

ANNEX [X]

INDUSTRIAL CARBON CAPTURE CONTRACT: HEADS OF TERMS

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

These Heads of Terms are preliminary and indicative draft terms for the Industrial Carbon Capture ("**ICC**") Contract ("**Agreement**"). They provide a framework of the principal terms and conditions that will or are expected to be included in the Agreement. These Heads of Terms do not constitute definitive drafting of the Agreement's terms.

These Heads of Terms 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**").

These Heads of Terms do 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 Agreement. These Heads of Terms do not constitute an offer and are not capable of acceptance.

In connection with the above, given the Heads of Terms are preliminary and indicative only, the provisions set out therein 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 Agreement) have been square bracketed (with footnotes) in the Heads of Terms. BEIS reserves the right to review and amend these square bracketed provisions, and all other provisions set out in the Heads of Terms. Amendments to the Heads of Terms that may be required for CHP emitters are still being considered.

PARTIES

The ICC Contract (Agreement) will be executed and delivered by the **Emitter** and the **ICC Contract Counterparty**.¹

BACKGROUND

- (A) The Agreement will be entered into following the [applicable negotiation process established pursuant to [●]].²
- (B) Prior to execution of the Agreement, the Emitter will have satisfied [the eligibility criteria].³
- (C) The Agreement is a private law, commercial contract made between the Parties and will be subject to private law remedies.

¹ Note to Reader: The contractual framework relating to the decision making of the ICC Contract Counterparty is subject to further review by BEIS.

² Note to Reader: BEIS is currently finalising its approach relating to the method of allocating and the powers for funding the ICC Contract, both of which will be confirmed in due course.

³ Note to Reader: For a further discussion on the initial eligibility criteria, please refer to pages 36-40 of the document 'Cluster Sequencing for Carbon Capture Usage and Storage Deployment: Phase 1', May 2021 ("Cluster Sequencing Guidance") and the October Update Document.

PART 1 DEFINITIONS AND INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In the Agreement:

"Achieved CO₂ Capture Rate" means the CO₂ Capture Rate during the relevant Billing Period and/or Settlement Unit (as applicable) calculated in accordance with paragraph 3 (Calculation of Supporting Formulae) of schedule 3 (Capex Payment Calculation);]

"Achieved CO₂ Capture Volume" means the CO₂ capture volume (*expressed in tCO₂*) for the Installation during the relevant Billing Period calculated in accordance with paragraph 3 (Calculation of Supporting Formulae) of schedule 3 (Capex Payment Calculation);⁴

"Adjusted Capture Period" means a period during the Term in which the Achieved CO₂ Capture Rate and Achieved CO₂ Capture Volume of the Installation are reduced or increased as a direct result of a Qualifying Change in Law;

"Aggregate Opex Value" means an amount equal to the sum of the [opex component of the] Strike Price, the T&S Volumetric Fee (*expressed in £/tCO₂*) and the T&S Capacity Fee (*expressed in £*) [*over any defined period of time*];⁵

"Annual Extension Conditions" has the meaning given to that term in clause 2.3(e) (Extension);

"Annual Extension Conditions Certificate" has the meaning given to that term in clause 2.3(e) (Extension);

"Arbitral Award" has the meaning given to that term in clause 26.4 (Arbitration);

"Arbitral Tribunal" has the meaning given to that term in the LCIA Arbitration Rules;

"Arbitrator" means any person to whom a Dispute is referred for resolution by arbitration in accordance with the Dispute Resolution Procedure;

"Audit" has the meaning given to that term in clause 6.4 (Right to Audit);

"Authority" means the Gas and Electricity Markets Authority that is established under Section 1 of the Utilities Act 2000;

"Billing Period" means the CP Billing Period or the OP Billing Period (as applicable);

"Billing Statements" means the Capex Payment Billing Statement or the Opex Payment Billing Statement (as applicable);

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

"Calculated CO₂ Generated" means the mass quantity of CO₂ (*expressed in tCO₂*) generated by the Installation, based upon [●] during the relevant Billing Period, converted to an equivalent mass quantity of CO₂ based upon an oxidation factor of 1.0 for fuel consumed by the Installation as per the guidelines set out in "Joint Environmental Programme, Guidance for the Monitoring and Reporting of CO₂ Emissions from Power

⁴ Note to Reader: Drafting will need to be included in the full-form ICC Contract to pro-rate capture volumes for certain periods.

⁵ Note to Reader: T&S fees and payment mechanics will need to be considered further by BEIS.

Stations, EUETS Phase 2", together with CO₂ generated from the chemical conversion of feedstock to products within the Installation, based on the design performance of the Installation in accordance with documented material balance data;

"Capex Due Date" has the meaning given to that term in clause 13.1 (Due Date for Payment);

"Capex Payment" means the payment calculated in accordance with schedule 3 (Capex Payment Calculations) to be made by the ICC Contract Counterparty to the Emitter in the circumstances set out in clause 10 (Capex Payment);

"Capex Payment Billing Period" means a Month, except that the first CP Billing Period shall commence on the Start Date and end on the last day of the Month in which the Start Date occurs and the last CP Billing Period shall commence on the first day of the last Month of the Initial Capex Payment Period or the Initial Term (as applicable) and end on the last day of the Initial Capex Payment Period or the Initial Term (as applicable), and **"CP Billing Period"** shall be construed accordingly;

"Capex Payment Billing Statement" has the meaning given to that term in clause 12 (Capex Payment Billing Statement);

"Capture Plant"⁶ means the part of the Installation described in schedule 1 (The Installation), which:

- (a) is capable of capturing, monitoring, metering and exporting CO₂ produced by the Industrial Installation which complies with the Captured Carbon Dioxide Quality Standards; and
- (b) includes all associated infrastructure required to integrate such installation within the Project;

"Capture Plant Delivery Points" means the point(s) of connection of the Installation to the Capture Plant to be identified on a plan which is annexed to the ICC Contract;]

"Capture Plant Metering Dispute" means a Dispute which relates to the metering of the CO₂ that is delivered by the Installation to the Capture Plant;]

"Capture Plant Metering Equipment" means [●];]

"Capture Plant Metering Obligation" means the obligation of the Emitter under clause 17 (Emitter's Undertaking: Metering);]

"Capture Plant Metering Specification" has the meaning given to that term in Part B of schedule 6 (Capture Plant Metering Specification);]

"Capture Plant Outage Event" means an event where the Capture Plant is declared to be unavailable, curtailed or derated in accordance with [*the declaration method to be determined*];

"Capture Plant Outage Relief Events" has the meaning given to that term in clause 9.7(a) (Capture Plant Outage Relief Events);

"Captured Carbon Dioxide Quality Standards" means [*the compositional limits (minimum percentage of CO₂ and maximum levels of a range of contaminants) that are*

⁶ Note to Reader: The definitions of "Capture Plant" and "Industrial Installation" may need to be adjusted if the Capture Plant is inherent to the cycle design of the Industrial Installation.

permissible for entry to the T&S Network, together with maximum and minimum entry pressure and maximum and minimum entry temperature, specified by the T&S Operator];⁷

"Carbon Price" [●];⁸

"CCUS Programme" means a programme to deploy a system comprising the following:

- (a) capturing CO₂ that has been produced by, or in connection with:
 - (i) commercial electricity generation;
 - (ii) commercial industrial processes; or
 - (iii) commercial hydrogen production;
- (b) transporting such CO₂ that has been captured; and
- (c) disposing of such CO₂ that has been captured, by way of permanent storage;

"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 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 date of the Agreement and save (in each case) to the extent that the Change in Law:

- (c) 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 Emitter or any of its Representatives;
- (d) arises out of, or in connection with, a failure by the Emitter or any of its Representatives to act in accordance with the Reasonable and Prudent Standard; or
- (e) represents no more than a continuous improvement or development of good practice which would be complied with in respect of an industrial installation deploying the CO₂ Capture Technology by an emitter acting in accordance with the Reasonable and Prudent Standard;⁹

"CiAL Dispute" has the meaning given to that term in clause 20.3 (CiAL Dispute);

⁷ Note to Reader: This definition is subject to further review by BEIS.

⁸ Note to Reader: This definition is subject to further review by BEIS.

⁹ Note to Reader: This definition is subject to further review by BEIS.

"CiAL Request Criterion" means [*the definition and procedure will be detailed in the full-form ICC Contract*];¹⁰

"CiAL Request Notice" has the meaning given to that term in clause 20.1(b) (CiAL Review);

"CiAL Review" means a review conducted by the ICC Contract Counterparty pursuant to clause 20.1 (CiAL Review) 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, in each case as a direct 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; and
- (b) as a consequence of one (1) or more of the Required CiL Amendment Objectives ceasing to be met, Required CiL Amendments are necessary;

"CiAL Review Outcome Notice" has the meaning given to that term in clause 20.2 (Notification of outcome of CiAL Review);

"CiAL Review Trigger" has the meaning given to that term in clause 20.1 (CiAL Review);

"Claimant" has the meaning given to that term in clause 26.3(b) (Expert Determination);

"CO₂" means carbon dioxide;

"CO₂ Capacity Test" means a test, as requested by the ICC Contract Counterparty at any time, to verify a Deemed CO₂ Capture Rate and/or Deemed CO₂ Capture Volume;

"CO₂ Capture Rate" means the CO₂ capture rate (*expressed as a percentage (%)*) for the Installation during [*the relevant period*] calculated in accordance with [●];

"CO₂ Capture Rate Estimate" means [*the Emitter's estimate of the CO₂ Capture Rate to be agreed between the Emitter and the ICC Contract Counterparty*];

"CO₂ Capture Rate Metering Data" means the Metering Data used in the calculation of the Achieved CO₂ Capture Rate in accordance with schedule 3 (Capex Payment Calculations);

"CO₂ Capture Volume" means the volume of CO₂ (*expressed in tCO₂*) for the Installation during [*the relevant period*] calculated in accordance with [●];

"CO₂ Capture Volume Estimate" means [*the Emitter's estimate of the Achieved CO₂ Capture Volume in all Billing Periods in a year based on the CO₂ Capture Rate Estimate, to be agreed between the Emitter and the ICC Contract Counterparty*] (*expressed in tCO₂*);¹¹

"CO₂ Capture Volume Metering Data" means the Metering Data used in the calculation of the Achieved CO₂ Capture Volume in accordance with schedule 3 (Capex Payment Calculations);

"CO₂ Capture Technology" means technology which [*is installed or implemented pursuant to the CCUS Programme*] and which:

¹⁰ Note to Reader: A specified threshold will trigger the requirement for the ICC Contract Counterparty to carry out a CiAL Review as was the case in the AR3 CfD. This will be detailed in the full ICC Contract.

¹¹ Note to Reader: Drafting will need to be included in the full-form ICC Contract to pro-rate capture volumes for certain periods.

- (a) captures [some or all of the] CO₂ [or any substance consisting primarily of CO₂]; and
- (b) temporarily stores, processes and exports CO₂ [(or any substance consisting primarily of CO₂)] [for permanent storage and disposal]; or
- (c) carries out any other process which is preparatory or ancillary to limbs (a) and (b) of this definition;

"CO₂ Data Recalculation Amount" has the meaning given to that term in clause 9.3(b)(ii) (Recalculations of Estimated CO₂ Data);

"CO₂ Delivery Points" means the point(s) of connection between the Capture Plant and the T&S Network [*or where CO₂ is transported from the Capture Plant to the T&S Network other than by pipeline, the point(s) of connection where such CO₂ first enters the T&S Network*], in each case as identified on a plan which is annexed to the ICC Contract;¹²

"CO₂ Flow Rate Estimate" means [the total instantaneous mass flow rate of CO₂ that the Emitter estimates will be delivered to the CO₂ Delivery Points by the Capture Plant (expressed in tonnes per day (tpd))];

"CO₂ Metered Cut-Off Time" means, in relation to each Billing Period, [*a time to be determined*] on [*a Business Day to be determined*] following such Billing Period;

"CO₂ Metering Data" means the CO₂ Capture Rate Metering Data and/or CO₂ Capture Volume Metering Data (as relevant);

"CO₂ Metering Dispute" means a Dispute which relates to the calculation of the Metered CO₂ Output in respect of a [Settlement Unit];

"CO₂ Metering Equipment" means the metering equipment which is required pursuant to the CO₂ Metering Specification to meter the Metered CO₂ Output and may include flow meters, composition analysers, associated communications equipment, and any other necessary ancillary equipment and infrastructure;

"CO₂ Metering Obligation" means the obligation of the Emitter under clause 17 (Emitter's Undertaking: Metering);

"CO₂ Metering Specification" has the meaning given to that term in Part A of schedule 6 (Metering Specification);

"CO₂ Reference Price Schedule" means the schedule set out in paragraph 4 of schedule 4 (Opex Payment Calculations);

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

"Commissioning Tests" means all of the procedures and tests (including performance tests) satisfactory to the ICC Contract Counterparty which, in accordance with the Reasonable and Prudent Standard, and in compliance with industry guidelines, practices and standards, are:

- (a) relevant to carbon capture installations [and integrated industrial systems that are required for carbon capture and storage] which are the same as, or of a similar type

¹² Note to Reader: BEIS is considering the impact of the inclusion of non-pipeline transportation on metering arrangements.

to, the Capture Plant (including those which are relevant to the Installation Capture Technology); and

- (b) required to be completed, followed or passed (as appropriate): (i) in order for a capturing facility [or integrated industrial systems of the type referred to in (a)] to capture and export CO₂ emissions; or (ii) to demonstrate that a capturing facility [or integrated industrial systems of the type referred to in (a)] is fit for commercial operation;¹³

"Competent Authority" means:

- (a) any national, federal, regional, state, local, 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 with jurisdiction in respect of the Installation, the Project and/or the ICC Contract,

and includes the Authority, the Economic Regulator, the Environment Agencies and the Secretary of State but excludes the ICC Contract Counterparty;

"Conditions Precedent" means the Initial Conditions Precedent and the Operational Conditions Precedent and **"Condition Precedent"** shall be construed accordingly;

"Confidential Information" means ICC Contract Counterparty Confidential Information and Emitter Confidential Information;

"Connected Disputes" has the meaning given to that term in clause 26.5 (Consolidation of Connected Disputes);

["Cost Data" means in respect of the Project:

- (d) all out-of-pocket costs which have been incurred by the Emitter relating to:
 - (i) pre-development;
 - (ii) regulatory and licensing;
 - (iii) engineering, procurement and construction (including mechanical, electrical and civil);
 - (iv) infrastructure; and
- (e) the Emitter's total capital expenditure;]¹⁴

"CP Fulfilment Notice" has the meaning given to that term in clause 6.2(b) (Fulfilment of Conditions Precedent);

"CPI" means:

- (a) the all items index of consumer price inflation published each month by the Office for National Statistics;

¹³ Note to Reader: BEIS is finalising further details relating to the commissioning tests it expects emitters to carry out.

¹⁴ Note to Reader: This definition is subject to further review by BEIS.

- (b) if that index is no longer being published, such index as the ICC Contract Counterparty may reasonably determine to be appropriate in the circumstances; or
- (c) if there is a material change to the basis of that index, such other index as the ICC Contract Counterparty may from time to time reasonably determine to be appropriate in the circumstances;

"Date of Referral" has the meaning given to that term in clause 26.3(e) (Expert Determination);

"Date of Response" has the meaning given to that term in clause 26.3(f) (Expert Determination);

"Deemed CO₂ Capture Rate" means the CO₂ capture rate (*expressed as a percentage (%)*) for any [Settlement Unit] determined pursuant to clause 9.7 (Deemed CO₂ Capture Rate and Deemed CO₂ Capture Volume) or subsequently verified through a CO₂ Capacity Test that is undertaken pursuant to clause 9.7(d);]¹⁵

"Deemed CO₂ Capture Volume" means the CO₂ capture volume (*expressed in tCO₂*) for any [Settlement Unit] determined pursuant to clause 9.7 (Deemed CO₂ Capture Volume) or subsequently verified through a CO₂ Capacity Test that is undertaken pursuant to clause 9.7(d);]¹⁶

"Default" means a Termination Event or any event or circumstances specified in clause 4 (Termination Events) which would (with the passage of time, the giving of notice, the making of any determination under the Agreement or any combination of any of the foregoing) be a Termination Event;

"Default Interest" means for any period calculated as follows [*to be determined*];

"Default Termination Date" has the meaning given to that term in clause 3.4(a) (Default termination);

"Default Termination Payment" has the meaning given to that term in clause 5.3(a) (Consequences of Default termination);

"Delivery Body" means the person from time to time responsible under and by virtue of [●] for directing the ICC Contract Counterparty to offer to enter into the Agreement and/or ICC Contracts;]

"Devolved Legislation" means any (i) Act of the Scottish Parliament; (ii) Act or Measure of Senedd Cymru; (iii) Scottish statutory instrument within the meaning of section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010; or (iv) Welsh subordinate legislation within the meaning of s.3(2) of the Legislation (Wales) Act 2019;

"Directive" means any ordinance, code, decision, directive, order, decree, regulation, determination, award, standard or rule of any Competent Authority which is legally binding upon the relevant Party or with which that Party would ordinarily comply acting (in the case of the Emitter) in accordance with the Reasonable and Prudent Standard and, in circumstances in which the Emitter is seeking to invoke the provisions of clause 19 (Change in Law), with which the Emitter does in fact comply;

¹⁵ Note to Reader: The approach to determining the Deemed CO₂ Capture Rate will need to be considered further by BEIS.

¹⁶ Note to Reader: The approach to determining the Deemed CO₂ Capture Volume will need to be considered further by BEIS.

"Directors' Certificate" means a certificate signed by two directors (or equivalent) of the Emitter;

"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 Capture Plant [or integrated industrial systems that are required for carbon capture and storage] and not to any other capture plant [or integrated industrial systems that are required for carbon capture and storage]; or
- (c) the Emitter and not to any other person;¹⁷

"Dispute" means any dispute or claim whatsoever relating to, in connection with or arising out of the Agreement;

"Dispute Notice" means a notice in writing that initiates the Dispute Resolution Procedure and which contains the information required by clause 26.1(c) (Outline of the Dispute Resolution Procedure);

"Dispute Resolution Procedure" means the rules, obligations and procedures set out in clause 26 (Dispute Resolution Procedure);

"Due Date" means the Capex Payment Due Date or the Opex Payment Due Date (as applicable);

"Economic Regulator" means the independent economic regulator of the economic regulatory regime for the T&S Network;

"EIR" means the Environmental Information Regulations 2004;

"Eligible Capture Technology" means CO₂ Capture Technology which is eligible for an ICC Contract, as specified in [●] (as in effect as at the date of the Agreement);

"Emitter Confidential Information" means:

- (a) all Information which is confidential or proprietary in nature and which relates (directly or indirectly) to the Emitter, the Installation or the Project which the ICC Contract Counterparty (or its Representatives) receives or has received from the Emitter (or its Representatives) or any third party who receives or has received such Information from the Emitter (or its Representatives) in connection with the Agreement (including any Information which the ICC Contract Counterparty prepares which contains or makes explicit reference to such Information or from which such Information is readily ascertainable); and
- (b) all Information relating to or arising from negotiations, discussions and correspondence in connection with the Agreement between or on behalf of the Parties,

but excluding in each case any Excluded Information;

"Emitter Permitted Purposes" means:

¹⁷

Note to Reader: This definition is subject to further review by BEIS.

- (a) complying with the Emitter's responsibilities and obligations, and exercising the Emitter's rights, powers and discretions, under or in connection with the Agreement; and
- (b) complying with the Emitter's responsibilities and obligations under or by virtue of [●], any other Law, or any Directive, policy or guidance;

"Emitter QCiL Notice" has the meaning given to that term in clause 19.1 (Qualifying Change in Law: Procedure);

"Emitter Repeating Representations" means each of the representations set out in clause 14.1 (Emitter's Representations and Warranties) other than clauses 14.1(g) (No litigation) and 14.1(h) (No requirement to deduct or withhold);

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

"Estimated CO₂ Data" has the meaning given to that term in clause 9.2 (Estimates of CO₂ Metering Data);

"Estimated CO₂ Data Billing Period" has the meaning given to that term in clause 9.2 (Estimates of CO₂ Metering Data);

"Estimated CO₂ Data Billing Statement" has the meaning given to that term in clause 9.2 (Estimates of CO₂ Metering Data);

"Estimated Data Settlement Unit" has the meaning given to that term in clause 9.2 (Estimates of CO₂ Metering Data);

"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 Agreement; 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 provide to it;

"Expert" means any person appointed to determine a Dispute in accordance with clause 26.3 (Expert Determination);

"Expert Determination Dispute" means the following Disputes to be determined by an Expert in accordance with clause 26.3 (Expert Determination):

- (a) whether there has been a breach of the Metering Obligations;
- (b) a CiAL Dispute;
- (c) [a CO₂ Metering Dispute;]
- (d) [a Capture Plant Metering Dispute;] or
- (e) [*any other matters subject to expert determination to be determined;*]

"Expert Determination Notice" has the meaning given to that term in clause 26.3(a) (Expert Determination);

"Expert Determination Procedure" means the rules, obligations and procedures set out in clause 26.3 (Expert Determination);

"Extended Term" has the meaning given to that term in clause 2.3(c)(i);

"Extension Delivery Date" means the date which falls [●] prior to the expiry of the Initial Term;¹⁸

"Extension Required CO₂ Capture Rate" means an Achieved CO₂ Capture Rate which is the higher of: (i) five percentage points lower than the OCP Achieved CO₂ Capture Rate; and (ii) eighty five per cent. (85%);

"FM Affected Party" has the meaning given to that term in clause 21.1 (Relief due to Force Majeure);

"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:

- (a) any Change in Law (excluding any Foreseeable Change in Law but including any change in the policy or guidance of any Competent Authority between the date of the Agreement and Start Date); and
- (b) any event or circumstance resulting from any action or omission by or of any ICC Contract Settlement Services Provider,

provided that such event or circumstance:

- (i) is beyond the reasonable control of the FM Affected Party or, if relevant, its Representatives (in the case of the Emitter and its Representatives, acting and having acted in accordance with the Reasonable and Prudent Standard);
- (ii) could not reasonably have been avoided or overcome by the FM Affected Party or its Representatives (as appropriate); and
- (iii) is not due to the FM Affected Party's fault or negligence (or that of its Representatives),

provided always that:

- (A) neither non-availability of funds nor the lack of funds shall constitute Force Majeure; and
- (B) no event or circumstance which has occurred before the date on which the Emitter applied for the Agreement of which, the Emitter or any of its Representatives either was aware, or (if it or they had made all due and careful enquiries and acted to a Reasonable and Prudent Standard) could be expected to have been aware, shall constitute a Force Majeure;¹⁹

"Foreseeable Change in Law" means a Change in Law which is reasonably foreseeable on the date of the Agreement and which falls within one of a number of categories of foreseeable Changes in Law which will be set out in the Agreement [*and which will reflect*

¹⁸ Note to Reader: The timings of the extension mechanics are subject to further consideration by BEIS.

