all other provisions set out in this document.

THIS ICC AGREEMENT is dated
made between:

(the "**Agreement Date**") and

- (1) [●], a company incorporated under the laws of [●] whose registered office is [●] and whose company number is [●] (the "**Emitter**"); and
- (2) [●]¹ (the "**ICC Contract Counterparty**").

BACKGROUND

- (A) This ICC Agreement has been entered into following the [applicable contract allocation or negotiation process established under or by virtue of [●]].²
- (B) The Emitter has satisfied the Eligibility Criteria³.
- (C) The ICC Contract Counterparty is [●]⁴ and has entered into this ICC Agreement solely for the purpose of implementing the provisions of the [●].⁵
- (D) This ICC Agreement, together with the terms and conditions set out in version [●] of the document entitled "ICC Contract Standard Terms and Conditions" as at [insert date] (the "**Conditions**"), constitute an agreement entered into on "standard terms" (as defined in [●] of [●]).⁶

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Except as expressly specified in this ICC Agreement, words and expressions defined in the Conditions shall have the same meanings when used in this ICC Agreement. Where a term is defined in both this ICC Agreement and in the Conditions, the definition in this ICC Agreement shall apply instead of the definition in the Conditions.

1.2 In this ICC Agreement and its recitals:

[●]⁷

2. AGREEMENT

The Emitter

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

The ICC Contract Counterparty

2.2 The ICC Contract Counterparty shall, as from the Agreement Date, comply with this ICC Agreement (including the Conditions) as the "**ICC Contract Counterparty**" and agrees

¹ Drafting note: counterparty details to be confirmed.

² Drafting note: the method of allocating the ICC Contract remains to be confirmed.

³ Drafting note: term to be defined.

⁴ Drafting note: counterparty description to be added.

⁵ Drafting note: relevant legislation to be confirmed.

⁶ Drafting note: relevant legislation to be confirmed.

⁷ Drafting note: relevant definitions to be inserted.

that the Conditions are hereby incorporated into this ICC Agreement as if they were clauses of this ICC Agreement.

Modifications

2.3 *The Parties agree to amend the Conditions as set out in Annex [2] (Modification Agreement).*

2.4 *Without prejudice to clause 2.6, the Emitter shall, on or around the Agreement Date, enter into a subcontract with CaaS Co (the "**CaaS Co Subcontract**") to provide the services set out in Annex [3] (CaaS Co Scope of Services), which shall, as a minimum, satisfy the requirements of the checklist set out in Annex [4] (CaaS Co Subcontract Checklist).*

2.5 *The Emitter shall perform its obligations under, and observe all of the provisions of, the CaaS Co Subcontract, and shall not:*

- (a) make or agree to make any [material] amendment, alteration or variation to such CaaS Co Subcontract;*
- (b) in any [material] respect depart from its obligations (or waive or allow to lapse any rights it may have in a [material] respect), or allow CaaS Co to depart from its obligations in any [material] respect;*
- (c) enter into any agreement replacing all or part of (or otherwise [materially and] adversely affecting the interpretation of) such CaaS Co Subcontract;*
- (d) terminate or agree to the termination of all or part of such CaaS Co Subcontract;*
- (e) agree to the novation or transfer of the CaaS Co Subcontract to a new entity; or*
- (f) enter into any new CaaS Co Subcontract,*

without first obtaining the ICC Contract Counterparty's prior written consent to such course of action (such consent not to be unreasonably withheld).

2.6 *Notwithstanding clause 2.4, the Emitter shall:*

- (a) be primarily responsible and liable in accordance with the terms of this ICC Agreement for all acts and omissions of CaaS Co as fully as if they were the acts and omissions of the Emitter, its officers, employees or agents, including (but not limited to) those acts and omissions that are carried out by CaaS Co in connection with the CaaS Co Subcontract, and the Emitter shall not be relieved from any liability or obligation under this ICC Agreement in respect of any such acts and omissions; and*
- (b) procure compliance by CaaS Co with the obligations that CaaS Co is responsible for discharging pursuant to the CaaS Co Subcontract including (but not limited to) those obligations which the Emitter is primarily responsible and liable for discharging under this ICC Agreement and which the Emitter has been required to pass down to CaaS Co in accordance with Annex [4] (CaaS Co Subcontract Checklist).*