¹⁹ Note to Reader: This definition is subject to further review by BEIS.

the definition of "Foreseeable Change in Law" in the AR4 CfD Standard Terms and Conditions];

"Further Milestone Assessment Response Notice" has the meaning given to that term in clause 7.2 (Response to Milestone Requirement Notice);

"Government Entity" means:

- (a) any department, non-departmental public body, authority or agency of [Her Majesty's Government]²⁰ 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;

"Grant Funding Agreement" means the agreement for the provision of grant funding [entered into on or around the date of the Agreement] between the ICC Contract Counterparty and the Emitter;²¹

"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;

"ICC Contract Counterparty" means:

- (a) until a Transfer of the ICC Contract has taken place in accordance with clause 29.1(b) (Permitted Transfer by the ICC Contract Counterparty) or the rights and liabilities of [●] under it are otherwise transferred or assigned to another person, [●]; and
- (b) thereafter, such person to whom the rights and liabilities of the ICC Contract Counterparty under the ICC Contract have been transferred or assigned in accordance with clause 29.1(b) (Permitted Transfer by the ICC Contract Counterparty) or otherwise;

"ICC Contract Counterparty Confidential Information" means:

- (a) all Information which is confidential or proprietary in nature and which relates (directly or indirectly) to the ICC Contract Counterparty or a Government Entity (including any such Information relating to United Kingdom government policy with respect to matters pertinent to ICC Contracts or the Agreement) which the Emitter (or its Representatives) receives or has received from the ICC Contract Counterparty (or its Representatives) or any third party who receives or has received such Information from the ICC Contract Counterparty (or its Representatives) in respect of the Agreement (including any Information which the Emitter prepares which contains or makes explicit reference to such information or from which such Information is readily ascertainable); and

²⁰ Note to Reader: This definition is subject to further review by BEIS including to ensure consistency, insofar as appropriate, with AR4 CfD drafting as it develops.

²¹ Note to Reader: BEIS is still considering various contractual interfaces between the ICC Contract and the Grant Funding Agreement. An update on these interfaces will be provided in due course.

- (b) all Information relating to or arising from negotiations, discussions and correspondence in connection with the Agreement,

but excluding in each case any Excluded Information;

"ICC Contract Counterparty Permitted Purposes" means:

- (a) complying with the ICC Contract Counterparty's responsibilities and obligations, and exercising the ICC Contract Counterparty's rights, powers and discretions, under or in connection with the Agreement or any other ICC Contract;
- (b) complying with the ICC Contract Counterparty's responsibilities and obligations under or by virtue of [●], any other Law, or any Directive, policy or guidance;
- (c) reporting on the establishment, performance or operation of, or compliance with, the arrangements contemplated by the Agreement and/or ICC Contracts; and
- (d) reporting to the Secretary of State on the performance, operation, and ICC Contract Settlement Activities of the Project to enable or assist the Secretary of State to fulfil its functions in connection with the ICC Contract and/or CCUS Programme. The Secretary of State's functions include:
 - (i) the development of the ICC Contract;
 - (ii) the development of the CCUS Programme; and
 - (iii) any examination of the performance, efficiency, and effectiveness of the Project;

"ICC Contract Settlement Activities" means the calculation, invoicing, recalculation and settlement of payments to be made pursuant to the Agreement;

"ICC Contract Settlement Services Provider" means any person appointed for the time being and from time to time by the ICC Contract Counterparty to carry out any of the ICC Contract Settlement Activities, or who is designated by the Secretary of State to carry out the ICC Contract Settlement Activities, acting in that capacity;²²

"ICC Documents" means the ICC Contract and each of the agreements entered into between the Parties pursuant or in relation to it and **"ICC Contract"** shall be construed accordingly;

"Identified Costs" has the meaning given to that term in clause 19.1(a)(iv)(A) (Qualifying Change in Law);

"Industrial Carbon Capture Contract" or **"ICC Contract"** means an industrial carbon capture contract between the ICC Contract Counterparty and an eligible emitter entered into following the applicable contract allocation or negotiation process established under or by virtue of [●];²³

²² Note to Reader: BEIS is still considering the approach to settlement.

²³ Note to Reader: BEIS is currently finalising its approach relating to the method of allocating and the powers for funding the ICC Contract, both of which will be confirmed in due course.

"Industrial Installation" means the industrial equipment and other facilities described in schedule 1 (The Installation) capable of producing the relevant industrial products excluding the Capture Plant;²⁴

"Industry Documents" means any and all agreements, codes and instruments regulating [any applicable CO₂ industry codes],²⁵ and **"Industry Document"** shall be construed accordingly;

"Information" means all information of whatever nature and in whatever form, including in writing, orally, electronically and in a visual or machine-readable medium (including CD-ROM, magnetic and digital form) and, in relation to any obligation of any person to provide information pursuant to the Agreement, 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 Emitter's control if:

- (a) it is within the possession of the Emitter;
- (b) the Emitter has a right to possession of it; or
- (c) the Emitter has a right to inspect or take copies of it;

"Information Commissioner" has the meaning given to that term in the FoIA;

"Initial Conditions Precedent" means the conditions precedent set out in Part A of schedule 2 (Conditions Precedent) and **"Initial Condition Precedent"** shall be construed accordingly;

"Initial Milestone Delivery Date" means the date which falls [eighteen (18)] months after the date of the Agreement;

"Initial Strike Price" has the meaning given to that term in the Agreement;

"Initial Term" has the meaning given to that term in clause 2.2 (Duration);

"Installation" means the Industrial Installation and Capture Plant²⁶ and all necessary interfaces and any other facilities or equipment required up to the CO₂ Delivery Point(s) as set out in schedule 1 (The Installation), for the safe, efficient, timely and economical operation of the Industrial Installation and Capture Plant in a manner to satisfy fully the requirements under the Agreement;

"Installation Capture Technology" means, in respect of the Installation, the Eligible Capture Technology deployed by the Installation, as specified in schedule 1 (The Installation);

"Installation Metering Equipment" means the CO₂ Metering Equipment [and the Capture Plant Metering Equipment];

"Intellectual Property Rights" means:

- (a) all intellectual property rights, including patents, trademarks, rights in designs, know-how, copyrights (including the rights to access, make copies, update, develop, enhance, alter, modify or otherwise amend the source code of any software) and

²⁴ Note to Reader: We note that the definitions of "Capture Plant" and "Industrial Installation" may be adjusted if the Capture Plant is inherent to the cycle design of the Industrial Installation.

²⁵ Note to Reader: This definition is subject to further review by BEIS.

²⁶ Note to Reader: We note that the definitions of "Capture Plant" and "Industrial Installation" may need to be adjusted if the Capture Plant is inherent to the cycle design of the Industrial Installation.

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);

"Law" means:

(a) any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;

(b) any exercise of the Royal Prerogative;

(c) [any provision of Devolved Legislation whose subject matter falls within what was, immediately before IP Completion Day (as defined in s.39 European Union (Withdrawal Agreement) Act 2020), an area of exclusive or shared competence within the meaning of Articles 2, 3, 4 and 6 of the Treaty on the Functioning of the European Union; or]

(d) [any retained EU law,]

in each case in the United Kingdom [(or part thereof, including Scotland and Wales)]; and

(e) to the extent directly binding on and/or enforceable by or against private persons within the United Kingdom any obligations arising from or provided for in a Treaty or other international agreement to which the United Kingdom is a signatory;²⁷

"LCIA" means the London Court of International Arbitration;

"LCIA Arbitration Rules" means the arbitration rules published under that name by the LCIA;

"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) a Force Majeure in respect of which the Emitter is the FM Affected Party but only to the extent that the Emitter has satisfied the requirements of clause 21 (Force Majeure) and this definition in order to be entitled to such extension; or

(b) the failure of the T&S Operator to carry out in a timely manner: (A) any connection works specified in the T&S Construction Agreement; or (B) any required works to the T&S Network in order for the Installation to export captured CO₂ to the T&S Network (except to the extent that such failure is due to the fault or negligence of the Emitter or its Representatives),²⁸

and provided that in the case of delays caused by the reasons set out in (b) above:

(ii) the Emitter gives notice to the ICC Contract Counterparty as soon as reasonably practicable of the nature and extent of the failure; and

²⁷ Note to Reader: This definition is subject to further review by BEIS including to ensure consistency, insofar as appropriate, with AR4 CfD drafting as it develops.

²⁸ Note to Reader: The events which extend the Longstop Date are subject to further review by BEIS.

- (iii) there shall be no extension for any day of delay to the Project that could have been avoided by the Emitter and its Representatives using reasonable endeavours:
 - (A) to mitigate the effects of such failure (including delay to the Project);
 - (B) to carry out its obligations under the Agreement in any way that is reasonably practicable; and
 - (C) to resume the performance of its obligations under the Agreement as soon as reasonably practicable;

"Longstop Period" means [a date to be determined]²⁹ or such longer period that results from an extension in accordance with the definition of **"Longstop Date"**;

"Material Change" means, in relation to the CO₂ Metering Equipment [and/or the Capture Plant Metering Equipment], a change to the systems and/or processes relating to such equipment which is of such a type or magnitude as to raise the reasonable expectation that the Emitter's ability to meet its obligations under the Agreement relating to the CO₂ Metering Equipment [and/or the Capture Plant Metering Equipment] will be affected;

"Metered CO₂ Output"³⁰ means the mass quantity of CO₂ (expressed in tCO₂) entering the T&S Network as measured at the CO₂ Delivery Point(s) during the relevant Billing Period;

"Metering" means the functions of metering, measuring, Sampling, Sample analysis and/or calculating and includes check metering. **"Meter"** and **"Metered"** shall be construed accordingly;

"Metering Access Rights" has the meaning given to that term in clause 17.5 (Access and testing of meters);

"Metering Access Termination Event" means an event as set out in clause 17.7 (Failure to provide Metering Access Rights);

"Metering Data" means all data (including Supporting Information) relating, directly or indirectly, to the quantity of CO₂, carbon, fuel and other consumables that is required for the ICC Contract Settlement Activities, including the calculation by the ICC Contract Counterparty of the Capex Payment in accordance with schedule 3 (Capex Payment Calculations), and the Opex Payment in accordance with schedule 4 (Opex Payment Calculation), such data to:

- (a) be Metered by the Installation Metering Equipment where applicable; and
- (b) include the Metered value relevant to [each Settlement Unit] at each Metering Point by both the main Installation Metering Equipment and any check Installation Metering Equipment;

"Metering Dispute" means a CO₂ Metering Dispute [or a Capture Plant Metering Dispute];

"Metering Obligations" means the CO₂ Metering Obligation and the Capture Plant Metering Obligation;

²⁹ Note to Reader: This will be a period of 12 months following the expiry of the Target Commissioning Window.

³⁰ Note to Reader: BEIS' expectation is that captured CO₂ which fails to comply with the Captured Carbon Dioxide Quality Standards will not be exported to the T&S Network through the valve equipment at the CO₂ Delivery Point(s) and will therefore not be considered to be "Metered CO₂ Output".

"Metering Points" means the CO₂ Delivery Points and the Capture Plant Delivery Points;³¹

"Metering Schematic Obligation" has the meaning given to that term in clause 17.5 (Metering Schematic Obligation);

"Milestone Assessment Response Notice" has the meaning given to that term in clause 7.2 (Response to Milestone Requirement Notice);

"Milestone Delivery Date" means the Initial Milestone Delivery Date, as such date may be extended day for day for each day of delay to the Project by reason of:

- (a) a Force Majeure in respect of which the Emitter is the FM Affected Party but only to the extent that the Emitter has satisfied the requirements and conditions of clause 21 (Force Majeure) and this definition to be entitled to such extension; or
- (b) the failure of the T&S Operator to carry out in a timely manner: (A) any connection works specified in the T&S Construction Agreement; or (B) any required works to the T&S Network in order for the Installation to export captured CO₂ to the T&S Network (except to the extent that such failure is due to the fault or negligence of the Emitter or its Representatives),³²

and provided that in the case of delays caused by the reasons set out in (b) above:

- (i) the Emitter gives notice to the ICC Contract Counterparty as soon as reasonably practicable of the nature and extent of the failure; and
- (ii) there shall be no extension for any day of delay to the Project that could have been avoided by the Emitter and its Representatives using reasonable endeavours:
 - (A) to mitigate the effects of such failure (including delay to the Project);
 - (B) to carry out its obligations under the Agreement in any way that is reasonably practicable; and
 - (C) to resume the performance of its obligations under the Agreement as soon as reasonably practicable;

"Milestone Requirement" has the meaning given to that term in clause 7.1 (Milestone satisfaction);

"Milestone Requirement Notice" has the meaning given to that term in clause 7.1 (Milestone satisfaction);

"Milestone Satisfaction Date" means the date of the Milestone Assessment Response Notice from the ICC Contract Counterparty to the Emitter specifying that the Emitter has complied with and fulfilled a Milestone Requirement;

"Minimum CO₂ Capture Rate" means [*a CO₂ Capture Rate percentage to be determined*];

["Minimum Reporting Content Requirements" means the content requirements, in a form and content reasonably satisfactory to the ICC Contract Counterparty, in respect of the report to be provided by the Emitter to the ICC Contract Counterparty pursuant to clause 6.3(b)(i) (Reporting Obligations) relating to the progress towards the design,

³¹ Note to Reader: BEIS is considering the impact of the inclusion of non-pipeline transportation on metering arrangements.

³² Note to Reader: The events which extend the Milestone Delivery Date are subject to further review by BEIS.

procurement, manufacturing, construction, completion, testing and commissioning of the Installation. The reports shall include, but shall not be limited to, the following:

- (a) an executive summary;
- (b) a schedule of forecast and actual key events with a balanced mix of critical and near critical path milestones;
- (c) a progress to date in narrative format;
- (d) an engineering status;
- (e) a procurement status;
- (f) a construction status;
- (g) an Installation start up status;
- (h) an updated 'S' curve for progress of design, procurement, construction and commissioning;
- (i) a contract programme updated to show progress achieved;
- (j) a baseline critical path together with any updated version of that as applicable;
- (k) an earned value analysis figure depicting progress against baseline with commentary on deviations from plan;
- (l) financing progress prior to Milestone Delivery Date;
- (m) [Cost Data]; and
- (n) key risks with associated potential impact (quantified) on cost and schedule outturn.]³³

"Month" means a calendar month;

"Non-affected Party" has the meaning given to that term in clause 21.2(a) (Conditions to Force Majeure relief);

"OCP Acceptance Tests" means the tests, carried out in accordance with the Commissioning Tests, to be completed by the Emitter, pursuant to paragraphs 2(b) and 2(c) of Part B of schedule 2 (Conditions Precedent), in order to determine the CO₂ Capture Rate and [CO₂ Capture Volume];

"OCP Achieved CO₂ Capture Rate" means the CO₂ Capture Rate which is demonstrated pursuant to the OCP Acceptance Tests and which is evidenced pursuant to paragraph 2(b) of Part B of schedule 2 (Conditions Precedent);

"OCP Capture Rate Notice" has the meaning given to that term in clause 8.1 (OCP Capture Rate Notice);

"OCP Capture Rate Response Notice" has the meaning given to that term in clause 8.1 (OCP Capture Rate Notice);

³³

Note to Reader: The content of the reports is subject to further review by BEIS.

"OCP Required CO₂ Capture Rate" means a CO₂ Capture Rate which is equal to or greater than the higher of: (i) five percentage points lower than the CO₂ Capture Rate Estimate; and (ii) eighty five per cent. (85%);

"OCP Required CO₂ Capture Volume" means a CO₂ Capture Volume which is equal to or greater than [●];³⁴

"Operational Conditions Precedent" means the conditions precedent set out in Part B of schedule 2 (Conditions Precedent) and **"Operational Condition Precedent"** shall be construed accordingly;

"Opex Payment" means the payment calculated in accordance with schedule 4 (Opex Payment Calculation) to be made by the ICC Contract Counterparty to the Emitter in the circumstances set out in clause 11 (Opex Payment);

"Opex Payment Billing Period" means a Month, except that the first OP Billing Period shall commence on the Start Date and end on the last day of the Month in which the Start Date occurs and the last OP Billing Period shall commence on the first day of the last Month of the Initial Term or the Extended Term (as applicable) and end on the last day of the Initial Term or the Extended Term (as applicable), and **"OP Billing Period"** shall be construed accordingly;

"Opex Payment Billing Statement" has the meaning given to that term in clause 12.2 (Opex Payment Billing Statement);

"Opex Payment Due Date" has the meaning given to that term in clause 13.1 (Due Date for payment);

"Other Change in Law"³⁵ 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 Emitter 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 emitters which operate industrial installations deploying the same or similar industrial process as the Industrial Installation to produce the same or similar product or provide the same or similar service but which do not deploy CO₂ Capture Technology; or
- (b) all emitters which operate industrial installations deploying CO₂ Capture Technology other than the Industrial Installation's CO₂ Capture Technology,

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;

"Party" means one or other of the parties to the Agreement;

"Payments" means the Capex Payment and the Opex Payment;

"Permitted Auditor" has the meaning given to that term in clause 6.4 (Right to Audit);

³⁴ Note to Reader: This definition is subject to further review by BEIS.

³⁵ Note to Reader: This definition is subject to further review by BEIS.

"Proceedings" means any proceeding, suit or action relating to or arising out of a Dispute or the Agreement but excluding any [Metering Dispute];³⁶

"Project" means the design, development, construction, completion, testing, commissioning, operation, maintenance and decommissioning of the Capture Plant [and integrated industrial systems that are required for carbon capture and storage];

"Project Commitments" means the requirements detailed in schedule 7 (Project Commitments) to be delivered by the Emitter to the ICC Contract Counterparty;

"QCiL Adjusted Capture Payment" has the meaning given to that term in clause 19.2 (QCiL Compensation);

"QCiL Capex Costs" means all QCiL Costs relating to the acquisition, disposal, modification or construction of any asset in respect of the Project;

"QCiL Capex Payment" has the meaning given to that term in clause 19.2 (QCiL Compensation);

"QCiL Capex Savings" means all QCiL Savings relating to the acquisition, disposal, modification or construction of any asset in respect of the Project;

"QCiL Compensation" means (i) a QCiL Opex Payment; (ii) a QCiL Capex Payment; (iii) a QCiL Adjusted Capture Payment; (iv) a QCiL Construction Event Payment; (v) a QCiL Operations Cessation Event Payment; and (vi) any combination of any of the foregoing, as such amounts are calculated in accordance with clause 19.2(a);

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

"QCiL Construction Event Payment" has the meaning given to that term in clause 19.2 (QCiL Compensation);

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

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

"QCiL Operations Cessation Event" means:

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

³⁶ Note to Reader: BEIS is still considering whether both Capture Plant Metering Disputes and CO₂ Metering Disputes will be captured.