2.7 *The ICC Contract Counterparty:*

- (a) acknowledges that the Emitter will enter into the CaaS Co Subcontract; and*
- (b) agrees that, without prejudice to clause 2.6(a), in respect of any obligation, undertaking or liability of or to be given by the Emitter in this ICC Agreement that cannot be fulfilled or discharged by the Emitter, the ICC Contract Counterparty shall accept the fulfilment or discharge of such obligation, undertaking or liability by or on behalf of CaaS Co.*

2.8 The Parties agree that for the purposes of this ICC Agreement, the Conditions shall be amended, modified, supplemented or replaced in accordance with the terms of this ICC Agreement.

3. **TERM**

Subject to Condition [●] (Extension of the Term) of the Conditions⁸, the "**Specified Expiry Date**" applicable to this ICC Agreement is the tenth (10th) anniversary of the earlier of the Start Date and the last day of the Target Commissioning Window.

4. **TECHNOLOGY TYPE⁹**

4.1 The [Industrial Technology]¹⁰ applicable to this ICC Agreement is [●].

4.2 The Installation Capture Technology applicable to this ICC Agreement is [●].

5. **CONDITIONS PRECEDENT AND MILESTONE**

Interpretation

5.1 The "**Initial Target Commissioning Window**" applicable to this ICC Agreement shall be [twelve (12)] months, with such period commencing on [●].

5.2 The "**Target Commissioning Date**" applicable to this ICC Agreement shall be [●].¹¹

5.3 The "**Longstop Period**" applicable to this ICC Agreement shall be [twelve (12)] months or such longer period that results from an extension in accordance with the definition of "**Longstop Date**".

Operational Conditions Precedent

5.4 The following shall be added as additional Operational Conditions Precedent applicable to this ICC Agreement after paragraph [5] of Part B (*Operational Conditions Precedent*) of Schedule 2 (*Conditions Precedent*) to the Conditions:

"[6] [●]."¹²

Milestone

5.5 The "**Initial Milestone Delivery Date**" applicable to this ICC Agreement shall be [eighteen (18)]¹³ months after the Agreement Date.

5.6 The "**Total Project Pre-Commissioning Costs**" applicable to this ICC Agreement shall be £[●].

5.7 The "**Project Commitments**" applicable to this ICC Agreement shall be the requirements provided for in [●].¹⁴

⁸ Drafting note: Please refer to the October Update Document in respect of BEIS' proposals relating to the extension of the term of the ICC Contract after the 10th year of the contract.

⁹ Drafting note: BEIS is considering whether any other project-specific information should be added to this section (e.g. Fuelling Criteria, Sustainability Criteria etc.).

¹⁰ Drafting note: term to be defined.

¹¹ Drafting note: This shall be a date falling within the Initial Target Commissioning Window.

¹² Drafting note: BEIS is considering whether any other Operational Conditions Precedent may be required.

¹³ Drafting note: Delete as applicable.

¹⁴ Drafting note: Project Commitments are still to be confirmed.

6. **PAYMENT CALCULATIONS**

6.1 The "**Base Year**" applicable to this ICC Agreement is 20[●].

6.2 The "**CO2 Capture Rate Estimate**" applicable to this ICC Agreement is [●].¹⁵

6.3 The "**CO₂ Capture Volume Estimate**" applicable to this ICC Agreement is [●].¹⁶

6.4 [●]¹⁷

7. **NOTICES**

7.1 The address and email address of each Party for any notice to be given under this ICC Agreement, and the department or office (if any) for whose attention the notice is to be made, is:

(a) in the case of the Emitter:

Address:	
Email address:	
For the attention of:	

(b) in the case of the ICC Contract Counterparty:

Address:	
Email address:	
For the attention of:	

8. **AGENT FOR SERVICE OF PROCESS**

[Condition [●] (*Agent for service of process*) shall not apply to this ICC Agreement and there shall be no Service Agent.]/[Condition [●] (*Agent for service of process*) shall apply to this ICC Agreement and the Service Agent shall be [●] of [●].]¹⁸

¹⁵ Drafting note: This will be the estimated capture rate that the Emitter specifies as part of the Phase-2 Cluster Sequencing Process.