(b) a Qualifying Shutdown Event which occurs on or after the Start Date;

"QCiL Operations Cessation Event Payment" has the meaning given to that term in clause 19.2 (QCiL Compensation);

"QCiL Opex Costs" means all QCiL Costs which are not QCiL Capex Costs;

"QCiL Opex Payment" has the meaning given to that term in clause 19.2 (QCiL Compensation);

"QCiL Opex Savings" means all QCiL Savings which are not QCiL Capex Savings;

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

"QCiL Termination Payment" has the meaning given to that term in clause 5.4(a);

"QSE Notice" has the meaning given to that term in clause 19.3 (Qualifying Shutdown Event);

"Qualifying Change in Law" means:

- (a) a Discriminatory Change in Law;
- (b) a Specific Change in Law; or
- (c) an Other Change in Law,

which, in each case, is not a Foreseeable Change in Law. [No decision by any Subsidy Control Competent Authority in respect of the application of the Subsidy Control Rules to the Agreement and/or ICC Contracts (including the annulment, invalidation, suspension, revocation, modification or replacement of any prior decision pursuant to such rules) shall constitute a Qualifying Change in Law];³⁷

"Qualifying Shutdown Event" means a Change in Law which comprises:

- (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 the Law or (iii) applying, implementing and/or changing policy or guidance which has effect from time to time; or
- (b) the exercise of power 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 power 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

³⁷ Note to Reader: This definition is subject to further review by BEIS including to ensure consistency, insofar as appropriate, with AR4 CfD drafting as it develops.

acted independently of a Government Authority unless such exercise of power 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 law, policy or guidance (provided such international law, policy or guidance was not promoted by such Government Authority and, in relation to any international law, policy or guidance proposed after the date of the Agreement, such Government Authority has used its reasonable endeavours to prevent the adoption of such international 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 Emitter can demonstrate (i) imposes a requirement that permanently prevents [the whole of the Capture Plant] from operating or (ii) constitutes the refusal or the failure to give approval to a request for consent to any re-start of the [whole Capture Plant] for a period exceeding [twenty four (24)] months (each, a **"Shutdown Event"**) unless, in any such case, the Shutdown Event was for reasons:

- (i) 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 Installation or the capture of CO₂ therefrom; (2) the Emitter; (3) the land on which the Installation is situated; or (4) the management of any of (1) to (3);
- (ii) arising out of, in connection with, or resulting from the negligence, breach or fault of, or a failure to act in accordance with a Reasonable and Prudent Standard by, the Emitter 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 Capture Plant; or
- (iii) [relating to any decision by any Subsidy Control Competent Authority in respect of the application of the Subsidy Control Rules in the Agreement or ICC Contracts (including the annulment, invalidation, revocation, modification, suspension or replacement of any prior decision pursuant to such rules)];³⁸

"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;

"Representatives" means:

- (a) in respect of the ICC Contract Counterparty:
 - (i) its directors, officials, officers, employees, agents, consultants and advisers; and
 - (ii) the ICC Contract Settlement Services Provider and its directors, officers, employees, agents, consultants and advisers;
- (b) in respect of the Emitter:

³⁸ Note to Reader: This definition is subject to further review by BEIS including to ensure consistency, insofar as appropriate, with AR4 CfD drafting as it develops.

- (i) its directors, officers or employees;
 - (ii) any of its contractors, agents, consultants and advisers which are engaged in connection with the Project or the Agreement; and
 - (iii) the directors, officers, employees, agents, consultants and advisers of any of its contractors which are engaged in connection with the Project or the Agreement;
- (c) in respect of any Government Entity, its directors, officials, officers, employees, agents, consultants and advisers; or
- (d) in respect of any other person, its directors, officers, officials, 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); or
- (b) a request that environmental information (as such term is defined in the EIR) be made available pursuant to the EIR;

"Requested Milestone Supporting Information" has the meaning given to that term in clause 7.2 (Response to Milestone Requirement Notice);

"Required Authorisation" means, in relation to each Party and at any time, each licence, accreditation, authorisation, permit, consent, certificate, resolution, clearance, exemption, order, confirmation, permission or other approval of or from any Competent Authority required at such time to enable the relevant Party to perform or fulfil its obligations under the Agreement and, in the case of the Emitter, for the Project;

"Required CiL Amendment" means any amendment or supplement to the Agreement 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: (i) the commercial intent of the Agreement; or (ii) the overall balance of risks, rights and obligations between the Parties, in each case as provided for in the Agreement);

"Required CiL Amendment Objectives" means that: (i) the Agreement continues in force; and (ii) no provision of the Agreement is rendered illegal, invalid, unenforceable or inoperable;

"Required Metering Data" has the meaning given to that term in clause 9.2 (Estimates of Metering Data);

"Respondent" has the meaning given to that term in clause 26.3(b) (Expert Determination);

"Sample" means a portion extracted from the total quantity of a substance that contains (as far as reasonably practicable) the constituents in the same proportions that are present in that total quantity being sampled. **"Sampling"** shall be construed accordingly;

"Secretary of State" means, unless otherwise expressly stated or the context otherwise requires, the Secretary of State for Business, Energy and Industrial Strategy;

"Senior Representative" means a senior employee or officer selected by a Party to represent it in relation to clause 26.2 (Resolution by the Senior Representatives);

"Senior Representative Settlement" means any agreement reached by the Senior Representatives which resolves a Dispute or any part of a Dispute;

"Settlement Unit" means each [day occurring during the Term after the Start Date, starting at 00:00 and ending at 23:59 on the same day];³⁹

"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) industrial installations which deploy CO₂ Capture Technology, or the CO₂ Capture Technology forming part of such industrial installations, and not to other industrial installations, or the production from, or production-related and associated processes carried out at, other industrial installations; or
- (b) 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, including by way of debt, in each case whether directly or indirectly, in any undertaking whose main business is the development, construction, operation and maintenance of installations referred to in paragraph (a) above and not other installations;

"Start Date" means the date so notified to the ICC Contract Counterparty by the Emitter in accordance with clause 6.2(c) (Fulfilment of Conditions Precedent), such date to be:

- (a) no earlier than [*number of Business Days to be inserted*] after the date of such notice;
- (b) no earlier than the first day of the Target Commissioning Window;
- (c) no earlier than the date of the CP Fulfilment Notice; and
- (d) no later than the Longstop Date,

and provided that on such first-mentioned date:

- (i) all the Emitter Repeating Representations and the representation set out in clause 14.1(g) (No litigation) are true by reference to the facts and circumstances then existing;
- (ii) no Default has occurred which is continuing; and
- (iii) all Conditions Precedent (with the exception of those waived in accordance with clause 6.5 (Waiver)) continue to be fulfilled;

"Strike Price" means the Initial Strike Price, as may be amended from time to time in accordance with the Agreement;⁴⁰

"Subsidy" shall have the meaning given to the term "subsidy" in the Subsidy Control Act [2022];⁴¹

³⁹ Note to Reader: The definition and use of the term "Settlement Unit" is subject to further review.

⁴⁰ Note to Reader: There will be a single Strike Price comprised of a capex component and an opex component. Please refer to the October Update Document for information about the composition of the Strike Price.

⁴¹ Note to Reader: This definition is subject to further review by BEIS including to ensure consistency, insofar as appropriate, with AR4 CfD drafting as it develops.

["**Subsidy Control Competent Authority**" has the meaning given to that term in the definition of Subsidy Control Rules;]⁴²

["**Subsidy Control Rules**" means: (i) any subsidy control provisions in Law or having legally binding effect in the United Kingdom; and (ii) any relevant decisions or judgments of any UK Competent Authority having jurisdiction in the United Kingdom to enforce or administer such subsidy control provisions (a "**Subsidy Control Competent Authority**");]⁴³

"**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);

"**Suspension Period**" has the meaning given to that term in clause 9.4(a) (Prolonged Failure to Provide Metering Data);

"**Target Commissioning Date**" means [*the target commissioning date notified by the Emitter to the Delivery Body in its application for the ICC Contract*];

"**Target Commissioning Window**" means a period of twelve (12) months within which the Target Commissioning Date falls [*as notified by the Emitter to the Delivery Body in its application for the ICC Contract*], as such period may be extended day for day for each day of delay to the construction, completion, testing or commissioning of the Installation by reason of:

- (a) a Force Majeure in respect of which the Emitter is the FM Affected Party but only to the extent that the Emitter has satisfied the requirements of clause 21 (Force Majeure) and this definition to be entitled to such extension; or
- (b) the failure of the T&S Operator to carry out in a timely manner: (A) any connection works specified in the T&S Construction Agreement; or (B) any required works to the T&S Network in order for the [Installation] to export captured CO₂ to the T&S Network (except to the extent that such failure is due to the fault or negligence of the Emitter or its Representatives),⁴⁴

and provided that in the case of delays caused by the reasons set out in (b) above:

- (i) the Emitter gives notice to the ICC Contract Counterparty as soon as reasonably practicable of the nature and extent of the failure; and
- (ii) there shall be no extension for any day of delay to the Project that could have been avoided by the Emitter and its Representatives using reasonable endeavours:
 - (A) to mitigate the effects of such failure (including delay to the Project);
 - (B) to carry out its obligations under the Agreement in any way that is reasonably practicable; and
 - (C) to resume the performance of its obligations under the Agreement as soon as reasonably practicable;

⁴² Note to Reader: This definition is subject to further review by BEIS including to ensure consistency, insofar as appropriate, with AR4 CfD drafting as it develops.

⁴³ Note to Reader: This definition is subject to further review by BEIS including to ensure consistency, insofar as appropriate, with AR4 CfD drafting as it develops.

⁴⁴ Note to Reader: The events which extend the Target Commissioning Window are subject to further review by BEIS.

"T&S Capacity Fee" means any transmission and storage capacity fee for captured CO₂ (*expressed in £*) payable in accordance with the T&S Connection Agreement,⁴⁵ during the relevant Billing Period;⁴⁶

"T&S Connection Agreement" means the agreement between the T&S Operator and the Emitter governing the connection to and use of the T&S Network by the Emitter;

"T&S Connection Confirmation" has the meaning given to that term in Part B of schedule 2 (Conditions Precedent);

"T&S Construction Agreement" means the agreement between the T&S Operator and the Emitter relating to the construction of infrastructure connecting the [Capture Plant] to the T&S Network at the CO₂ Delivery Point(s);

"T&S Network" means the network consisting (wholly or mainly) of:

- (a) pipelines used for the transportation of CO₂ from one capture plant to a storage facility or to or from any CO₂ pipeline network; or
- (b) [routes used for the transportation of CO₂ from one capture plant to a storage facility or to or from any CO₂ pipeline network;] and
- (c) storage facilities for the permanent storage of CO₂,

owned or operated by the T&S Operator within the United Kingdom;⁴⁷

"T&S Operator" means the licensed company operating and maintaining the T&S Network;

"T&S Outage Event" means an event or circumstance that prevents the Installation from accessing the [*full capacity that the Emitter has reserved under the T&S Connection Agreement*] for entry to the T&S Network;⁴⁸

[**"T&S Termination Payment"** has the meaning given to that term in clause 5.2(a) (Consequences of T&S Unavailability Event termination);]

[**"T&S Unavailability Event"** means an event or circumstance that delays or prevents the Installation from first connecting to and accessing the T&S Network, or which prevents the Installation from continuing to connect to and access the T&S Network, in each case for at least [*a continuous period to be determined*];]⁴⁹

"T&S Volumetric Fee" means any volumetric transmission and storage fee (*expressed in £/tCO₂*) for captured CO₂ payable in accordance with the T&S Connection Agreement;⁵⁰

⁴⁵ Note to Reader: The T&S Capacity Fee payable by the Emitter under the T&S Connection Agreement is likely to be indexed to the fee that will be verified by the Economic Regulator. Please refer to the discussion in Section 3 of the Main Document.

⁴⁶ Note to Reader: BEIS is continuing to consider whether the Emitter will pay the T&S fees (which will be funded via the ICC business model) or the T&S fees will be directly paid to the T&SCo by the ICC Contract Counterparty.

⁴⁷ Note to Reader: Definition to be kept under review as transport and storage business model develops.

⁴⁸ Note to Reader: BEIS is still considering the quantum of "qualifying costs" that will be payable to an Emitter where there is a T&S unplanned outage or capacity constraint and how the concepts of Deemed CO₂ Capture Rate and Deemed CO₂ Capture Volume will be used to calculate such costs. Please refer to the October Update Document for a further discussion on this issue.

⁴⁹ Note to Reader: BEIS is still considering the trigger for T&S Unavailability Events.

⁵⁰ Note to Reader: The T&S Volumetric Fee payable by the Emitter under the T&S Connection Agreement is likely to be indexed to the fee that will be verified by the Economic Regulator. Please refer to the discussion in Section 3 of the Main Document. Note that BEIS is also continuing to consider whether the Emitter will pay the T&S fees (which will be funded via the ICC business model) or the T&S fees will be directly paid to the T&SCo by the ICC Contract Counterparty.

"Technical Compliance Termination Event" means an event as set out in clause 17.4 (Failure to remedy Metering Obligations breach);

"Term" means the Initial Term and (where applicable) the Extended Term;

"Termination Event" has the meaning given to that term in clause 4 (Termination Events);

"Termination Payments" means the Default Termination Payment and the T&S Termination Payment and **"Termination Payment"** shall be construed accordingly;

"Third Party" has the meaning given to that term in clause 29.5 (No third party rights);

"Total Project Pre-Commissioning Costs" means [*an amount to be determined*];⁵¹

"Treaty" has the meaning given to that term in Article 2(1)(a) of the Vienna Convention on the law of treaties 1969; and

"UK Competent Authority" means a Competent Authority of the United Kingdom.

1.2 Interpretation

- (a) Any reference to the Agreement shall be deemed to include the schedules.
- (b) Save for the purposes of clause 19 (Change in Law) and the definition of Change in Law, any reference in the Agreement to a Law, Directive or other similar enactment or instrument (each, an **"enactment"**) includes references to:
 - (i) that enactment as amended, supplemented or applied by or under any other enactment before, on or after the date of the Agreement;
 - (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 date of the Agreement) under any enactment, including one within paragraph (i) or (ii) above.
- (c) Unless a contrary indication appears, any reference in the Agreement to:
 - (i) the Agreement or any other agreement or Industry Document is, save for the purposes of clause 19 (Change in Law) and the definition of **"Change in Law"**, a reference to the **"Agreement"** or other agreement or **"Industry Document"** as amended, supplemented, restated, novated or replaced from time to time;
 - (ii) a **"clause"** or **"schedule"** is a reference to a clause of, or a schedule to, the Agreement;
 - (iii) the words **"include"** or **"including"** shall be construed without limitation to the generality of the preceding words;
 - (iv) 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;

⁵¹ Note to Reader: This amount is to be determined by BEIS.

- (v) a person includes its successors and permitted assignees or permitted transferees and, where a person ceases to exist, such other person to which all or some of its powers and functions may from time to time be transferred;
 - (vi) time shall be a reference to time in London, England;
 - (vii) words in the singular may be interpreted as including the plural, and vice versa; and
 - (viii) words of any gender include each other gender.
- (d) Any capitalised words, terms, phrases and abbreviations used specifically in any schedule shall have the meanings set out in that schedule.
 - (e) clause and schedule headings are for ease of reference only.
 - (f) If there is a conflict between the main body of the Agreement and a schedule, the main body of the Agreement shall prevail except as expressly provided for in the main body of the Agreement.

1.3 **Symbols and currency**

- (a) Any reference in the Agreement to "**£**" or "**pounds**" or "**Sterling**" is to be the lawful currency of the United Kingdom.
- (b) Any reference in the Agreement to "**MW**" is to megawatts and to "**MWh**" is to megawatt hours.
- (c) Any reference in the Agreement to "**tCO₂**" is to tonnes of carbon dioxide.

1.4 **No interest in the Installation**

Other than as expressly set out in the Agreement, nothing in the Agreement is intended to create, or shall create, a legal or beneficial interest in the Installation or the Project in favour of any person other than the Emitter.

PART 2 TERM AND TERMINATION

2. TERM

2.1 Commencement

Subject to clause 6 (Conditions Precedent), the Agreement shall commence on the date of the Agreement.

2.2 Duration

(a) Subject to termination of the Agreement in the circumstances described in clauses 3.1 (Pre-Start Date termination), [3.2 (Termination for Prolonged Force Majeure),]⁵² [3.3 (Termination for T&S Unavailability Event),]⁵³ 3.4 (Default termination), [3.5 (Termination for a Prolonged Minimum CO₂ Capture Rate Breach),]⁵⁴ and 3.6 (Qualifying Change in Law termination), the Agreement shall continue until the [tenth (10th)] anniversary of the earlier of:

- (i) the Start Date; and
- (ii) the last day of the Target Commissioning Window,

(the "**Initial Term**"), as such period may be extended in accordance with clause 2.3.

(b) The provisions set out in clause 10 (Capex Payment) shall continue until the [fifth (5th)] anniversary of the earlier of the Start Date and the last day of the Target Commissioning Window ("**Initial Capex Payment Period**"), as such period may be extended in accordance with clause 10.2 (Extension of Initial Capex Payment Period).

(c) The provisions set out in clause 11 (Opex Payment) shall continue until the [tenth (10th)] anniversary of the earlier of the Start Date and the last day of the Target Commissioning Window, as such period may be extended in accordance with clause 2.3.⁵⁵

2.3 Extension

(a) No later than the Extension Delivery Date,⁵⁶ the Emitter shall deliver to the ICC Contract Counterparty a Director's Certificate certifying (having made due and careful enquiry) that:

- (i) the [average] Achieved CO₂ Capture Rate for the last five (5) years of the Initial Term is equal to or greater than the [Extension Required CO₂ Capture Rate]; and
- (ii) the [average yearly] Achieved CO₂ Capture Volume and (where relevant) Deemed CO₂ Capture Volume for the last five (5) years of the Initial Term is

⁵² Note to Reader: To be determined whether Termination for Prolonged Force Majeure will be included in the ICC Contract.

⁵³ Note to Reader: To be determined whether Termination for T&S Unavailability Event will be included in the ICC Contract.

⁵⁴ Note to Reader: To be determined whether Termination for a Prolonged Minimum CO₂ Capture Rate Breach will be included in the ICC Contract.

⁵⁵ Note to Reader: Please refer to the October Update Document for information about the reference price and Free Allowance treatment during the Extended Term.

⁵⁶ Note to Reader: The timings of the extension mechanics are subject to further consideration by BEIS.

equal to or greater than ninety per cent. (90%) of the CO₂ Capture Volume Estimate,

(the "**Extension Performance Conditions**"), together with relevant Supporting Information in a form and content reasonably satisfactory to the ICC Contract Counterparty ("**Extension Performance Certificate**").

(b) No later than the Extension Delivery Date, the Emitter shall deliver to the ICC Contract Counterparty a Director's Certificate certifying (having made due and careful enquiry) that:

(i) on no [●] during the period between [●] and [●] of the Initial Term has the Carbon Price exceeded [●] of the Aggregate Opex Value for the corresponding [●]; and

(ii) [*other market conditions to be confirmed*],

(the "**Extension Market Conditions**"), together with relevant Supporting Information in a form and content reasonably satisfactory to the ICC Contract Counterparty ("**Extension Market Certificate**").

(c) If the Emitter fails or is unable to deliver both a valid Extension Performance Certificate and a valid Extension Market Certificate by the Extension Delivery Date in accordance with clause 2.3(a) and clause 2.3(b) (including because the Extension Performance Conditions and/or the Extension Market Conditions have not been satisfied), the ICC Contract Counterparty may (in its absolute discretion) elect to either:

(i) subject to clause 2.3(e), extend the Initial Term for an additional five (5) years (the "**Extended Term**");⁵⁷ or

(ii) not extend the Initial Term, whereby the Agreement will expire following the expiry of the Initial Term in accordance with clause 2.4.

(d) If the Emitter delivers both the Extension Performance Certificate and the Extension Market Certificate to the ICC Contract Counterparty on or before the Extension Delivery Date in accordance with clauses 2.3(a) and 2.3(b) then, subject to any dispute raised by the ICC Contract Counterparty in respect of whether the Extension Performance Conditions and the Extension Market Conditions have been satisfied and subject to clause 2.3(e), the Initial Term shall be extended for an additional five (5) years.⁵⁸

(e) No later than [twenty (20)] Business Days following the expiry of each year during the Extended Term, the Emitter shall deliver to the ICC Contract Counterparty a Director's Certificate certifying (having made due and careful enquiry) that:

(i) the [average] Achieved CO₂ Capture Rate for the last rolling five (5) years is equal to or greater than the [Extension Required CO₂ Capture Rate];

(ii) the [average yearly] Achieved CO₂ Capture Volume and (where relevant) Deemed CO₂ Capture Volume for the last rolling five (5) years is equal to or greater than ninety per cent. (90%) of the CO₂ Capture Volume Estimate;

⁵⁷ Note to Reader: The updated payment mechanics that will apply for such Extended Term (as set out in the October Update Document) will be reflected in the full-form ICC Contract.

⁵⁸ Note to Reader: The updated payment mechanics that will apply for such Extended Term (as set out in the October Update Document) will be reflected in the full-form ICC Contract.

(iii) on no [●] during the previous year has the Carbon Price exceeded [●] of the Aggregate Opex Value for the corresponding [●]; and

(iv) [*other market conditions to be confirmed*],

(the "**Annual Extension Conditions**"), together with relevant Supporting Information in a form and content reasonably satisfactory to the ICC Contract Counterparty (the "**Annual Extension Conditions Certificate**").

(f) If the Emitter fails or is unable to deliver a valid Annual Extension Conditions Certificate to the ICC Contract Counterparty in accordance with clause 2.3(e) (including because the Annual Extension Conditions have not been satisfied), the ICC Contract Counterparty shall have the right, but not the obligation, to terminate the Agreement by giving the Emitter notice of the same, and where the ICC Contract Counterparty gives the Emitter such notice the Agreement shall terminate immediately and:

(i) no termination payment shall be payable in consequence by either Party to the other Party; and

(ii) neither Party shall be entitled to make any claim against the other Party under or in connection with the Agreement save in respect of any antecedent breach of any provision of the Agreement.