¹⁶ Drafting note: This will be the estimated capture volume that the Emitter specifies as part of the Phase-2 Cluster Sequencing Process.

¹⁷ Drafting note: Other variables will need to be added to this section when the payment mechanics are finalised.

¹⁸ Drafting note: Delete as applicable.

ANNEX 1

(Description of the Installation)

The Installation is the [NAME OF PROJECT], falling within the area delineated by the following grid references:

Corner Point ID	Latitude	Longitude
Northerly corner	[●]	[●]
Easterly corner	[●]	[●]
Southerly corner	[●]	[●]
Westerly corner	[●]	[●]

[Drafting note: A description of the Installation will be populated using information provided in the relevant contract allocation process and will include the unique geographical coordinates of the Installation. BEIS is considering whether any further details relating to the Installation will need to be set out in this section.]

ANNEX 2

(Modification Agreement)¹⁹

1. DEFINITIONS AND INTERPRETATION

[See discussion below in respect of proposed definition changes. Definitions to be reviewed further to identify any other minor amendments that are required to reflect CaaS Co arrangements].

2. TERMINATION

[The definitions of "QCiL Construction Event" and "QCiL Operations Cessation Event" will need to be amended to refer to the shutdown of a Capture Plant owned / operated by a CaaS Co. The shutdown compensation provisions for CaaS Co projects will need to be amended i) so that compensation is paid pro-rata to the relevant Emitter's share of the overall capacity of the CaaS Co Capture Plant (with the precise details for calculating such compensation still to be confirmed), and ii) in light of the award of and interaction with the Grant Funding Agreement (which is still being developed by BEIS).]

3. TERMINATION EVENTS

[The following additional default termination events are being considered for inclusion in the Conditions for CaaS Co projects. However, BEIS is minded to give an Emitter the opportunity to cure certain of these events to avoid termination (e.g. by replacing the relevant CaaS Co, if possible):

- (a) CaaS Co insolvency (clause 4(a) of the HoTs);*
- (b) CaaS Co breach of key obligations (clause 4(c) of the HoTs); and*
- (c) termination of the CaaS Co Subcontract.*

The specific cure rights that will be offered to Emitters is subject to further consideration by BEIS.]

4. CONSEQUENCES OF TERMINATION

[Compensation on termination formulae (once developed for non-CaaS Co projects) will need to be considered in relation to CaaS Co arrangements.]

5. CONDITIONS PRECEDENT

[This will need to be kept under review as the Conditions Precedent are developed/defined. However, BEIS is minded to extend certain CPs to CaaS Co, e.g. Initial CPs such as a legal opinion and KYC information relating to CaaS Co, evidence that CaaS Co has entered into certain Key Project Documents relating to the Capture Plant and evidence that CaaS Co satisfies certain Eligibility Requirements. The provision of a CaaS Co Subcontract which satisfies the requirements of the CaaS Co Subcontract Checklist is likely to be included as an additional Initial CP.]

¹⁹ Drafting note: The following potential amendments/additions to the Conditions to reflect CaaS Co arrangements will need to be kept under review as the ICC Contract is developed further. References to amendments that will need to be made to certain clauses of the ICC Contract HoTs should be read as amendments that will ultimately need to be made to the Conditions.

6. **MILESTONE REQUIREMENT**

[This will need to be kept under review as the Milestone Requirement is developed/defined. However, BEIS' initial views are that this may need to be adapted for CaaS Co arrangements if it is CaaS Co who is responsible for satisfying the requirement in practice.]

7. **CO2 CAPTURE RATE METERING DATA**

[BEIS' initial views are that specific changes will not be required to clause 9 of the HoTs on the basis that, as set out in clause 2.6(b) of this ICC Agreement, an Emitter is required to "procure compliance by CaaS Co with the obligations it is responsible for discharging pursuant to the CaaS Co Subcontract". However, this point remains subject to further review by BEIS.]