2.4 **End of the Term**

At the end of the Term, the Agreement shall terminate automatically and without compensation.

3. **TERMINATION**

3.1 **Pre-Start Date termination**

If:

(a) (i) the Emitter fails or is unable to deliver the Milestone Requirement Notice by the Milestone Delivery Date in accordance with clause 7.1 (Milestone satisfaction); or (ii) 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 has occurred and is continuing;

(c) any of the Initial Conditions Precedent are not fulfilled by the Emitter or waived by the ICC Contract Counterparty within twenty (20) Business Days of the date of the Agreement; or

(d) any of the Operational Conditions Precedent are not fulfilled by the Emitter or waived by the ICC Contract Counterparty on or before the Longstop Date,

the ICC Contract Counterparty shall have the right, but not the obligation, to terminate the Agreement with immediate effect upon giving the Emitter notice of the same specifying, in the case of clause 3.1(b), the relevant Termination Event.

3.2 **[Termination for Prolonged Force Majeure**

If the ICC Contract Counterparty determines that a Prolonged Force Majeure has occurred and is continuing, the ICC Contract Counterparty shall have the right, but not the obligation,

to terminate the Agreement with immediate effect upon giving the Emitter notice of the same.]]⁵⁹

3.3 [Termination for T&S Unavailability Event

If a T&S Unavailability Event has occurred and is continuing, the ICC Contract Counterparty shall have the right, but not the obligation, to terminate the Agreement with immediate effect upon giving the Emitter notice of the same ("**T&S Unavailability Termination Date**").]]⁶⁰

3.4 Default termination

- (a) If at any time on or after the Start Date a Termination Event has occurred and is continuing, the ICC Contract Counterparty shall have the right, but not the obligation, by notice to the Emitter, to designate a day as an early termination date with respect to the Agreement ("**Default Termination Date**"), specifying the relevant Termination Event.
- (b) If the ICC Contract Counterparty gives notice designating a Default Termination Date, the Agreement shall terminate on the Default Termination Date even if the circumstances giving rise to the Termination Event are no longer continuing.

3.5 [Termination for a Prolonged Minimum CO₂ Capture Rate Breach]]⁶¹

3.6 Qualifying Change in Law termination

- (a) If a Qualifying Change in Law is implemented, occurs or becomes effective and:
 - (i) gives rise to or results in a QCiL Construction Event or a QCiL Operations Cessation Event (including a Qualifying Shutdown Event), the ICC Contract Counterparty shall give notice to the Emitter terminating the Agreement; or
 - (ii) does not give rise to or result in a QCiL Construction Event or a QCiL Operations Cessation Event (including a Qualifying Shutdown Event) but clause 19.2(b) applies, the ICC Contract Counterparty may give notice to the Emitter terminating the Agreement.
- (b) The ICC Contract Counterparty shall not terminate the Agreement under clause 3.6(a)(i) in circumstances in which the Emitter has provided an Emitter QCiL 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.

3.7 No other termination right

The termination rights in this clause 3 are the only rights that either Party has to terminate the Agreement.

⁵⁹ Note to Reader: To be determined whether Termination for Prolonged Force Majeure will be included in the ICC Contract.

⁶⁰ Note to Reader: To be determined whether Termination for T&S Unavailability Event will be included in the ICC Contract.

⁶¹ Note to Reader: BEIS is considering introducing penalties and/or a further termination event, in cases where the Emitter's performance is poor for a prolonged period of time (particularly during the last years of the ICC Contract).

4. **TERMINATION EVENTS**

A Termination Event means the occurrence at any time with respect to the Emitter of any of the following events:

(a) **Insolvency**

the Emitter:

- (i) is dissolved or becomes insolvent;
- (ii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (iii) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (iv) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official;
- (v) has a secured party take possession of all or substantially all its assets or has a distress, diligence, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets; or
- (vi) is subject to any event with respect to it which under the applicable laws of any jurisdiction has an analogous effect to any of the events specified above,

except where any of the events set out this clause 4(a) is attributable to the ICC Contract Counterparty not paying when due any amount which[, but for the operation of clause 28 (Limited Recourse Arrangements, Undertakings and Acknowledgements),] would have been due pursuant to the Agreement;

(b) **Non-payment**

the Emitter fails to pay any amount when due under the Agreement and that failure is not remedied on or before [twenty (20)] Business Days after the ICC Contract Counterparty gives the Emitter notice of that failure;

(c) **Breach of key obligations**

- (i) the Emitter is no longer the legal and beneficial owner of the Installation (subject only to any third party rights arising by reason of any security interest created or subsisting over or in respect of the Installation);
- (ii) the Emitter is in breach of any of clause 29.1 (Assignment); or
- (iii) any director, officer or other senior manager of the Emitter commits or procures fraud, or aids, abets or counsels fraud (and fraud is in fact committed) in relation to the Agreement;⁶²

(d) **Metering**

a Technical Compliance Termination Event or a Metering Access Termination Event occurs;

⁶² Note to Reader: BEIS is considering whether this termination right should expressly apply to the Deemed CO₂ Capture Rate process.

- (e) [**Cross-default**

*the Grant Funding Agreement is terminated due to the Emitter's breach or default.]*⁶³

5. CONSEQUENCES OF TERMINATION

5.1 [**Consequences of Pre-Start Date termination [and termination for Prolonged Force Majeure]**

If the ICC Contract Counterparty terminates the Agreement pursuant to clause 3.1 (Pre-Start Date termination) [or clause 3.2 (Termination for Prolonged Force Majeure)]:⁶⁴

- (a) no termination payment shall be payable in consequence by either Party to the other Party; and
- (b) neither Party shall be entitled to make any claim against the other Party under or in connection with the Agreement save in respect of any antecedent breach of any provision of the Agreement.]

5.2 [**Consequences of T&S Unavailability Event termination**]⁶⁵

If the ICC Contract Counterparty terminates the Agreement pursuant to clause 3.2 (T&S Unavailability Event termination):

- (a) the ICC Contract Counterparty shall on, or as soon as reasonably practicable after, the T&S Unavailability Termination Date calculate the termination payment ("**T&S Termination Payment**") in accordance with [*a formula to be determined*];
- (b) the ICC Contract Counterparty shall notify the Emitter of the amount of the T&S Termination Payment; and
- (c) the ICC Contract Counterparty shall pay the T&S Termination Payment to the Emitter (or as the Emitter may direct) within [*a period to be determined*] of notification of the amount of the T&S Termination Payment, which amount shall bear interest in accordance with clause 13.5 (Default Interest).]

5.3 [**Consequences of Default termination [and termination for a Prolonged Minimum CO₂ Capture Rate Breach]**

If the ICC Contract Counterparty terminates the Agreement pursuant to clause 3.4 (Default termination) [or clause 3.5 (Termination for a Prolonged Minimum CO₂ Capture Rate Breach)]:

- (a) the ICC Contract Counterparty shall on, or as soon as reasonably practicable after, the Default Termination Date calculate the termination payment ("**Default Termination Payment**") in accordance with [*a formula to be determined*];
- (b) the ICC Contract Counterparty shall notify the Emitter of the amount of the Default Termination Payment;
- (c) the Emitter shall pay the Default Termination Payment to the ICC Contract Counterparty (or as the ICC Contract Counterparty may direct) within [*a period to*

⁶³ Note to Reader: To be determined whether this Termination Event will be included.

⁶⁴ Note to Reader: BEIS is still considering the termination for Prolonged Force Majeure provisions, including whether such termination should take place on a no-liability basis.

⁶⁵ Note to Reader: BEIS is still considering the quantum of costs that will be payable to an Emitter in the event that the ICC Contract is terminated due to a T&S Unavailability Event.

be determined] of notification of the amount of the Default Termination Payment, which amount shall bear interest in accordance with clause 13.5 (Default Interest);⁶⁶

- (d) [if the ICC Contract Counterparty terminates the Agreement pursuant to clause 3.5 (Termination for a Prolonged Minimum CO₂ Capture Rate Breach), the Default Termination Payment shall be reduced by [●];] and
- (e) the ICC Contract Counterparty shall have the right, but not the obligation, to set off the Default Termination Payment against any or all other amounts owing (whether or not matured, contingent or invoiced) by the ICC Contract Counterparty to the Emitter. The right of set off shall be without prejudice and in addition to any other right to which the ICC Contract Counterparty is otherwise entitled. If an amount is unascertained, the ICC Contract Counterparty may reasonably estimate the amount to be set off, subject to subsequent adjustment within [*a period to be determined*].⁶⁷

5.4 Consequences of Qualifying Change in Law termination

If the ICC Contract Counterparty terminates the Agreement pursuant to clause 3.6(a)(i) (Qualifying Change in Law termination):

- (a) the ICC Contract Counterparty shall on, or as soon as reasonably practicable after, the termination date calculate the termination payment ("**QCIL Termination Payment**") in accordance with clause 19.2(f) where a QCiL Construction Event has occurred or clause 19.2(g) where a QCiL Operations Cessation Event (including a Qualifying Shutdown Event) has occurred;
- (b) the ICC Contract Counterparty shall notify the Emitter of the amount of the QCiL Termination Payment; and
- (c) the ICC Contract Counterparty shall pay the QCiL Termination Payment to the Emitter (or as the Emitter may direct) within [*a period to be determined*] of notification of the amount of the QCiL Termination Payment, which amount shall bear interest in accordance with clause 13.5 (Default Interest).

5.5 Survival

Upon termination or expiry of the Agreement, the Parties shall have no further obligations under the Agreement but termination or expiry shall not affect:

- (a) save to the extent taken into account in the calculation of the Termination Payment (if any), the provisions of the Agreement as they relate to the payment of any sum due by one Party to the other under the Agreement;
- (b) the continued existence and validity of, and the rights and obligations of the Parties under, clause 1 (Definitions and Interpretation), clause 3 (Termination), this clause 5, clause 12 (Billing Statements), clause 13 (Payment Mechanics) and clauses 22 (Confidentiality) to 31 (Language) (inclusive);⁶⁸ or
- (c) any other right or obligation [*to be identified*] which is expressed to survive termination.

⁶⁶ Note to Reader: To be considered alongside any Grant Funding Agreement.

⁶⁷ Note to Reader: To be determined whether any compensation will be payable by the Emitter to the ICC Contract Counterparty.

⁶⁸ Note to Reader: The surviving provisions are subject to further review.

PART 3 CONDITIONS PRECEDENT AND MILESTONE REQUIREMENT

6. CONDITIONS PRECEDENT

6.1 Conditions Precedent⁶⁹

The rights and obligations of the Parties under clause 10 (Capex Payment), clause 11 (Opex Payment), clause 12 (Billing Statements), clause 13 (Payment Mechanics) and clause 17 (Emitter's Undertakings: Metering) are conditional upon the fulfilment or waiver of the Conditions Precedent and shall commence on the Start Date.

6.2 Fulfilment of Conditions Precedent

- (a) The Emitter shall use reasonable endeavours to fulfil or procure the fulfilment of:
 - (i) the Initial Conditions Precedent as soon as reasonably practicable and in any event no later than twenty (20) Business Days after the date of the Agreement; and
 - (ii) the Operational Conditions Precedent as soon as reasonably practicable and in any event before the Longstop Date.
- (b) The ICC Contract Counterparty shall notify the Emitter as soon as reasonably practicable after the ICC Contract Counterparty considers that:
 - (i) the Initial Conditions Precedent have been fulfilled (or waived in accordance with clause 6.4 (Waiver)); and
 - (ii) the Operational Conditions Precedent have been fulfilled (or waived in accordance with clause 6.4 (Waiver)) ("**Operational CP Fulfilment Notice**").
- (c) Upon receipt of the Operational CP Fulfilment Notice, the Emitter shall notify the ICC Contract Counterparty of the date that the Emitter has selected as the "**Start Date**" in accordance with, and subject to, the definition of that term in clause 1.1 (Definitions).

6.3 Reporting Obligations

Operational Conditions Precedent: General Reporting Obligations

- (a) The Emitter shall keep the ICC Contract Counterparty fully informed as to progress towards fulfilment of the Operational Conditions Precedent and in particular (but without limitation) shall:
 - (i) provide the ICC Contract Counterparty with reports (in form and content reasonably satisfactory to the ICC Contract Counterparty and in accordance with the reasonable requirements of the ICC Contract Counterparty as to the timing and frequency of such reports) as to the progress made in or towards fulfilment of the Operational Conditions Precedent;
 - (ii) notify the ICC Contract Counterparty by means of a Directors' Certificate [each time] the Emitter considers an Operational Condition Precedent has been fulfilled; and

⁶⁹ Note to Reader: The full-form ICC Contract will detail which provisions are effective at the date of: i) the Agreement; ii) the satisfaction of the Initial CPs; and iii) the satisfaction of the Operational CPs.

- (iii) notify the ICC Contract Counterparty by means of a Directors' Certificate together with reasonable details in support, promptly upon the Emitter becoming aware:
 - (A) of any fact, matter or circumstance which will or is reasonably likely to prevent any of the Operational Conditions Precedent being fulfilled within the Target Commissioning Window or by the Longstop Date; or
 - (B) that any of the Operational Conditions Precedent is no longer fulfilled at any time prior to the Start Date together with details of any remedial action that the Emitter is taking or proposes to take,

in each case unless compliance with the same has been waived in writing by the ICC Contract Counterparty.

Operational Conditions Precedent: Construction Reporting Obligations

- (b) The Emitter shall keep the ICC Contract Counterparty fully informed as to the progress towards the design, procurement, manufacturing, construction, completion, testing and commissioning of the Installation from the date of the Agreement until the occurrence of the Start Date and in particular (but without limitation) shall:
 - (i) provide the ICC Contract Counterparty with reports (in a form and content reasonably satisfactory to the ICC Contract Counterparty) on [a quarterly basis]⁷⁰ as to the progress towards the design, procurement, manufacturing, construction, completion, testing and commissioning of the Installation. As a minimum, each report shall include the Minimum Reporting Content Requirements;
 - (ii) [provide the ICC Contract Counterparty with the Supporting Information provided to the Emitter's board of Directors (or an equivalent body or committee, as applicable) as to the progress towards the design, procurement, manufacturing, construction, completion, testing and commissioning of the Installation]; and
 - (iii) notify the ICC Contract Counterparty by means of a Directors' Certificate together with reasonable details in support, promptly upon the Emitter becoming aware of any fact, matter or circumstance which will or is reasonably likely to delay the design, procurement, manufacturing, construction, completion, testing and commissioning of the Installation, including:
 - (A) any remedial action that the Emitter is taking or proposes to take;
 - (B) a revised Project timetable (and any delay in relation [to the Longstop Date]); and
 - (C) the estimated additional costs to the Project.

6.4 **Right to Audit**

- (a) If the ICC Contract Counterparty considers (acting reasonably) that the Emitter has breached its obligations under clause 6.3 (Reporting Obligations) of the Agreement, the ICC Contract Counterparty may direct the Emitter to grant (or procure the grant of) to the ICC Contract Counterparty, its authorised agents, consultants and/or advisers (each a "**Permitted Auditor**") a right of access to its premises, personnel, systems, records and any other information as such Permitted Auditor requires to

⁷⁰ Note to Reader: The frequency of the reporting is to be considered further by BEIS.

confirm whether such breach has occurred (an **"Audit"**). The Emitter shall provide, and shall procure that any subcontractor provides, all required cooperation, access, assistance and information to enable the Permitted Auditors to carry out such Audit.

- (b) The scope of any such Audit shall be limited to matters relevant to the Agreement and shall take place during regular office hours after the Permitted Auditor has provided reasonable prior written notice to the Emitter.
- (c) The Emitter shall reimburse the ICC Contract Counterparty for all out-of-pocket costs, expenses and fees incurred by the Permitted Auditors in connection with the Audit.

6.5 **Waiver**

The ICC Contract Counterparty may agree by notice to the Emitter to waive the fulfilment of all or any of the Conditions Precedent.

6.6 **[Subsidy Control**

[●]]⁷¹

7. **MILESTONE REQUIREMENT**

7.1 **Milestone satisfaction**

- (a) No later than the Milestone Delivery Date, the Emitter shall notify the ICC Contract Counterparty (a **"Milestone Requirement Notice"**) that the Emitter considers that it has complied with and fulfilled a Milestone Requirement. A Milestone Requirement Notice shall include either:
 - (i) such invoices, payment receipts and other Supporting Information with respect to the Project as the Emitter considers relevant to evidence that it and its direct shareholders have in aggregate spent 10 per cent. (10%) or more of the Total Project Pre-Commissioning Costs on the Project; or
 - (ii) such Information as is specified, identified or listed as the Project Commitments and such Supporting Information as the Emitter considers relevant to evidence compliance with or fulfilment of the Project Commitments (and for this purpose, where the Project Commitments relate to Material Equipment, taking into consideration the need to demonstrate to the ICC Contract Counterparty's satisfaction that contracts, agreements and purchase orders relating to such Material Equipment constitute significant financial commitments that are real, genuine and made in good faith),

(each, a **"Milestone Requirement"**).
- (b) A Milestone Requirement Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the Milestone Requirement Notice.

7.2 **Response to Milestone Requirement Notice**

- (a) The ICC Contract Counterparty shall, no later than [twenty (20)] Business Days after receipt of the Milestone Requirement Notice, give a notice to the Emitter (a **"Milestone Assessment Response Notice"**). A Milestone Assessment Response Notice shall specify whether the ICC Contract Counterparty considers that:

⁷¹ Note to Reader: This provision is subject to further review by BEIS including to ensure consistency, insofar as appropriate, with AR4 CfD drafting as it develops.

- (i) the Emitter 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 Emitter has complied with and fulfilled a Milestone Requirement and, if so, details of the additional Supporting Information which the ICC Contract Counterparty requires to determine whether the Emitter has complied with and fulfilled a Milestone Requirement (the **"Requested Milestone Supporting Information"**).
- (b) If the ICC Contract Counterparty states in a Milestone Assessment Response Notice that:
- (i) the Emitter 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 Agreement;
 - (ii) the Emitter has not complied with and fulfilled a Milestone Requirement, then the Milestone Requirement will be deemed not to have been complied with and fulfilled for the purposes of the Agreement unless and until a resolution or determination to the contrary is made pursuant to the Dispute Resolution Procedure; or
 - (iii) the Emitter has not provided the ICC Contract Counterparty with sufficient Supporting Information to determine whether the Emitter has complied with and fulfilled a Milestone Requirement:
 - (A) the Emitter shall provide the Requested Milestone Supporting Information as soon as reasonably practicable, and in any event no later than ten (10) Business Days after receipt of a Milestone Assessment Response Notice, or such longer period as is specified by the ICC Contract Counterparty; and
 - (B) upon receipt of the Requested Milestone Supporting Information, the ICC Contract Counterparty shall as soon as reasonably practicable, and in any event no later than twenty (20) Business Days after receipt of such Requested Milestone Supporting Information, give a further Milestone Assessment Response Notice to the Emitter (the **"Further Milestone Assessment Response Notice"**). A Further Milestone Assessment Response Notice shall specify whether the ICC Contract Counterparty considers that the Emitter has or has not complied with and fulfilled a Milestone Requirement.

7.3 **Waiver**

The ICC Contract Counterparty may agree by notice to the Emitter to waive the fulfilment of the Milestone Requirement.

7.4 **Notification of difficulties in achieving the Milestone Requirement**

The Emitter shall promptly notify the ICC Contract Counterparty, giving reasonable details, upon becoming aware of any fact, matter or circumstance which will or is reasonably likely to prevent the Emitter fulfilling the Milestone Requirement by the Milestone Delivery Date, accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, such notice.

PART 4 – CAPTURE RATE

8. CAPTURE RATE NOTICE

8.1 OCP Capture Rate Notice

- (a) The Emitter shall, following the OCP Acceptance Tests, give a notice to the ICC Contract Counterparty (an "**OCP Capture Rate Notice**"). An OCP Capture Rate Notice shall specify the CO₂ Capture Rate [and CO₂ Capture Volume] which has been Commissioned as at the date of such notice, and shall include relevant Supporting Information.
- (b) An OCP Capture Rate Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the OCP Capture Rate Notice.
- (c) The ICC Contract Counterparty shall give a notice to the Emitter (an "**OCP Capture Rate Response Notice**") within [twenty (20)] Business Days after receiving the OCP Capture Rate Notice. An OCP Capture Rate Response Notice shall specify that either:
 - (i) the ICC Contract Counterparty agrees with the CO₂ Capture Rate [and CO₂ Capture Volume] as specified in the OCP Capture Rate Notice; or
 - (ii) the ICC Contract Counterparty:
 - (A) has not been provided with sufficient Supporting Information to determine the CO₂ Capture Rate [and/or CO₂ Capture Volume]; or
 - (B) does not agree with the CO₂ Capture Rate [and/or CO₂ Capture Volume] which has been Commissioned as specified in the OCP Capture Rate Notice giving reasons,and in each case requesting details of any additional or revised Supporting Information.