8. **CAPEX PAYMENT AND OPEX PAYMENT**

[To be kept under review as payment mechanics develop, noting that BEIS may wish to ensure that there are specific obligations for Emitters to pass through certain payments to CaaS Co, e.g. capex, opex and T&S fees which CaaS Co incurs or is liable to pay.]

9. **EMITTER'S REPRESENTATIONS AND WARRANTIES**

[The following amendments are proposed to clause 14 of the HoTs:

- (a) amend the definition of "Required Authorisation" (referred to in clause 14.1(e) of the HoTs) to refer to any licence, consent etc. that CaaS Co requires to carry out its obligations under the CaaS Co Subcontract; and*
- (b) amend clause 14.2(a) of the HoTs to confirm that CaaS Co is the legal and beneficial owner of the Capture Plant (where relevant); and*
- (c) add an additional Emitter representation and warranty in respect of the other aspects of this clause of the HoTs, which Emitters will be required to make on behalf of CaaS Co to the best of their knowledge and belief.]*

10. **EMITTER'S UNDERTAKINGS: GENERAL**

[The following amendments are proposed to clause 16 of the HoTs:

- (a) amend clause 16.1(g) of the HoTs so that an Emitter is required to undertake to provide the ICC Contract Counterparty with information regarding compliance by CaaS Co with the CaaS Co Subcontract (including notice of any default by CaaS Co); and*
- (b) add a new sub-clause to the HoTs requiring an Emitter to undertake to enforce its rights under the CaaS Co Subcontract to ensure that CaaS Co remains the legal and beneficial owner of the Capture Plant (where relevant, see clause 16.1(e)).]*

11. **EMITTER'S UNDERTAKINGS: METERING**

[BEIS' initial views are that specific changes will not be required to clause 17.1 of the HoTs on the basis that, as set out in clause 2.6(b) of this ICC Agreement, an Emitter is required to "procure compliance by CaaS Co with the obligations it is responsible for discharging pursuant to the CaaS Co Subcontract". However, this point remains subject to further review by BEIS.]

12. **EMITTER'S UNDERTAKINGS: INFORMATION PROVISION**

[The following amendments are proposed to clause 18 of the HoTs:

- (a) *clause 18.1(e) of the HoTs to be amended so that an Emitter is also required to provide information regarding the financial condition, business and operations of CaaS Co;*
- (b) *clause 18.1(h) of the HoTs to be amended so that an Emitter is also required to provide information regarding any litigation, proceedings, etc. against CaaS Co which could have a material adverse impact on CaaS Co's ability to comply with its obligations under the CaaS Co Subcontract; and*
- (c) *clause 18.2(b) of the HoTs to be amended so that an Emitter is required to ensure that any information it provides relating to CaaS Co is true, complete and accurate in all material respects and not misleading, to the best of the Emitter's knowledge and belief].*

13. **QUALIFYING CHANGE IN LAW**

[The following amendments are proposed to the QCiL provisions in the HoTs:

- (a) *a new limb will be added to the definition of "Discriminatory Change in Law" to capture laws that specifically apply to the relevant CaaS Co;*
- (b) *limb (a) of the definition of "Specific Change in Law" will be amended to state "or the CO2 Capture Technology forming part of **or permanently connected to** such industrial installations ...";*
- (c) *the introductory wording in the "Other Change in Law" definition should be amended to state "... discriminatory effect on the out-of-pocket costs incurred or saved by the Emitter or the Project **or CaaS Co** ...", with an equivalent amendment made to limb (b) of such definition; and*
- (d) *the QCiL compensation formulae (once developed) will need to be amended so that, for QCiLs which impact a CaaS Co's Capture Plant i) compensation is paid pro-rata to the relevant Emitter's share of the overall capacity of the CaaS Co Capture Plant (with the precise details for calculating such compensation still to be confirmed) and ii) such compensation is subject to the "no double-recovery" provisions of the ICC Contract (clause 29.1(c) of the HoTs) in respect of any other compensation received by the relevant CaaS Co.]*