PART 5 PAYMENT CALCULATIONS⁷²

9. CO₂ CAPTURE RATE AND CO₂ CAPTURE VOLUME

9.1 Achieved CO₂ Capture Rate and Achieved CO₂ Capture Volume

- (a) The Emitter shall promptly provide or procure the provision of all CO₂ Capture Rate Metering Data and CO₂ Capture Volume Metering Data to the ICC Contract Counterparty, with Supporting Information including any other data required to carry out the relevant calculations in accordance with schedule 3 (Capex Payment Calculations).⁷³

9.2 Estimates of CO₂ Metering Data

- (a) If the ICC Contract Counterparty has not received all or part of the CO₂ Capture Rate Metering Data and/or the CO₂ Capture Volume Metering Data from the Emitter (such missing data being the **"Required Metering Data"**) in respect of any [Settlement Unit] (an **"Estimated Data Settlement Unit"**) within a [Billing Period] (an **"Estimated CO₂ Data Billing Period"**) on or prior to the CO₂ Metered Cut-Off Time, the Achieved CO₂ Capture Rate and/or the Achieved CO₂ Capture Volume for the Estimated Data Settlement Unit, as set out in the Billing Statement relating to such Estimated CO₂ Data Billing Period (an **"Estimated CO₂ Data Billing Statement"**), shall be calculated by the ICC Contract Counterparty in accordance with clauses 9.2(b) and 9.2(c) [and used in schedule 3 (Capex Payment Calculations) or in schedule 4 (Opex Payment Calculation) (as applicable)].
- (b) The estimated Achieved CO₂ Capture Rate and/or Achieved CO₂ Capture Volume for each Estimated Data Settlement Unit within an Estimated CO₂ Data Billing Period (the **"Estimated CO₂ Data"**) shall be calculated by the ICC Contract Counterparty using (at its discretion):⁷⁴
- (i) the CO₂ Metering Data for the most recent [Settlement Unit] prior to the Estimated Data Settlement Unit for which the ICC Contract Counterparty has received all the CO₂ Metering Data; or
 - (ii) the CO₂ Metering Data for the Estimated Data Settlement Unit to the extent it is available and, for each item of Required Metering Data that is not available, the CO₂ Metering Data corresponding to such relevant unavailable item for the most recent [Settlement Unit] prior to the Estimated Data Settlement Unit for which the ICC Contract Counterparty has received it,
- in each case adjusted by the ICC Contract Counterparty (acting reasonably) to reflect:
- (iii) relevant conditions during such Estimated Data Settlement Unit; and
 - (iv) CO₂ Metering Data for previous [Settlement Units].
- (c) The Emitter shall promptly provide Supporting Information in relation to relevant conditions where required by the ICC Contract Counterparty for the purposes of calculating the Estimated CO₂ Data.

9.3 Recalculations of Estimated CO₂ Data

⁷² Note to Reader: Payment calculations to be confirmed. The October Update Document contains details relating to ICC Contract payments, free allowance treatment and other relevant points.

⁷³ Note to Reader: BEIS is currently considering whether this data could be collected/provided by a third party, such that this obligation would not be required or would need to be reframed.

⁷⁴ Note to Reader: The mechanics in this clause are subject to further review.

If the ICC Contract Counterparty is subsequently notified of the Required Metering Data for an Estimated Data Settlement Unit:

- (a) the ICC Contract Counterparty shall recalculate the Achieved CO₂ Capture Rate and/or Achieved CO₂ Capture Volume for such [Settlement Unit] using such Required Metering Data; and
- (b) if the calculation performed by the ICC Contract Counterparty pursuant to clause 9.3(a) results in a different Achieved CO₂ Capture Rate and/or Achieved CO₂ Capture Volume than that calculated by the ICC Contract Counterparty in relation to the Estimated Data Settlement Unit and reflected in the relevant Estimated CO₂ Data Billing Statement, then:
 - (i) the recalculated Achieved CO₂ Capture Rate and/or Achieved CO₂ Capture Volume shall be used by the ICC Contract Counterparty to recalculate the Payments for the relevant Estimated Data Settlement Unit; and
 - (ii) any adjustment to the Capex Payment and/or Opex Payment for the Estimated CO₂ Data Billing Period (the "**CO₂ Data Recalculation Amount**") shall be included as such in the relevant Billing Statement which is next issued by the ICC Contract Counterparty.

9.4 **Prolonged Failure to Provide Metering Data**

- (a) If the ICC Contract Counterparty is required to calculate any Estimated CO₂ Data under clause 9.2 in respect of all or any part of the CO₂ Metering Data for [*a period of time to be determined*], the ICC Contract Counterparty may (subject to clause 9.4(b)) elect to suspend payment of any Payments which would otherwise be payable by the ICC Contract Counterparty in respect of any Billing Period:
 - (i) that occurs in the period after the notification referred to in clause 9.4(b) until [*a period to be determined*] have elapsed during which all of the CO₂ Metering Data necessary for calculating the Payment has been provided by the Emitter (a "**Suspension Period**"); and
 - (ii) for which the Emitter has not provided all or any part of the CO₂ Metering Data to the ICC Contract Counterparty.
- (b) Prior to exercising any suspension right under clause 9.4(a), the ICC Contract Counterparty shall notify the Emitter of:
 - (i) its intention to exercise such suspension right; and
 - (ii) the first Billing Period in relation to which such election to suspend shall apply.
- (c) If the Emitter subsequently complies with its obligation to provide all of the CO₂ Metering Data in respect of all of the Billing Periods in a Suspension Period in respect of which payment has been suspended pursuant to clause 9.4(a), then the ICC Contract Counterparty shall pay any amounts to the Emitter which would have been payable but for the operation of clause 9.4(a) during such Suspension Period (without any interest being payable on such amounts).

9.5 **Captured CO₂ Declaration Capacity Data**

The Emitter shall submit CO₂ capture capacity data declarations and details of Capture Plant Outage Events (together with Supporting Information) in a form and content satisfactory to the ICC Contract Counterparty (acting reasonably) and with the frequency that such data

is required to be provided in accordance with [*a methodology and framework to determined*].⁷⁵

9.6 T&S Outage Event Declarations

The Emitter shall provide or procure the provision of details relating to T&S Outage Events (with Supporting Information) in a form and content satisfactory to the ICC Contract Counterparty (acting reasonably) and with the frequency that such data is required to be provided in accordance with [*a methodology and framework to determined*].⁷⁶

9.7 Deemed CO₂ Capture Rate and Deemed CO₂ Capture Volume

- (a) Where a Capture Plant Outage Event occurs as a direct result of a T&S Outage Event, except to the extent that:
- (i) the T&S Outage Event arises out of or in connection with any act, omission, breach or default of the Emitter (including any breach by the Emitter of an Industry Document); or
 - (ii) prior to the occurrence of the T&S Outage Event, the Emitter has notified the ICC Contract Counterparty that a Capture Plant Outage Event has occurred which is not related to the T&S Outage Event
- (a "**Capture Plant Outage Relief Event**"),⁷⁷ then [●].⁷⁸
- (b) The Emitter shall, promptly following the occurrence of a Capture Plant Outage Relief Event, submit a notice to the ICC Contract Counterparty, evidencing in reasonable detail (with Supporting Information):
- (i) the Capture Plant Outage Relief Event;
 - (ii) the impact of the Capture Plant Outage Relief Event on the Achieved CO₂ Capture Rate and Achieved CO₂ Capture Volume; and
 - (iii) the steps that the Emitter has taken and/or proposes to take to mitigate the effect of the relevant event,
- together with a Directors' Certificate in relation to such Supporting Information.
- (c) Where the Deemed CO₂ Capture Rate and Deemed CO₂ Capture Volume are applicable for a [Settlement Unit], they shall be equal to: [●].⁷⁹
- (d) The ICC Contract Counterparty may request a CO₂ Capacity Test at any time to verify the Deemed CO₂ Capture Rate and/or Deemed CO₂ Capture Volume.

⁷⁵ Note to Reader: We note further work is to be undertaken to set out the methodology and framework for making availability of capture declarations.

⁷⁶ Note to Reader: We note further work is to be undertaken to set out the methodology and framework for T&S Outage Event declarations.

⁷⁷ Note to Reader: BEIS is still considering whether a Capture Plant Outage Event (which occurs as a direct result of a T&S Outage Event and does not fall within the exceptions in (i) and (ii)) must occur for at least a minimum period of time in order to constitute a Capture Plant Outage Relief Event.

⁷⁸ Note to Reader: BEIS is still considering the quantum of "qualifying costs" that will be payable to an Emitter where there is a T&S unplanned outage or capacity constraint and how the concepts of Deemed CO₂ Capture Rate and Deemed CO₂ Capture Volume will be used to calculate such costs. Please refer to the October Update Document for a further discussion on this issue.

⁷⁹ Note to Reader: The approach to determining the Deemed CO₂ Capture Rate and Deemed CO₂ Capture Volume will need to be considered further by BEIS.

10. CAPEX PAYMENT⁸⁰

10.1 Application

The ICC Contract Counterparty shall pay the Emitter the Capex Payment in accordance with the terms of this clause 10 (Capex Payment), clause 12 (Billing Statements) and clause 13 (Payment Mechanics), with effect from the Start Date with such payment calculated in accordance with schedule 3 (Capex Payment Calculations).

10.2 Extension of Initial Capex Payment Period

[●]⁸¹

11. OPEX PAYMENT⁸²

11.1 Application

The ICC Contract Counterparty shall pay the Opex Payment to the Emitter in accordance with terms of this clause 11 (Opex Payment), clause 12 (Billing Statements) and clause 13 (Payment Mechanics), with effect from the Start Date, with such payment calculated in accordance with schedule 4 (Opex Payment Calculation).

11.2 Indexation

The [[●] *component of the*] Opex Payment shall be fully indexed annually by reference to the change in CPI. The ICC Contract Counterparty shall calculate, and notify the Emitter of, the resultant change to the Opex Payment in accordance with schedule 3 (Capex Payment Calculations).⁸³

11.3 [T&S Capacity Fee

- (a) If by the Start Date the T&S Network has not been commissioned to enable the Installation to export captured CO₂ to the T&S Network, the T&S Capacity Fee component of the Opex Payment shall not be payable by the ICC Contract Counterparty until the T&S Network is commissioned, and the T&S Capacity Fee shall be deemed to be zero (0) for the applicable period for the purposes of calculating the Opex Payment in accordance with schedule 4 (Opex Payment Calculation).
- (b) The [T&S Capacity Fee] component of the Opex Payment shall be adjusted by reference to any change to the corresponding payment terms in the T&S Connection Agreement.⁸⁴ The ICC Contract Counterparty shall calculate, and notify the Emitter of, the resultant change to the Opex Payments in accordance with schedule 4 (Opex Payment Calculation).

⁸⁰ Note to Reader: Payment mechanics to be confirmed. Please refer to the October Update Document for further information relating to ICC Contract payments, free allowance treatment and other relevant points.

⁸¹ Note to Reader: This clause and schedule 3 will need to be updated to reflect the position set out in the May Update Document that i) an Emitter will be able to receive full capex payments in the first five years of the Initial Term if it achieves the expected capture rate and volume and ii) if it does not, it will have the opportunity to recover any residual capex payments between the sixth and tenth years of the Initial Term.

⁸² Note to Reader: Payment mechanics to be confirmed. Please refer to the October Update Document for further information relating to ICC Contract payments, free allowance treatment and other relevant points.

⁸³ Note to Reader: Indexation of the relevant component of the Opex Payment will need to be considered further by BEIS.

⁸⁴ Note to Reader: The T&S Capacity Fee payable by the Emitter under the T&S Connection Agreement is likely to be indexed to the fee that will be verified by the Economic Regulator. Please refer to the discussion in Section 3 of the Main Document.

11.4 **T&S Volumetric Fee**

The T&S Volumetric Fee component of the Opex Payment shall be adjusted by reference to any change to [*the corresponding payment terms in the T&S Connection Agreement*].⁸⁵ The ICC Contract Counterparty shall calculate, and notify the Emitter of, the resultant change to the T&S Volumetric Fee.]⁸⁶

11.5 **Minimum Capture Rate**

[If the Achieved CO₂ Capture Rate within an [OP Billing Period] falls below the Minimum CO₂ Capture Rate, [*an Opex Payment penalty to be defined*] shall be [imposed on] the Emitter in respect of such [OP Billing Period].]

11.6 **Opex Costs Early Reopener**

[●]⁸⁷

⁸⁵ Note to Reader: The T&S Volumetric Fee payable by the Emitter under the T&S Connection Agreement is likely to be indexed to the fee that will be verified by the Economic Regulator. Please refer to the discussion in Section 3 of the Main Document.

⁸⁶ Note to Reader: To be confirmed whether the T&S Capacity Fee and/or T&S Volumetric Fee will form part of the Capex Payment or Opex Payment or neither.

⁸⁷ Note to Reader: This clause and schedule 4 will need to be updated to reflect BEIS' proposals in the October Update Document relating to the opex costs early reopener, once further details are determined.

PART 6 BILLING AND PAYMENT

12. BILLING STATEMENTS⁸⁸

12.1 Capex Payment Billing Statement

On and from the Start Date and within [seven (7)] Business Days after the last day of each CP Billing Period thereafter, the ICC Contract Counterparty shall send to the Emitter a statement (the "**Capex Payment Billing Statement**") showing the Capex Payment payable in respect of the previous CP Billing Period (the "**Monthly Capex Payment**") with such statement to confirm:

- (a) the Monthly Capex Payment for the relevant CP Billing Period with Supporting Information (including the accompanying calculation in accordance with schedule 3 (Capex Payment Calculations));
- (b) the Achieved CO₂ Capture Rate and Achieved CO₂ Capture Volume for each [Settlement Unit] falling within the relevant CP Billing Period with Supporting Information (including the accompanying calculation in accordance with schedule 3 (Capex Payment Calculations));
- (c) any Capture Plant Outage Events (excluding Capture Plant Outage Relief Events) within the relevant CP Billing Period with Supporting Information (including the duration of the relevant event(s));
- (d) the use of any Estimated CO₂ Data in the calculation thereof; and
- (e) any CO₂ Data Recalculation Amounts relating to the Capex Payment within the relevant CP Billing Period in accordance with clause 9.3 (Recalculations of Estimated CO₂ Data).

12.2 Opex Payment Billing Statement

On and from the Start Date and within [seven (7)] Business Days after the last day of each OP Billing Period thereafter, the ICC Contract Counterparty shall send to the Emitter a statement ("**Opex Payment Billing Statement**") showing:

- (a) the Opex Payment for each [Settlement Unit] falling within the relevant OP Billing Period, with Supporting Information (including the accompanying calculation in accordance with schedule 4 (Opex Payment Calculation));
- (b) the sum of the Opex Payments for all of the [Settlement Units] falling within the relevant OP Billing Period;
- (c) [the Achieved CO₂ Capture Rate and Achieved CO₂ Capture Volume for each [Settlement Unit] falling within the relevant OP Billing Period, with Supporting Information (including the accompanying calculation in accordance with schedule 3 (Capex Payment Calculations))];
- (d) any Capture Plant Outage Events (excluding Capture Plant Outage Relief Events) for the relevant OP Billing Period, with Supporting Information (including the duration of the relevant event(s));
- (e) the use of any Estimated CO₂ Data in the calculation thereof;

⁸⁸ Note to Reader: Payment mechanics to be confirmed. Please refer to the October Update Document for further information relating to ICC Contract payments, free allowance treatment and other relevant points.

- (f) any CO₂ Data Recalculation Amounts relating to the Opex Payment within the relevant OP Billing Period in accordance with clause 9.3 (Recalculations of Estimated CO₂ Data);
- (g) [the T&S Capacity Fee for the relevant OP Billing Period; and]
- (h) [the T&S Volumetric Fee in respect of each [Settlement Unit] falling within the relevant OP Billing Period.]

13. **PAYMENT MECHANICS**⁸⁹

13.1 **Due Date for payment**

- (a) Subject to [clause 28 (Limited Recourse Arrangements, Undertakings and Acknowledgements) and] clause 13.1(b), on or before [twenty-eight (28)] Business Days after receipt of:
 - (i) a Capex Payment Billing Statement ("**Capex Payment Due Date**"), the ICC Contract Counterparty shall pay the Emitter the Monthly Capex Payment in such CP Billing Period in accordance with the Capex Payment Billing Statement; and
 - (ii) an Opex Payment Billing Statement ("**Opex Payment Due Date**"), the ICC Contract Counterparty shall pay the Emitter the Opex Payment in such OP Billing Period in accordance with the Opex Payment Billing Statement,

such payments to be made in Sterling by direct bank transfer or equivalent transfer of immediately available funds to the credit of the account in the United Kingdom specified by the Emitter (which account may, but need not be, in its name).

- (b) In addition to any other remedies that the ICC Contract Counterparty may have, the ICC Contract Counterparty shall have the right, but not the obligation, to withhold or suspend payment under the Agreement at any time when the Emitter is not complying with the Metering Obligations by reason of the Emitter's fault or negligence or that of its Representatives.

13.2 **Set Off**

Each Party may set off any matured obligations due by the other Party pursuant to the Agreement against any matured obligation owed by that Party to the other Party pursuant to the Agreement.

13.3 **No deduction or withholding**

- (a) Save as provided in clause 5.3(c) (Consequences of Default termination), all payments under the Agreement shall be made free of any restrictions or conditions and without deduction or withholding (except to the extent required by law) on account of any other amount, whether by way of set off or otherwise.
- (b) If a Party is required to deduct or withhold on account of tax, then that Party shall:
 - (i) promptly notify the other Party of such requirement;
 - (ii) pay to the relevant authorities the full amount required to be deducted or withheld promptly upon the earlier of determining that such deduction or

⁸⁹ Note to Reader: Payment mechanics to be confirmed. Please refer to the October Update Document for further information relating to ICC Contract payments, free allowance treatment and other relevant points.

withholding is required or receiving notice that such amount has been assessed against that other Party; and

- (iii) promptly forward to that other Party an official receipt (or a certified copy), or other documentation reasonably acceptable to that other Party, evidencing such payment to such authorities.

13.4 **Disputed payments**

- (a) If a Party disputes in good faith any sum shown in a Billing Statement as being payable by that Party, it shall:
 - (i) subject to [clause 28 (Limited Recourse Arrangements, Undertakings and Acknowledgements) and] clause 13.1(b) (Due Date for payment), make payment of the full amount set out in such Billing Statement on or before the Due Date; and
 - (ii) give notice of the amount in dispute and the reasons for the dispute to the other Party.
- (b) The Parties shall seek to settle the disputed amount using the Dispute Resolution Procedure.
- (c) A Party shall not be entitled to initiate any dispute concerning any sum shown in, or which should have been shown in, a Billing Statement more than [*a period to be determined*] months after the date of that Billing Statement.

13.5 **Default Interest**

- (a) Subject to clauses 13.5(c) and 29.10 (Costs), if either Party fails to pay any sum payable by it pursuant to the Agreement (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).
- (b) The right to receive Default Interest pursuant to the Agreement (and as calculated in accordance with this clause 13.5 (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 Agreement.
- (c) Default Interest shall be payable by the ICC Contract Counterparty only in circumstances in which the ICC Contract Counterparty is in breach of clauses [●] to [●], but not otherwise.

PART 7 REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

14. EMITTER'S REPRESENTATIONS AND WARRANTIES

14.1 Agreement Date Representations

The Emitter represents and warrants to the ICC Contract Counterparty that, as at the date of Agreement, the following statements are true, accurate and not misleading:

(a) **Status**

It is a limited liability company, duly incorporated and validly existing under the laws of the jurisdiction of its incorporation and it has the power to own its assets and carry on its business as contemplated by the Agreement.

(b) **Power and authority**

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Agreement and the obligations contemplated by the Agreement.

(c) **Enforceability**

The obligations expressed to be assumed by it under the Agreement are legal, valid, binding and enforceable subject only to legal reservations.

(d) **Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, the Agreement do not conflict with:

- (i) 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;⁹⁰
- (ii) its constitutional documents;
- (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**

All Required Authorisations have been obtained or effected and are in full force and effect and all conditions of any Required Authorisations have been complied with in all material respects.

(f) **No Default**

No Default with respect to the Emitter has occurred and is continuing or might reasonably be expected to result from its entry into or performance of the Agreement.

(g) **No litigation:**

⁹⁰ Note to Reader: BEIS intends to align the definition of this term in the full-form ICC Contract with the definition of "Material Adverse Effect" in the AR3 CfD.

No litigation, arbitration or administrative suit or proceeding, adjudication, expert determination, tax claim or tax investigation which is current, pending or, so far as it is aware by reason of a formal written notice before action or similar, threatened against it which, if adversely determined, would have or would reasonably be expected to have a material adverse effect.

(h) **No requirement to deduct or withhold**

It is not required by any applicable law, as 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 ICC Contract Counterparty under the Agreement.

14.2 **Start Date representation**

The Emitter represents and warrants to the ICC Contract Counterparty that, as at and from the Start Date, the following statements are true, accurate and not misleading:

(a) **Ownership**

The Emitter is the legal and beneficial owner of the Installation, 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 Emitter (or an agent or security trustee on its behalf) in accordance with clause 29.1 (Assignment).

(b) **Installation Capture Technology**

The capture technology deployed by the Installation is the Installation Capture Technology.