14. **CHANGE IN APPLICABLE LAW**

14.1 *[The Change in Applicable Law provisions of the HoTs will be amended as follows:*

- (a) *the "Required CiL Amendment Objectives" will extend to circumstances where a provision of the CaaS Co Subcontract which has been passed down from the ICC Contract is rendered illegal, invalid, unenforceable or inoperable; and*
- (b) *an Emitter will be required to vary a CaaS Co Subcontract to ensure that it is aligned with any provisions of the ICC Contract which are varied through the Change in Applicable Law mechanics, to the extent that such provisions are required to be passed down to the CaaS Co Subcontract].*

15. **FORCE MAJEURE**

[Definition of "Force Majeure" to be amended to include events which impact the Capture Plant being constructed and/or operated by CaaS Co (subject to the relevant exemptions in the definition)].

16. **CONFIDENTIALITY**

[Clause 24.4 (ICC Contract Counterparty Confidential Information) to be amended so that an Emitter is permitted to disclose ICC Contract Counterparty Confidential Information to CaaS Co, subject to CaaS Co being subject to equivalent confidentiality obligations].

17. **FREEDOM OF INFORMATION**

[Clause 26 (Freedom of Information) of the HoTs to be amended to require an Emitter to obtain/produce any information that CaaS Co holds which is subject to an FoIA and/or EIR request (which can apply in respect of private law contractual arrangements).]

18. **INTELLECTUAL PROPERTY RIGHTS**

[Clause 27 (Intellectual Property Rights) of the HoTs will be amended to require the grant of CaaS Co IPR to the ICC Contract Counterparty for the same permitted purposes and on the same terms as Emitter IPR.]

19. **DISPUTE RESOLUTION PROCEDURE**

[Clause 28.5 (Consolidation of Connected Disputes) of the HoTs to be amended to recognise that a dispute arising under a CaaS Co Subcontract can be deemed a "Connected Dispute" which an Expert or Arbitral Tribunal can consolidate with a dispute under the ICC Contract.]

20. **LIMITED RECOURSE, UNDERTAKINGS AND ACKNOWLEDGEMENTS**

[Modifications to clause 30 of the HoTs will need to be considered further when BEIS completes its analysis of the spending powers that will be used to fund ICC Contracts.]

21. **GENERAL PROVISIONS**

21.1 *[Clause 31.1 (Assignment) of the HoTs to record the ICC Contract Counterparty's consent to the assignment by the Emitter of certain rights and benefits, and the transfer of certain obligations, under the ICC Contract to CaaS Co.]*

21.2 *[The template lender direct agreement which will be annexed to the ICC Contract (which is referred to in Clause 31.2 of the HoTs) will need to be amended so that, as a condition to any novation of the ICC Contract to a substitute Emitter following lender step-in, the CaaS Co Subcontract is also transferred to that substitute Emitter.]*

21.3 *[Clause 31.3 of the HoTs will be amended so that an Emitter is required to vary a CaaS Co Subcontract where an ICC Contract provision which is identified in the CaaS Co checklist is varied.]*

ANNEX 3

(CaaS Co Scope of Services)

[Drafting note: If applicable, insert detailed scope of services as agreed between CaaS Co and the Emitter and accepted/acknowledged by the ICC Contract Counterparty. Delete if not applicable.]

ANNEX 4

(CaaS Co Subcontract Checklist)

[Drafting note: If applicable, insert key terms that BEIS requires to be included in the subcontract between the Emitter and CaaS Co. Delete if not applicable.]

ANNEX 5

([Fuelling Criteria])

[Drafting note: The concept of Fuelling Criteria, which is linked to the Renewable Qualifying Multiplier, is not currently included in the ICC Contract HoTs. There may be an equivalent concept in the ICC Agreement – payment calculations are TBC.]

EXECUTION PAGE

The EMITTER

SIGNED BY)
)
)
) (Signature of named signatory)

.....

Print name
For and on behalf of [*name of
the Emitter*]

The ICC CONTRACT COUNTERPARTY

SIGNED BY)
)
)
) (Signature of named signatory)

.....

Print name
For and on behalf of [*name of
the ICC Contract Counterparty*]