14.3 **Repeating Representations**

The Emitter Repeating Representations are deemed to be made by the Emitter by reference to the facts and circumstances then existing on the Start Date.

15. **ICC CONTRACT COUNTERPARTY'S REPRESENTATIONS AND WARRANTIES**

15.1 The ICC Contract Counterparty represents and warrants to the Emitter that, as at the date of the Agreement, the following statements are true, accurate and not misleading:⁹¹

(a) **Status**

It is a limited liability company, duly incorporated and validly existing under the laws of England and Wales and it has the power to own its assets and carry on its business as contemplated by the Agreement.

(b) **Power and authority**

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Agreement and the obligations contemplated by the Agreement.

(c) **Enforceability**

⁹¹ Note to Reader: These provisions are subject to further review once BEIS has confirmed the identity of the ICC Contract Counterparty.

The obligations expressed to be assumed by it under the Agreement are legal, valid, binding and enforceable subject only to legal reservations.

(d) **Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, the Agreement do not conflict with:

- (i) 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;
- (ii) any authorisation, licence, accreditation, permit, consent, certificate, resolution, clearance, exemption order, confirmation or other approval of or from any Competent Authority required to enable it to perform and comply with its obligations under the Agreement to an extent or in a manner which has or is reasonably expected to have a material adverse effect;
- (iii) its constitutional documents; 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 on its ability to perform its obligations under the Agreement.

(e) **No requirement to deduct or withhold**

It 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 Emitter pursuant to the Agreement.

15.2 The representations in clauses 15.1(a) to 15.1(d) are deemed to be made by the ICC Contract Counterparty by reference to the facts and circumstances then existing on the Start Date.

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

16.1 **General**

The Emitter undertakes to the ICC Contract Counterparty as follows:

(a) **Compliance with Laws**

It shall at all times comply with all Laws and Directives to which it may be subject if failure to do so would have or would reasonably be expected to have a materially adverse effect.

(b) **Required Authorisations**

It shall promptly obtain, and at all times comply in all material respects with and do all that is necessary to maintain in full force and effect, all Required Authorisations to the extent that failure to do so would have or would reasonably be expected to have a materially adverse effect.

(c) **Industry Documents**

It shall at all times comply in all material respects 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 materially adverse effect.

(d) **No insolvency action**

It shall not petition, apply for, institute, support or vote for the administration, winding-up or liquidation of the ICC Contract Counterparty or seek any other relief as against the ICC Contract Counterparty under any administration, insolvency or bankruptcy law or similar law affecting creditors' rights generally.

(e) **Ownership**

It shall at all times be the legal and beneficial owner of the Installation, subject only to third party rights arising by reason of any security interest created or subsisting over or in respect of the Installation.

(f) **Compliance of technology**

The Emitter shall at all times ensure that the capture technology deployed by the Installation is the Installation Capture Technology, provided that (without prejudice to any other provision of the Agreement) this provision shall not prevent the operation of the Industrial Installation in unabated mode.

(g) **Notification**

The Emitter shall:

- (i) provide the ICC Contract Counterparty promptly with such information regarding compliance by the Emitter with the undertakings in this clause 16 as the ICC Contract Counterparty may reasonably request.
- (ii) give notice to the ICC Contract Counterparty as soon as reasonably practicable upon becoming aware of the occurrence of any Default (together with the details of the steps, if any, being taken to remedy it).

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

17.1 **CO₂ Metering Obligation**

- (a) The Emitter shall ensure that at all times, with effect from the Start Date, the CO₂ Metering Equipment relating to the Installation:
 - (i) has been installed at the metering point(s) identified in schedule 5 (Metering Points);
 - (ii) has been and is installed, configured, registered, operated and maintained in accordance with the requirements of the CO₂ Metering Specification, including to ensure that captured CO₂ which fails to comply with the Captured Carbon Dioxide Quality Standards is not exported to the T&S Network;
 - (iii) is configured exclusively in relation to the Installation and no other CO₂ output is metered through such meters; and
 - (iv) is operational and capable of measuring accurately the CO₂ output from the Installation at the CO₂ Delivery Point.⁹²

⁹² Note to Reader: BEIS is considering the impact of the inclusion of non-pipeline transportation on metering arrangements.

- (b) The Emitter shall ensure that at all times, with effect from the Start Date, the captured CO₂ from the Installation complies with the Captured Carbon Dioxide Quality Standards.

17.2 [Capture Plant Metering Obligation

The Emitter shall ensure that at all times, with effect from the Start Date, the Capture Plant Metering Equipment relating to the Installation:

- (a) has been installed at the metering point(s) identified in schedule 5 (Metering Points);
- (b) has been and is installed, configured, registered, operated and maintained in accordance with the requirements of the Capture Plant Metering Specification;
- (c) is configured exclusively in relation to the Industrial Installation and no CO₂ generated by any other installation is metered through such meters; and
- (d) is operational and capable of measuring accurately [●].⁹³

17.3 Investigate any fault or issue

With effect from the Start Date, the Emitter undertakes to the ICC Contract Counterparty to investigate any fault or issue with:

- (a) the Capture Plant Metering Equipment of which it is notified by the ICC Contract Counterparty or which it is required to investigate pursuant to the [*insert relevant code(s)*]; and/or
- (b) the CO₂ Metering Equipment of which it is notified by the ICC Contract Counterparty or which it is required to investigate pursuant to [*insert relevant code(s)*].

17.4 Metering Obligations breach

The ICC Contract Counterparty may at any time notify the Emitter if it considers that the Emitter is in breach of its obligations under clauses 17.1 to 17.3. If the Emitter fails to remedy such breach within [*a period to be specified in the Agreement*], then a **Technical Compliance Termination Event** will be deemed to have occurred.

17.5 Metering schematic obligation

- (a) If there is a Material Change to the Installation Metering Equipment, then the Emitter shall notify the ICC Contract Counterparty as soon as reasonably practicable after such change, setting out details of the Material Change that has been effected and provide an updated version of the relevant schematic diagram (the "**Metering Schematic Obligation**").
- (b) If the Emitter is in breach of the Metering Schematic Obligation, the ICC Contract Counterparty may elect to suspend payment of any payments which would otherwise be payable by the ICC Contract Counterparty to the Emitter in any period during which the Emitter is in breach of such obligation, provided that, prior to effecting any such suspension, the ICC Contract Counterparty notifies the Emitter of: (i) its intention to suspend payment; and (ii) the date from which it proposes to effect such suspension.
- (c) If the Emitter subsequently complies with its Metering Schematic Obligation, then the ICC Contract Counterparty shall pay any amounts to the Emitter which would

⁹³ Note to Reader: Metering provisions are subject to further review.

have been payable but for the operation of clause 17.5(b) above (without any interest being payable on such amounts).

17.6 **Access to and testing of meters**

The Emitter shall grant the ICC Contract Counterparty and any suitable persons nominated by the ICC Contract Counterparty the right of access, at reasonable times and on reasonable notice, to the Installation and such plant, property or assets owned, occupied or controlled by the Emitter and to which the Emitter can lawfully grant access as may be reasonably necessary in order for the ICC Contract Counterparty to read and verify the Installation Metering Equipment and inspect and conduct tests in respect of such metering equipment from time to time ("**Metering Access Rights**").

17.7 **Failure to provide Metering Access Rights**

- (a) If the Emitter is in breach of its obligation to permit the ICC Contract Counterparty to exercise the Metering Access Right, the ICC Contract Counterparty may elect to suspend payment of any payments which would otherwise be payable by the ICC Contract Counterparty to the Emitter in any period during which the Emitter is in breach of such obligation, provided that, prior to effecting any such suspension, the ICC Contract Counterparty notifies the Emitter of: (i) its intention to suspend payment; and (ii) the date from which it proposes to effect such suspension.
- (b) If the Emitter subsequently complies with its obligation to permit the ICC Contract Counterparty to exercise the Metering Access Rights, then the ICC Contract Counterparty shall pay any amounts to the Emitter which would have been payable but for the operation of clause 17.7(a) above (without any interest being payable on such amounts).
- (c) If the Emitter:
 - (i) is in breach of its obligation to permit the ICC Contract Counterparty to exercise the Metering Access Rights; and
 - (ii) has not permitted the ICC Contract Counterparty to exercise such Metering Access Rights within [twenty (20)] Business Days of receipt of a notice requesting the same,

then a **Metering Access Termination Event** will be deemed to have occurred.

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

18.1 **Provision of information to the ICC Contract Counterparty**

In addition and without prejudice to its obligations under clauses 6.3 (Reporting Obligations), 7.4 (Notification of difficulties in achieving the Milestone), 16.1 (Emitter's undertakings: General) and 21.3 (Provision of Force Majeure information), the Emitter, acting in accordance with the Reasonable and Prudent Standard, shall promptly provide the ICC Contract Counterparty (and, if requested by the ICC Contract Counterparty, the ICC Contract Settlement Services Provider) with:

- (a) the Emitter's estimate of the expected Start Date and the commissioning profile of the Installation;
- (b) all information requested by the ICC Contract Counterparty to comply with its obligations under the Agreement;
- (c) as from [*a period (to be determined) prior to*] the Start Date and [*at intervals to be determined*], forecasts of the expected:

- (i) CO₂ Capture Rate;
 - (ii) CO₂ Capture Volume; and
 - (iii) *[any other information to be determined]*,
- (d) details of any material events or circumstances that will or are reasonably likely to affect significantly the following:
- (i) CO₂ Capture Rate;
 - (ii) CO₂ Capture Volume; and
 - (iii) *[any other information to be determined]*,
- (e) all information reasonably requested by the ICC Contract Counterparty regarding the financial condition, business and operations of the Emitter;
- (f) all information reasonably requested by the ICC Contract Counterparty for the purposes of compiling, evaluating and publishing statistics relating to the outcome of the ICC Contract and the CCUS Programme;
- (g) all information reasonably requested by the ICC Contract Counterparty for the purposes of assessing compliance by the Emitter with the Metering Obligations;
- (h) the details of any litigation, proceedings, determinations, claims or investigations against the Emitter which could have a material adverse impact on the Emitter's ability to comply with its obligations under the Agreement;
- (i) the data required to determine the CO₂ Capture Rate and CO₂ Capture Volume in respect of each [Settlement Unit] and other data required by the ICC Contract Counterparty or the ICC Contract Settlement Services Provider to perform its functions under or in connection with the Agreement (including that required for settlement); and
- (j) as soon as reasonably practicable, all information reasonably requested that represents the status and progress of the Project to date against contractual and Project milestones, showing the critical path of the Project towards these milestones up to the delivery of the [OCP Capture Rate Notice].

18.2 **Accuracy of information**

The Emitter shall ensure that:

- (a) all forecasts and forward-looking statements provided by or on behalf of the Emitter under clause 18.1 (Provision of information to the ICC Contract Counterparty) shall be prepared on a reasonable basis and shall be made in good faith after careful consideration; and
- (b) all other information relating to the Project, the Installation or the Emitter provided by or on behalf of the Emitter under clause 18.1 (Provision of information to the ICC Contract Counterparty) is true, complete and accurate in all material respects and not misleading.

PART 8 CHANGE IN LAW

19. QUALIFYING CHANGE IN LAW

19.1 Procedure

- (a) If a Party considers that a Qualifying Change in Law has occurred or is shortly to occur, it may give notice to the other Party of that fact together with:
- (i) supporting evidence in reasonable detail of the Qualifying Change in Law;
 - (ii) the date it considers the Qualifying Change in Law to have occurred or is expected to occur, as the case may be;
 - (iii) specify why it considers that the notified Change in Law constitutes, or will constitute, a Qualifying Change in Law, including whether it 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
 - (iv) in the case of a notice given by the Emitter with respect to a Qualifying Change in Law (an "**Emitter QCiL Notice**"):
 - (A) a statement, together with Supporting Information, in reasonable detail, of: (x) the costs and/or savings which the Emitter reasonably expects to incur and/or make (taking account of the Emitter's obligation to minimise costs and maximise cost savings under clause 19.5 (Mitigation)) and (y) whether an Adjusted Capture Period has occurred and/or will occur and the costs and/or savings which the Emitter has incurred and/or saved or reasonably expects to incur and/or save as a direct result of such Adjusted Capture Period, in each case over the remainder of the Term arising from the occurrence of the Qualifying Change in Law ("**Identified Costs**") (and excluding, for the avoidance of doubt, costs referred to in clause 19.7 (Indemnity)); and
 - (B) Supporting Information evidencing, in reasonable detail, the steps that the Emitter has taken and/or proposes to take to mitigate the effect of the Qualifying Change in Law,together with a Directors' Certificate in relation to such Supporting Information stating whether the Emitter, having made due and careful enquiry, considers the relevant Change in Law to be a Qualifying Change in Law.
- (b) If the ICC Contract Counterparty gives notice to the Emitter under clause 19.1(a) with respect to a Change in Law which the ICC Contract Counterparty considers may be a Qualifying Change in Law, the Emitter shall as soon as practicable, and in any event within [forty (40)] Business Days after receipt of such notice, provide the ICC Contract Counterparty with:
- (i) the Supporting Information set out in clause 19.1(a) (on the assumption that the Change in Law is a Qualifying Change in Law);
 - (ii) a Directors' Certificate in relation to such Supporting Information stating whether the Emitter, having made due and careful enquiry, considers the relevant Change in Law to be a Qualifying Change in Law.
- (c) The ICC Contract Counterparty shall be under no obligation to consider any notice from the Emitter under clause 19.1(a) unless and until the Emitter has provided the ICC Contract Counterparty with all the information, documents and evidence required of it under that clause.

- (d) As soon as practicable, and in any event within [fifteen (15)] Business Days, after the earlier of: (x) notice by the Emitter under clause 19.1(a) together with all the information, documents and evidence required of it under that clause; and (y) notice by the ICC Contract Counterparty under clause 19.1(a) and the provision by the Emitter of the information referred to in clause 19.1(b), as the case may be, the Parties shall meet to discuss and, in good faith, seek to agree:
 - (i) whether a Qualifying Change in Law has occurred or will occur and the date or expected date of such occurrence;
 - (ii) in the case of a Qualifying Change in Law:
 - (A) the QCiL Effective Date;
 - (B) whether the relevant Qualifying Change in Law will, or is reasonably expected to, result in Identified Costs;
 - (C) the amounts, forecasts and estimates applicable to that Qualifying Change in Law and any other matters necessary to determine the quantum of the QCiL Compensation; and
 - (D) the steps or additional steps, as the case may be, which the Emitter should take to mitigate the effect of the Qualifying Change in Law;
 - (iii) the QCiL Compensation in respect of such Qualifying Change in Law; and
 - (iv) where applicable, any adjustments to the Achieved CO₂ Capture Rate and Achieved CO₂ Capture Volume that are required as a direct result of the Qualifying Change in Law.

19.2 QCiL Compensation

- (a) Subject to clause 19.2(b), compensation in respect of a Qualifying Change in Law shall be calculated:
 - (i) if there are QCiL Opex Costs and/or QCiL Opex Savings, in accordance with clause 19.2(c) (a "**QCiL Opex Payment**");
 - (ii) if there are QCiL Capex Costs and/or QCiL Capex Savings, in accordance with clause 19.1(d) (a "**QCiL Capex Payment**");
 - (iii) if there is an Adjusted Capture Period, in accordance with clause 19.2(e) (a "**QCiL Adjusted Capture Payment**");
 - (iv) if there is a QCiL Construction Event, in accordance with clause 19.2(f) (a "**QCiL Construction Event Payment**"); and
 - (v) if there is a QCiL Operations Cessation Event, in accordance with clause 19.2(g) (a "**QCiL Operations Cessation Event Payment**").
- (b) If a Qualifying Change in Law occurs which gives rise to or results in: (i) QCiL Costs; (ii) an Adjusted Capture Period where the CO₂ Capture Rate and CO₂ Capture Volume of the Installation are reduced (a "**Reduced Capture Period**"); or (iii) a combination of the foregoing:
 - (i) before the Start Date, and the amount of the QCiL Compensation that would otherwise be payable in respect of the estimated QCiL Costs and/or impact of the Reduced Capture Period is greater than the amount of the QCiL

Construction Event Payment that would have been payable if such Qualifying Change in Law were to have constituted a QCiL Construction Event; or

- (ii) on or after the Start Date, and the amount of the QCiL Compensation that would otherwise be payable in respect of the estimated QCiL Costs and/or impact of the Reduced Capture Period is greater than the amount of the QCiL Operations Cessation Event Payment that would have been payable if such Qualifying Change in Law were to have constituted a QCiL Operations Cessation Event,

then:

- (iii) the ICC Contract Counterparty shall have the right, but not the obligation, to give notice to the Emitter terminating the Agreement under clause 3.6(a)(ii);
- (iv) the amount of the QCiL Compensation payable by the ICC Contract Counterparty to the Emitter in respect of the Qualifying Change in Law shall be limited to:
 - (A) if clause 19.2(b)(i) applies, the amount of the QCiL Construction Event Payment that would have been payable under clause 19.2(f); or
 - (B) if clause 19.2(b)(ii) applies, the amount of the QCiL Operations Cessation Event Payment that would have been payable under clause 19.2(g); and
- (v) where the ICC Contract Counterparty gives notice to the Emitter terminating the Agreement under clause 3.6(a)(ii), no termination payment shall be payable in consequence by either Party to the other Party and neither Party shall be entitled to make any claim against the other Party under or in connection with the Agreement save in respect of any antecedent breach of any provision of the Agreement.

QCIL Opex Payment

- (c) Any QCiL Opex Payment shall be effected, at the election of the ICC Contract Counterparty (after consultation with the Emitter), either:
 - (i) as an adjustment to the Strike Price,⁹⁴ which shall be increased if the QCiL Opex Costs exceed the QCiL Opex Savings, and decreased if the QCiL Opex Savings exceed the QCiL Opex Costs; or
 - (ii) as daily payments, which shall be payable by the ICC Contract Counterparty to the Emitter if the QCiL Opex Costs exceed the QCiL Opex Savings, or by the Emitter to the ICC Contract Counterparty if the QCiL Opex Savings exceed the QCiL Opex Costs.

QCIL Capex Payment

- (d) Any QCiL Capex Payment shall be effected, at the election of the ICC Contract Counterparty (after consultation with the Emitter), as a lump sum payment, staged payments or daily payments which shall be payable:
 - (i) by the ICC Contrary Counterparty to the Emitter if the QCiL Capex Costs exceed the QCiL Capex Savings; or

⁹⁴

Note to Reader: The precise formulae to effect such an adjustment are still to be confirmed.

- (ii) by the Emitter to the ICC Contract Counterparty if the QCiL Capex Savings exceed the QCiL Capex Costs.

QCIL Adjusted Capture Payment

- (e) Any QCiL Adjusted Capture Payment⁹⁵ shall be effected, at the election of the ICC Contract Counterparty (after consultation with the Emitter), as [a lump sum payment, staged payments, daily payments and/or an adjustment to the Strike Price] which shall be payable:
 - (i) by the ICC Contract Counterparty to the Emitter if the relevant Qualifying Change in Law results in a decreased [Capex Payment and/or Opex Payment] paid to the Emitter due to a reduction in the CO₂ Capture Rate and CO₂ Capture Volume of the Installation as a direct result of the relevant Qualifying Change in Law; or
 - (ii) by the Emitter to the ICC Contract Counterparty if the relevant Qualifying Change in Law results in an increased [Capex Payment and/or Opex Payment] paid to the Emitter due to an increase in the CO₂ Capture Rate and CO₂ Capture Volume of the Installation as a direct result of the relevant Qualifying Change in Law.

QCIL Construction Event Payment

- (f) Any QCiL Construction Event Payment shall be effected, at the election of the ICC Contract Counterparty (after consultation with the Emitter), as a lump sum payment or staged payments which shall be payable to the Emitter by the ICC Contract Counterparty as an amount equal to all irrecoverable and unavoidable out-of-pocket costs (including tax liabilities) which have been, will be or are reasonably likely to be incurred by the Emitter in respect of the Project arising directly from the relevant QCiL Construction Event, if and to the extent that such costs comprise:
 - (i) development/pre-development costs in respect of the Capture Plant;
 - (ii) decommissioning costs in respect of the Capture Plant;
 - (iii) break costs associated with the Emitter's contractual or financing arrangements in respect of the Project; or
 - (iv) costs which are wholly attributable to the construction, installation, testing, completion or commissioning of the Capture Plant,with such costs to:
 - (v) exclude all other compensation which will be payable by the Emitter in connection with the relevant QCiL Construction Event and all costs associated with the Emitter's financing arrangements referred to above; and
 - (vi) be reduced by all savings which have been, will be or are reasonably likely to be made by the Emitter in respect of the Project arising directly from the relevant QCiL Construction Event.

⁹⁵ Note to Reader: The precise formulae to make QCiL Adjusted Capture Payments on a forward-looking basis (where the relevant QCiL leads to a permanent increase or decrease to the CO₂ Capture Rate and CO₂ Capture Volume of the Installation) are still to be confirmed.

QCIL Operations Cessation Event Payment

- (g) Any QCiL Operations Cessation Event Payment shall be effected, at the election of the ICC Contract Counterparty (after consultation with the Emitter), as a lump sum payment or staged payments which shall be payable to the Emitter by the ICC Contract Counterparty as an amount equal to:
 - (i) the remaining [Capex Payments] that the Emitter would have received but for the QCiL Operations Cessation Event; and
 - (ii) all irrecoverable and unavoidable out-of-pocket costs (including tax liabilities and break costs) which have been, will be or are reasonably likely to be incurred by the Emitter in respect of the Project arising directly from the relevant QCiL Operations Cessation Event, but excluding:
 - (A) all other compensation which will be payable to the Emitter in connection with the relevant QCiL Operations Cessation Event;
 - (B) all costs (other than break costs) associated with the Emitter's financing arrangements in respect of the Project; and
 - (C) all savings which have been, will be or are reasonably likely to be made by the Emitter in respect of the Project arising directly from the relevant QCiL Operations Cessation Event.

19.3 Qualifying Shutdown Event

- (a) If a Qualifying Shutdown Event has occurred, the Emitter may give notice to that effect to the ICC Contract Counterparty (a "**QSE Notice**"). A QSE Notice shall:
 - (i) include reasonable details of the Qualifying Shutdown Event;
 - (ii) specify the date on which the Qualifying Shutdown Event occurred;
 - (iii) specify the Emitter's good faith estimate of the QCiL Costs and the QCiL Savings, reasonably likely to be made or received in respect of the Project by the Emitter arising directly from such QCiL Operations Cessation Event occurring;
 - (iv) include such Supporting Information, in reasonable detail, which the Emitter considers to be relevant and supportive of the foregoing; and
 - (v) include Supporting Information evidencing, in reasonable detail, the steps that the Emitter has taken and/or proposes to take to comply with clause 19.5 (Mitigation) and the Reasonable and Prudent Standard.
- (b) Any QSE Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the QSE Notice.
- (c) A QSE Notice shall be deemed to constitute a Emitter QCiL Notice and the provisions of clause 19 (Qualifying Change in Law) shall apply (with the necessary modifications) for the purposes of:
 - (i) agreeing or determining whether a Qualifying Shutdown Event has occurred;
 - (ii) (if a Qualifying Shutdown Event has occurred) agreeing or determining the amount of QCiL Compensation resulting from the occurrence of such Qualifying Shutdown Event (on the basis that a Qualifying Shutdown Event

constitutes a QCiL Operation Cessation Event) and the terms and conditions upon which such QCiL Compensation will be paid or effected; and

- (iii) agreeing or determining any and all other related matters pertinent to the foregoing.

19.4 **True-Up**

[It is intended that the QCiL True-Up provisions in the AR3 CfD Standard Terms and Conditions will be replicated in the Agreement]

19.5 **Mitigation**

- (a) The Emitter shall promptly take all reasonable steps, acting in accordance with the Reasonable and Prudent Standard, to minimise any costs and maximise any cost savings arising from a Qualifying Change in Law and/or Qualifying Shutdown Event (including by recommencing capture as soon as reasonably practicable), provided that this obligation to mitigate shall not be construed as requiring the Emitter not to comply in full with its obligations under the Agreement.
- (b) The Emitter shall, as soon as reasonably practicable, notify the ICC Contract Counterparty of the mitigating steps that it has taken, is taking and proposes to take and shall promptly provide such further information regarding such mitigation as the ICC Contract Counterparty may reasonably request.

19.6 **Disputes**

- (a) If the Parties are not able to agree any of the matters referred to in this clause 19, either Party may refer the Dispute to the Dispute Resolution Procedure.
- (b) Until the Dispute has been resolved by agreement between the Emitter and the ICC Contract Counterparty or determination in accordance with the Dispute Resolution Procedure, there shall be no QCiL Compensation payable.

19.7 **Indemnity**

The Emitter shall, promptly on demand, indemnify the ICC Contract Counterparty against all out-of-pocket costs the ICC Contract Counterparty properly incurs in giving or responding to any notice of a Qualifying Change in Law or a Qualifying Shutdown Event, in evaluating whether a Qualifying Change in Law or Qualifying Shutdown Event has occurred, and in its discussions and dealings with the Emitter with respect to the Qualifying Change in Law or Qualifying Shutdown Event. This indemnity shall not apply in respect of any such costs resulting from the ICC Contract Counterparty disputing that a Qualifying Change in Law or Qualifying Shutdown Event has occurred if an agreement or determination is reached to the contrary.

20. **CHANGE IN APPLICABLE LAW**

20.1 **CiAL Review**

- (a) The ICC Contract Counterparty shall conduct a CiAL Review if:
 - (i) it determines 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; or

(ii) the CiAL Request Criterion⁹⁶ is met,

(each, a "**CiAL Review Trigger**").

(b) If the Emitter considers 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,

the Emitter may give a notice to the ICC Contract Counterparty requesting the ICC Contract Counterparty to undertake a CiAL Review (a "**CiAL Request Notice**"). A CiAL Request Notice:

(A) shall specify why, and the date on which, the Emitter 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;

(B) shall specify why the Emitter 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

(C) may set out the Emitter's opinion of the Required CiL Amendment(s),

together with such Supporting Information, in reasonable detail, which the Emitter considers to be relevant to and supportive of the foregoing.

20.2 **Notification of outcome of CiAL Review**

The ICC Contract Counterparty shall give a notice to the Emitter of the outcome of a CiAL Review (a "**CiAL Review Outcome Notice**") as soon as reasonably practicable following the conclusion of a CiAL Review. A CiAL Review Outcome Notice shall:

(a) set out the outcome of the CiAL Review and, if applicable, the Required CiL Amendments; and

(b) specify the date from which such Required CiL Amendments are to take effect.

20.3 **CiAL Dispute**

(a) The Emitter may, no later than [twenty (20)] Business Days after receipt of a CiAL Review Outcome Notice, give a notice to the ICC Contract Counterparty that it wishes to raise a Dispute in relation to the outcome of such CiAL Review (a "**CiAL Dispute**").

⁹⁶ Note to Reader: A certain threshold would trigger the ICC Contract Counterparty to carry out a CiAL Review as was the case in the AR3 CfD. The definition and procedure will be detailed in the full-form ICC Contract.

(b) The Emitter acknowledges and agrees that it may only raise a Dispute with respect to the outcome of any CiAL Review if there is a manifest error or fraud in any determination by the ICC Contract Counterparty as to:

- (i) the outcome of the CiAL Review; or
- (ii) the Required CiL Amendments,

in each case contained within the CiAL Review Outcome Notice, and any CiAL Dispute which is based upon grounds other than those specified in this clause 20.3(b) shall be invalid and of no effect.

(c) The Expert Determination Procedure shall apply to a CiAL Dispute.

20.4 **Compliance with the Agreement**

(a) The occurrence of a Change in Applicable Law that has the result of one (1) or more of the Required CiL Amendment Objectives ceasing to be met shall not:

- (i) constitute a Force Majeure for the purposes of the Agreement; or
- (ii) provide either Party the right to suspend or terminate its obligations under the Agreement,

provided that paragraph (A) above shall not preclude a Change in Law from constituting Force Majeure.

(b) Subject to this clause 20 (Change in Applicable Law), the Parties shall be relieved from liability, and deemed not to be in breach of the Agreement for any failure or delay in the performance under the Agreement 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 this clause 20 (Change in Applicable Law) shall relieve either Party from any obligation to pay any sum due and payable to the other Party pursuant to the Agreement.

PART 9 PROTECTIONS: FORCE MAJEURE

21. FORCE MAJEURE

21.1 Relief due to Force Majeure

Subject to the provisions of this clause 21 (Force Majeure), a Party affected by Force Majeure (an "**FM Affected Party**") shall:

- (a) be relieved from liability and deemed not to be in breach of the Agreement nor liable for any failure or delay in the performance of any of its obligations under the Agreement if and to the extent such failure or delay is directly attributable to occurrence and continuance of such Force Majeure; and
- (b) be entitled to an extension of one or more of the Longstop Date, Milestone Delivery Date and/or the Target Commissioning Window, for any delay if and to the extent such delay is directly attributable to the occurrence and continuance of such Force Majeure, subject to the requirements of the definition of that term.

21.2 Conditions to Force Majeure relief

The FM Affected Party's relief from liability under clause 21.1 (Relief due to Force Majeure) is subject to and conditional upon:

- (a) the FM Affected Party giving notice as soon as reasonably practicable to the other Party ("**Non-affected Party**") in writing of the nature and extent of the Force Majeure causing its failure or delay in performance; and
- (b) the FM Affected Party using all reasonable endeavours to mitigate the effects of the Force Majeure, to carry out its obligations under the Agreement in any way that is reasonably practicable and to resume the performance of its obligations under the Agreement as soon as reasonably possible.

21.3 Provision of Force Majeure information

- (a) In addition to its notification obligation under clause 21.2 (Conditions to Force Majeure relief), the FM Affected Party shall give notice as soon as reasonably practicable to the Non-affected Party in writing (to the extent that such Information is reasonably available) of:

- (i) the steps being taken by the FM Affected Party to remove or mitigate the effect of the Force Majeure (including delay to the Project) and to carry out its obligations under the Agreement;
- (ii) the anticipated date of resumption of performance of its obligations under the Agreement; and
- (iii) such other details relating to the Force Majeure and its effects (including delay to the Project) as may be reasonably requested by the Non-affected Party,

and, to the extent that such Information is not reasonably available at the time a notice is given, the FM Affected Party shall provide such Information to the Non-affected Party as soon as it becomes reasonably available.

- (b) The FM Affected Party shall notify the Non-affected Party [*the interval period to be determined*]:
 - (i) of any update to the Information provided under clause 21.3(a) and shall give notice as soon as reasonably practicable to the Non-affected Party upon it

becoming aware of any material developments or additional material Information relating to the Force Majeure and its effects; and

- (ii) where the Force Majeure is a continuing one, that it is continuing, accompanied by an explanation and Information to show that the events or circumstances concerned continue to meet all requirements of the definition of Force Majeure.

PART 10 CONFIDENTIALITY, ANNOUNCEMENTS AND FREEDOM OF INFORMATION

22. CONFIDENTIALITY

22.1 Confidentiality restrictions: application to the terms of the Agreement

The Parties agree that, subject to clause 23 (Announcements), the provisions of the Agreement shall not be treated as Confidential Information and may be disclosed without restriction.

22.2 Emitter Confidential Information

- (a) The ICC Contract Counterparty shall keep all Emitter Confidential Information confidential and shall not disclose Emitter Confidential Information without the prior written consent of the Emitter other than as permitted by this clause 22.
- (b) The ICC Contract Counterparty shall not make use of any Emitter Confidential Information otherwise than for fulfilling the ICC Contract Counterparty Permitted Purposes, except with the express prior written consent of the Emitter.
- (c) clause 22.2(a) shall not apply to any disclosure:
 - (i) by the ICC Contract Counterparty of Emitter Confidential Information (on a confidential basis):
 - (A) to its Representatives to enable or assist the ICC Contract Counterparty to fulfil the ICC Contract Counterparty Permitted Purposes;
 - (B) to any Transferee to fulfil the ICC Contract Counterparty Permitted Purposes;
 - (C) to any person engaged in providing services to the ICC Contract Counterparty to enable or assist the ICC Contract Counterparty to fulfil the ICC Contract Counterparty Permitted Purposes;
 - (D) to any Government Entity (or to its Representatives or to any person engaged in providing services to such Government Entity) where the ICC Contract Counterparty considers such disclosure is required to enable or assist:
 - (aa) the ICC Contract Counterparty to fulfil the ICC Contract Counterparty Permitted Purposes; or
 - (bb) the relevant Government Entity: (i) to fulfil any of its functions arising out of or in connection with the Agreement or any other ICC Contract; or (ii) perform any function ancillary or related functions arising out of or for the purposes of the Agreement or any other ICC Contract; or (ii) fulfil any functions, duties or obligations arising by virtue of or pursuant to [●]; and
 - (E) to the T&S Operator, the Economic Regulator, the ICC Contract Settlement Services Provider or the Delivery Body (or to their respective Representatives) to the extent that the ICC Contract Counterparty considers such disclosure is necessary to enable or assist:
 - (a) the ICC Contract Counterparty to fulfil the ICC Contract 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 Agreement or for the purposes of any other ICC

Contract 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 [●]);

provided that:

- (1) the ICC Contract Counterparty shall use all reasonable endeavours to inform the recipient of the Emitter Confidential Information of the ICC Contract Counterparty's obligations under clause 22.2; and
 - (2) in the case of disclosure of Emitter Confidential Information pursuant to clauses 22.2(c)(i)(A), 22.2(c)(i)(D), or 22.2(c)(i)(D) the ICC Contract Counterparty shall ensure that the recipient of the Emitter Confidential Information shall be subject to the same obligation of confidentiality as contained in clause 22.2;
- (ii) 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 such Emitter Confidential Information has been provided on a "without prejudice" or "without prejudice save as to costs" basis);
 - (iii) (subject to clause 22.2(d)) by the ICC Contract Counterparty of Emitter Confidential Information:
 - (A) to any Parliamentary committee, but only if and to the extent that the ICC Contract Counterparty considers such disclosure is required to enable or assist it to fulfil any ICC Contract Counterparty Permitted Purpose;
 - (B) to the 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 ICC Contract Counterparty that such disclosure is required to enable or assist the Secretary of State to fulfil its functions;
 - (C) [to the Secretary of State to enable or assist the Secretary of State to make a disclosure to a Subsidy Control Competent Authority or other Competent Authority or otherwise to comply with the Subsidy Control Rules, but only if and to the extent that the ICC Contract Counterparty considers such disclosure is required in connection with the application of the Subsidy Control Rules or in connection with any decision by a Subsidy Control Competent Authority relating to those rules; or
 - (D) to a Subsidy Control Competent Authority or other Competent Authority or an interested party under the Subsidy Control Rules, but only if and to the extent that the ICC Contract Counterparty considers such disclosure is necessary in connection with the application of the Subsidy Control Rules or in connection with any decision by a Subsidy Control Competent Authority relating to those rules;]⁹⁷
 - (iv) which is required:
 - (A) by the FoIA;

⁹⁷

Note to Reader: These provisions are subject to further review by BEIS including to ensure consistency, insofar as appropriate, with AR4 CfD drafting as it develops.

- (B) by the EIR; or
- (C) (subject to clause 22.2(d)) for the purposes of compliance with any other Law or Directive 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 ICC Contract Counterparty; or
- (v) by the ICC Contract Counterparty of Emitter Confidential Information:
 - (A) to which the Emitter has agreed in writing in advance; or
 - (B) that is otherwise expressly permitted under the terms, or required for the operation or fulfilment, of the Agreement.
- (d) Prior to any disclosure of Emitter Confidential Information by the ICC Contract Counterparty pursuant to clause 22.2(c)(iii) or 22.2(c)(iv)(C), the ICC Contract Counterparty shall use reasonable endeavours to notify the Emitter of the Emitter Confidential Information to be disclosed, provided that:
 - (i) it is lawful and reasonably practicable in the circumstances to do so; and
 - (ii) in the case of any disclosure pursuant to clause 22.2(c)(iii)(A) or 22.2(c)(iii)(B), it is not inconsistent with Parliamentary convention.
- (e) The disclosure of Emitter Confidential Information by the ICC Contract Counterparty in reliance on the exception set out in clause 22.2(c)(iv)(A) or 22.2(c)(iv)(B) shall be subject to the provisions of clause 24 (Freedom of information).

22.3 **ICC Contract Counterparty: liability for Representatives and service providers**

The ICC Contract Counterparty shall be responsible for:

- (a) any failure by its current or former Representatives or any person to whom Emitter Confidential Information is disclosed pursuant to clauses 22.2(c)(i)(A) or 22.2(c)(i)(D) to comply with clause 22.2(a) as if they were subject to it; and
- (b) any use by its current or former Representatives or any person to whom Emitter Confidential Information is disclosed pursuant to 22.2(c)(i)(A) or 22.2(c)(i)(D), of any Emitter Confidential Information in breach of clause 22.2(b), as if they were subject to it.

22.4 **ICC Contract Counterparty Confidential Information**

- (a) The Emitter shall keep all ICC Contract Counterparty Confidential Information confidential and shall not disclose ICC Contract Counterparty Confidential Information without the prior written consent of the ICC Contract Counterparty other than as permitted by this clause 22.
- (b) The Emitter shall not make use of any ICC Contract Counterparty Confidential Information otherwise than for the purpose of fulfilling the Emitter Permitted Purposes, except with the express prior written consent of the ICC Contract Counterparty.

- (c) Clause 22.4(a) shall not apply to any disclosure:
- (i) by the Emitter of ICC Contract Counterparty Confidential Information (on a confidential basis):
 - (A) to its Representatives to enable or assist the Emitter to fulfil the Emitter Permitted Purposes;
 - (B) to members of its Group (and their respective Representatives) to enable or assist the Emitter to fulfil the Emitter Permitted Purposes;
 - (C) to any Transferee to fulfil the Emitter Permitted Purposes;
 - (D) to the providers or prospective providers to the Emitter 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 financing, refinancing or credit support;
 - (E) to *bona fide* prospective purchasers of the Installation provided that such disclosure is restricted to Information necessary for the purpose of assessing the potential purchase;
 - (F) to the T&S Operator, the Economic Regulator, the ICC Contract Settlement Services Provider or the Delivery Body (or to their respective Representatives) to the extent that the ICC Contract Counterparty considers such disclosure is necessary to enable or assist:
 - (a) the Emitter to fulfil the Emitter 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 Agreement or for the purposes of any other ICC Contract 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 [●]); or
 - (G) for the purposes of:
 - (aa) the examination and certification by its auditors of the Emitter's accounts; or
 - (bb) complying with a proper request from its insurance adviser or insurer on placing or renewing any insurance policies,
 provided that:
 - (1) the Emitter shall use reasonable endeavours to inform the recipient of the ICC Contract Counterparty Confidential Information of the Emitter's obligations under clause 22.4; and
 - (2) in the case of disclosure of ICC Contract Counterparty Confidential Information pursuant to clause 22.4(c)(i)(A) to 22.4(c)(i)(E), the Emitter shall ensure that the recipient of the ICC Contract Counterparty Confidential Information shall be subject to the same obligation of confidentiality as contained in clause 22.4;
 - (ii) 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 (save where such ICC Contract Counterparty Confidential Information has been provided on a "without prejudice" or "without prejudice save as to costs" basis);

- (iii) (subject to clause 22.4(d)) which is required by any Law or Directive (including the rules of any securities exchange or clearing system) 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 Emitter; or
- (iv) by the Emitter of ICC Contract Counterparty Confidential Information:
 - (A) to which the ICC Contract Counterparty has agreed in writing in advance; or
 - (B) that is otherwise expressly permitted under the terms, or required for the operation or fulfilment, of the Agreement.
- (d) Prior to any disclosure of ICC Contract Counterparty Confidential Information by the Emitter pursuant to clause 22.4(c)(iii), the Emitter shall use reasonable endeavours to notify the ICC Contract Counterparty of the ICC Contract Counterparty Confidential Information to be disclosed, provided that it is lawful and reasonably practicable in the circumstances to do so.

22.5 **Emitter: liability for Representatives, service providers**

The Emitter shall be responsible for:

- (a) any failure by its current or former Representatives or any person to whom ICC Contract Counterparty Confidential Information is disclosed pursuant to clause 22.4(c)(i)(A) to 22.4(c)(i)(E) to comply with clause 22.4(a) as if they were subject to it; and
- (b) any use by its current or former Representatives or any person to whom ICC Contract Counterparty Confidential Information is disclosed pursuant to clauses 22.4(c)(i)(A) or 22.4(c)(i)(B), of any ICC Contract Counterparty Confidential Information in breach of clause 22.4(b) as if they were subject to it; and
- (c) any failure by any person to whom ICC Contract Counterparty Confidential Information is disclosed pursuant to clauses 22.4(c)(i)(C) or 22.4(c)(i)(E) to comply with the restrictions on usage of ICC Contract Counterparty Confidential Information provided for in such clauses.

23. **ANNOUNCEMENTS**

23.1 **No announcements**

The Emitter shall not make, publish, issue or release any announcement or public statement in relation to, or which refers to, the Agreement or any related or ancillary matter, without the express prior written consent of the ICC Contract Counterparty (such consent not to be unreasonably withheld or delayed).

23.2 **Emitter permitted announcements**

Notwithstanding clause 23.1 (No announcements), the Emitter may make, publish, issue or release any announcement or public statement in relation to, or which refers to, the Agreement or any related or ancillary matter if and to the extent required by any Law or Directive (including the rules of any securities exchange or clearing system) 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 Emitter, provided the Emitter shall agree the contents of such announcement or public statement with the ICC Contract Counterparty before it is made, published, issued or released (such consent not to be unreasonably withheld or delayed).

23.3 **ICC Contract Counterparty permitted announcements**

The ICC Contract Counterparty may make, publish, issue or release any announcement or public statement in relation to, or which refers to, the Agreement 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 Emitter Confidential Information, the making, publication, issuance or release of such announcement or public statement does not breach clause 22 (Confidentiality).

24. **FREEDOM OF INFORMATION**

24.1 **The Emitter acknowledges that:**

- (a) the ICC Contract Counterparty is subject to the requirements of the FoIA and the EIR and the Emitter shall assist and cooperate with the ICC Contract Counterparty, at the Emitter's expense, to enable it to comply with its disclosure obligations under the FoIA and the EIR; and
- (b) the ICC Contract Counterparty shall be responsible for determining in its absolute discretion, and notwithstanding any other provision in the Agreement or any other agreement, 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 under the FoIA or the EIR, as appropriate; and
 - (ii) is to be disclosed in response to a Request for Information,

and in no event shall the Emitter respond directly to a Request for Information unless expressly authorised to do so in writing by the ICC Contract Counterparty.

24.2 If the ICC Contract Counterparty receives a Request for Information in relation to Information that the Emitter is holding on behalf of the ICC Contract Counterparty and which the ICC Contract Counterparty does not hold itself, the ICC Contract Counterparty shall refer to the Emitter such Request for Information and the Emitter shall:

- (a) provide the ICC Contract Counterparty with a copy of all such Information in its possession or power in the form that the ICC Contract Counterparty requires as soon as practicable and in any event within five Business Days of the ICC Contract Counterparty's request or such other period as the ICC Contract Counterparty may specify; and
- (b) provide all necessary assistance as reasonably requested by the ICC Contract Counterparty in connection with any such Information to enable the ICC Contract 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.

24.3 The Emitter shall ensure that all Information held on behalf of the ICC Contract Counterparty is retained for disclosure and shall permit the ICC Contract Counterparty to inspect such Information as requested from time to time.

24.4 If the Emitter receives a Request for Information in relation to the ICC Contract Counterparty or in connection with the Agreement, the Emitter shall transfer any such Request for Information to the ICC Contract Counterparty as soon as practicable after receipt and in any event within two Business Days, and the provisions of this clause 24 shall apply as if the Request for Information had been received by the ICC Contract Counterparty.

24.5 The Emitter acknowledges that any notification to the ICC Contract Counterparty which identifies Emitter Confidential Information is of indicative value only and that the ICC

Contract Counterparty may nevertheless be obliged to disclose Emitter Confidential Information in accordance with the requirements of the FoIA and the EIR.

- 24.6 The Emitter acknowledges that the ICC Contract Counterparty may, acting in accordance with the Code of Practice on the discharge of public authorities' functions under 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 under the EIR (issued under Regulation 16 of EIR), be obliged under the FoIA or the EIR to disclose Information unless an exemption applies. The ICC Contract Counterparty may at its discretion consult the Emitter with regard to whether the FoIA or the EIR applies to the Request for Information and whether an exemption applies.
- 24.7 Nothing in this clause 24 shall restrict or prevent the publication by the ICC Contract Counterparty of any Information in accordance with:
- (a) any publication scheme (as defined in the FoIA) adopted and maintained by the ICC Contract Counterparty in accordance with the FoIA; or
 - (b) any model publication scheme (as defined in the FoIA) applicable to the ICC Contract Counterparty as may be published from time to time by the Information Commissioner,

provided that, in deciding whether to publish Emitter Confidential Information in accordance with any such publication scheme or model publication scheme, the ICC Contract Counterparty shall take account of whether, in its sole opinion, such Emitter Confidential Information would be exempt from disclosure under the FoIA.

PART 11 INTELLECTUAL PROPERTY RIGHTS

25. INTELLECTUAL PROPERTY RIGHTS

25.1 Retention of Intellectual Property Rights

Each Party shall retain any Intellectual Property Rights developed by or on behalf of that Party, whether pursuant to or independently from the Agreement.

25.2 Licence of Intellectual Property Rights

Each Party shall license its Intellectual Property Rights to the other Party on a non-exclusive, royalty-free, non-transferable basis with the right to grant sub-licences (including after termination or expiry of the Agreement), for the ICC Contract Counterparty Permitted Purposes and the Emitter Permitted Purposes (as the case may be).

25.3 Indemnity for infringement of Intellectual Property Rights

Each Party shall indemnify the other Party in respect of any infringement of third party Intellectual Property Rights, to the extent that such infringement arises as a result of a Party exercising its licence to use the other Party's Intellectual Property Rights in accordance with clause 25.2.

PART 12 DISPUTE RESOLUTION

26. DISPUTE RESOLUTION PROCEDURE

26.1 Outline of the Dispute Resolution Procedure

- (a) If a Dispute arises, the objective of the Parties shall be to seek to ensure that the Dispute is resolved as quickly, as efficiently and as cost-effectively as possible. Each Party shall, at each stage of the Dispute Resolution Procedure, endeavour in good faith to resolve such Dispute through negotiation in accordance with the foregoing objective.
- (b) The Emitter and the ICC Contract Counterparty shall continue to observe and perform all of their respective duties, responsibilities and obligations under the Agreement notwithstanding any Dispute which falls to be resolved in accordance with this clause 26.
- (c) Except as otherwise expressly provided in the Agreement, if a Dispute arises, either Party may serve a Dispute Notice on the other Party in order to initiate the Dispute Resolution Procedure. The Dispute Notice shall include the following details:
 - (i) the subject matter of the Dispute and the issues to be resolved (including, in the context of a Dispute under clause 13.4 (Disputed payments), the disputed amount);
 - (ii) the position the referring Party believes is correct and the referring Party's reasons for that position;
 - (iii) the identity of the referring Party's Senior Representative;
 - (iv) details of any other disputes of which the Party is aware that may be consolidated or joined;
 - (v) copies of any documents which the referring Party considers to be important and/or relevant; and
 - (vi) a statement of the relief, determination, remedy or recourse which the referring Party seeks.
- (d) Following the service by any Party of a Dispute Notice:
 - (i) the Parties shall seek to resolve the Dispute in accordance with clause 26.2 (Resolution by the Senior Representatives) by convening a meeting of the Senior Representatives of the Parties; and
 - (ii) if the Senior Representatives are unable to settle, compromise or resolve the Dispute in accordance with clause 26.2 (Resolution by the Senior Representatives), the Dispute shall be resolved by referring it to the Arbitral Tribunal in accordance with clause 26.4 (Arbitration) with the exception of Disputes relating to [*a limited number of specific circumstances to be listed*], where the Dispute shall be referred to an Expert for determination in accordance with clause 26.3 (Expert Determination).

26.2 Resolution by the Senior Representatives

- (a) The Parties shall procure that their respective Senior Representatives shall meet within [*a period to be determined*] of the date of service of the Dispute Notice, and if necessary shall meet more than once in that period, to seek to resolve the Dispute by agreement.

- (b) If the Senior Representatives of the Parties are able to resolve the Dispute within [*a period to be determined*] of the date of the Dispute Notice (or within such further time as the Senior Representatives of the Parties may agree in writing), the Senior Representative Settlement shall be documented in writing and shall be signed by the Senior Representative of each Party but shall not be legally binding unless and until both Parties have observed and complied with this clause 26.2(b).
- (c) If the Senior Representatives of the Parties are unable to resolve the Dispute within [*a period to be determined*] of the date of service of the Dispute Notice (or within such further time as the Senior Representatives of the Parties may agree in writing), either Party may refer the Dispute to an Expert for determination in accordance with clause 26.3 (Expert Determination) or to arbitration in accordance with clause 26.4 (Arbitration), as the case may be.
- (d) Unless the Parties otherwise agree in writing, any statement, concession, waiver or agreement (other than a Senior Representative Settlement) made by a Party in the course of discussions pursuant to this clause 26.2 shall be without prejudice to the Dispute. The Parties agree not to raise, refer to or rely on any such statement, concession, waiver or agreement (other than a Senior Representative Settlement) in any subsequent expert determination, arbitration or other legal proceedings whether related to the Dispute or otherwise.

26.3 **Expert Determination**

- (a) Either Party may, subject to clause 26.2 (Resolution by the 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 clause 26.2(c); or (ii) the Dispute is an Expert Determination Dispute. Such referral shall be effected by either Party giving a notice (an "**Expert Determination Notice**") to the other Party. An Expert Determination Notice shall include:
 - (i) the nature and a brief description of the Dispute;
 - (ii) details of where and when the Dispute has arisen;
 - (iii) the nature of the relief, determination, remedy or recourse sought;
 - (iv) details of any other disputes of which the Party is aware that may be consolidated or joined; and
 - (v) a proposal as to the identity of the Expert, and terms of reference, of the Expert and the relevant expertise that the referring Party considers qualifies the Expert to determine the relevant Expert Determination Dispute.
- (b) The Party receiving the Expert Determination Notice (Respondent) shall, within [*a period to be determined*] of service of the Expert Determination Notice, notify the other Party (Claimant) whether or not it is willing to appoint the Expert proposed by the Claimant. If the Respondent does not agree with the Claimant's proposal, the Respondent must propose an alternative Expert for consideration by the Claimant. If the Parties have failed to agree on the appointment of the Expert within [*a period to be determined*] of the date of the Expert Determination Notice (or such other period as the Parties may agree), any Party may request that the Expert be appointed by the LCIA, which shall be requested to choose a suitably qualified and experienced Expert for the Dispute in question, whose appointment shall be binding on the Parties.
- (c) Within [*a period to be determined*] of receipt of the proposed appointment or nomination, the Expert shall confirm its appointment in writing to the Parties stating:
 - (i) its willingness and availability to act; and

- (ii) that the Expert has no conflict of interest which prevents it from determining the Dispute.
- (d) Within [*a period to be determined*] of the Expert having agreed to act, the Claimant shall refer the Dispute to the Expert by sending a report on the Dispute to the Expert and to the Respondent. The report shall include the following:
- (i) the subject matter of the Dispute and the issues to be resolved;
 - (ii) the position the Claimant believes is correct and the Claimant's reasons for that position;
 - (iii) copies of all the documents the Claimant considers to be important and relevant;
 - (iv) a statement of the determination, remedy or recourse the Claimant seeks; and
 - (v) details of any other disputes of which the Party is aware that may be consolidated or joined.
- (e) The date on which the Expert and the other Party receive the Claimant's submission shall be the Date of Referral.
- (f) The Respondent may, but is not obliged to, submit a response to the Expert and copies of any documents on which the Respondent intends to rely within [*a period to be determined*] of the Date of Referral (Date of Response).
- (g) The Expert shall reach a decision within [*a period to be determined*] of the Date of Response.
- (h) In determining any Dispute referred to the Expert, the Expert:
- (i) shall act fairly and impartially;
 - (ii) shall establish the timetable and procedure for the expert determination;
 - (iii) shall take the initiative in ascertaining the facts and the law;
 - (iv) shall reach its decision in accordance with the applicable laws in relation to the Dispute referred to the Expert;
 - (v) if requested by one of the Parties, shall provide reasons for its decision, which shall be communicated to the Parties; and
 - (vi) shall not be entitled to amend the Agreement as part of its determination.
- (i) The Arbitration Act 1996 and the law relating to arbitrators and arbitrations shall not apply to the Expert or its decision or the procedure by which the Expert reaches its decision.
- (j) In determining any Dispute referred to the Expert for a decision the Expert at its sole and absolute discretion shall take the initiative in ascertaining the facts and the law as the Expert considers necessary in respect of the referral which may include:
- (i) considering any written representations, statements and experts' reports submitted to the Expert by the Parties;

- (ii) instructing an expert and/or taking Counsel's opinion as to any matter raised in the Dispute, but the Expert shall not be entitled to delegate any decision to such expert or Counsel; and
 - (iii) opening up, reviewing and revising any opinion, assessment, certificate, instruction, determination or decision of whatsoever nature given or made under the Agreement provided that the Expert may not in so doing purport to decide any matter excluded from this Expert Determination Procedure.
- (k) The Expert shall not be liable for anything done or omitted in the discharge or purported discharge of its functions as Expert unless such act or omission is in bad faith, and any employee, agent or adviser of the Expert shall be similarly protected from liability.
 - (l) If the Expert is at any time unable or unwilling to act or fails to come to a decision within the specified time allowed, either Party may proceed to seek the appointment of a replacement Expert as if the Expert Determination Notice had just been served.
 - (m) The replacement Expert shall be authorised to determine any Dispute which was submitted to the Expert's predecessor but which the Expert's predecessor had not decided at the time when the Expert's predecessor became unable or unwilling to act.
 - (n) The Expert's decision shall be final and binding upon the Parties.
 - (o) If either Party does not comply with the decision of the Expert, the other Party may take proceedings in the courts of England and Wales to secure enforcement of the decision.
 - (p) The Expert may, in its determination, provide that one or other or both of the Parties pay the Expert's fees and each other's legal costs in such proportions as the Expert may specify on the general principle that costs should reflect the Parties' relative success and failure in the expert determination. In the absence of such a direction, each Party shall bear its own legal costs and the fees and expenses of the Expert shall be paid in equal shares by the Parties.

26.4 **Arbitration**

- (a) Either Party may refer a Dispute to arbitration in accordance with the LCIA Arbitration Rules provided that the Dispute has not been resolved by the Parties' Senior Representatives in accordance with clause 26.2 (Resolution by the Senior Representatives) or by an Expert in accordance with clause 26.3 (Expert Determination).
- (b) Any Dispute 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 clause 26.4.
- (c) The Arbitral Tribunal shall make its award in writing (the "**Arbitral Award**"). The Parties agree that all final Arbitral Award shall be binding on the Parties save that no Arbitral Award shall impose an amendment to the Agreement.
- (d) 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 Decisions**").
- (e) If the Arbitral Tribunal is to consist of:

- (i) 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
 - (ii) one (1) Arbitrator, the parties shall use reasonable endeavours to agree on the identity of the Arbitrator no later than ten (10) Business Days after the Mutual Appointment Decision, failing which the Arbitrator shall be appointed by the LCIA as contemplated by the LCIA Arbitration Rules.
- (f) The seat, or legal place, of any arbitration shall be London.
- (g) The language to be used in any arbitral proceedings shall be English.

26.5 **Consolidation of Connected Disputes**

Where a Dispute arises under the Agreement and a dispute arises under any other ICC Contract ("**Connected Disputes**") which, in the reasonable opinion of the Expert appointed in any of the Connected Disputes or the first Arbitral Tribunal appointed in any of the Connected Disputes (as the case may be), are so closely connected as a result of there being common questions of fact or law that it is expedient for them to be resolved in the same proceedings, that Expert or Arbitral Tribunal (as the case may be) shall have the power to order that the proceedings to resolve the Connected Disputes shall be consolidated, and the Parties agree to participate in good faith with the consolidated process and be bound by the decision of the Expert or the Arbitral Tribunal, as the case may be.

26.6 **No Other Proceedings**

- (a) Subject to limb (b) and clause 26.7 below, 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.
- (b) Notwithstanding any other provision of the Dispute Resolution Procedure, either Party may at any time:
 - (i) 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
 - (ii) 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.

26.7 **Metering Disputes**

- (a) [Capture Plant Metering Disputes shall be resolved in accordance with [●].]
- (b) CO₂ Metering Disputes shall be resolved in accordance with the relevant Industry Document (which includes industry codes). If the relevant industry code is not available, it shall be resolved in accordance with clause 28.3 (Expert Determination).

PART 13 GENERAL PROVISIONS REGARDING LIABILITIES, REMEDIES AND WAIVERS

27. LIABILITIES, REMEDIES AND WAIVERS

27.1 Liabilities

(a) Consequential loss

Without prejudice to the calculation of the Termination Payment and save where any provision of the Agreement provides for an indemnity, neither Party shall be liable to the other Party under or pursuant to the Agreement or in tort (including negligence and/or breach of statutory duty) or otherwise at law for:

- (i) 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 date of the Agreement as the probable result of such breach; or
- (ii) any loss of profit, loss of revenue, loss of use, loss of goodwill or any special, indirect or consequential loss,

in each case incurred by the other Party in connection with any breach of the terms of the Agreement.

(b) Reasonable pre-estimate

Each Party acknowledges that the Termination Payment is reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages upon early termination of the Agreement. The Emitter waives the right to contest the Termination Payment as an unreasonable penalty.

(c) No Double-Recovery

The Emitter may recover only once in respect of the same loss. The ICC Contract Counterparty shall not be liable to pay any compensation under any term of the Agreement to the extent that the subject of the claim has been compensated for, or the same loss has been recovered by the Emitter under the Agreement, any other ICC Document or the Grant Funding Agreement.

27.2 No waiver

- (a) No waiver by either Party of any breach by the other of the Agreement shall operate unless expressly made in writing, and any such waiver shall not be construed as a waiver of any other breach.
- (b) No delay or omission by either Party in exercising any right, power or remedy provided by law or under or pursuant to the Agreement shall:
 - (i) affect that right, power or remedy; or
 - (ii) operate as a waiver of it.
- (c) The single or partial exercise by either Party of any right, power or remedy provided by law or under or pursuant to the Agreement shall not, unless otherwise expressly stated, preclude any other or further exercise of it or the exercise of any other right, power or remedy.

27.3 Consents

Any consents, approvals, waivers or agreements to be given by the ICC Contract Counterparty pursuant to the Agreement shall be given in writing and may be given or withheld by the ICC Contract Counterparty at its sole and absolute discretion and, if given, may be given on and subject to such terms and/or conditions as the ICC Contract Counterparty may in its sole discretion determine. The exercise of discretion by the ICC Contract Counterparty 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 Agreement.

27.4 Entire agreement

- (a) The Agreement together with [*other relevant agreements to be listed*] constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes and extinguishes any agreements, understandings and/or representations previously given or made with respect thereto other than those included in the Agreement.
- (b) Each Party acknowledges that in entering into the Agreement it has not relied on, and shall have no right or remedy in respect of, any pre-contractual statement (whether made negligently or innocently) other than as expressly set out in the Agreement.
- (c) Nothing in this clause 27.4 shall limit or exclude liability for fraud.
- (d) For the purpose of this clause 27.4, "**pre-contractual statement**" means 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 Agreement made or given by either Party, the Secretary of State or the Delivery Body at any time prior to the date of the Agreement.

27.5 Severability

If any provision or part of a provision of the Agreement 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 Agreement; or
- (b) the legality, validity, or enforceability in other jurisdictions of that or any other provision of the Agreement.

28. **LIMITED RECOURSE ARRANGEMENTS, UNDERTAKINGS AND ACKNOWLEDGEMENTS**⁹⁸

[●]

⁹⁸ Note to Reader: The contents of these provisions will need to be considered further by BEIS in light of the spending powers that BEIS will use to fund the ICC Business Model.

PART 14 MISCELLANEOUS

29. GENERAL PROVISIONS

29.1 Assignment

(a) Restriction on transfers

Subject to this clause 29.1, neither Party may:

- (i) assign to any person all or any of its rights or benefits under the Agreement;
- (ii) 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 Agreement; or
- (iii) 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 Agreement,

(each, a "**Transfer**", and "**Transferee**" shall be construed accordingly), without the prior written consent of the other Party.

(b) Permitted Transfer by the ICC Contract Counterparty

Notwithstanding clause 29.1(a) (Restriction on transfers), a Transfer of the ICC Contract Counterparty's rights and obligations may be effected (whether by virtue of any Law or any scheme pursuant to any Law or otherwise), without the consent of the Emitter, to any:

- (A) company formed and registered under the Companies Act 2006;
- (B) entity directly wholly-owned or controlled by a Minister of the Crown; or
- (C) public authority, including any person any of whose functions are of a public nature,

in each case where such company, entity or public authority:

- (i) acquires the whole of the ICC Contract;
- (ii) has the legal capacity, power and authority to become a party to, and to perform the obligations and exercise the discretions of the ICC Contract Counterparty under, this ICC Contract;
- (iii) has sufficient financial standing or access to sufficient financial resources (including pursuant to [●])⁹⁹ to perform the payment obligations of the ICC Contract Counterparty under this ICC Contract; and
- (iv) has or has access to sufficient non-financial resources and expertise to perform the obligations and exercise the discretions of the ICC Contract Counterparty under this ICC Contract.

(c) General provisions relating to permitted transfers

If the ICC Contract Counterparty effects a Transfer pursuant to clause 29.1(b) (Permitted Transfer by the ICC Contract Counterparty), the Emitter shall at its own

⁹⁹ Note to Reader: A reference to the relevant funding powers will need be to inserted here.

cost enter into such further agreements as are necessary in order to substitute the relevant Transferee for the ICC Contract Counterparty and to give effect to any consequential amendments to the Agreement that are necessary to give effect thereto.

(d) **Permitted Assignment by the Emitter**

- (i) Notwithstanding clause 29.1(a) (Restriction on transfers), no consent of the ICC Contract Counterparty shall be required to effect an assignment by the Emitter of all (but not part) of its rights and benefits under the Agreement by way of security to or in favour of any bank or financial institution (or an agent or security trustee on its behalf) in relation to the financing or refinancing of the Emitter's business activities.
- (ii) The Emitter shall effect an assignment pursuant to this clause 29.1(d) by giving the ICC Contract Counterparty prior written notice [*of not less than a period to be determined*] specifying the details of the assignee.

(e) **Transfers by the Emitter**

If the ICC Contract Counterparty consents to the Transfer by the Emitter of all of its rights, benefits and obligations under the Agreement to a Transferee, the Emitter shall effect a transfer of the Installation to the same Transferee contemporaneously with the Transfer of the Agreement.

29.2 **Direct agreement**

At the request of any bank or financial institution (or agent or security trustee on its behalf) in whose favour the Emitter assigns its rights under the Agreement in accordance with clause 29.1(d) (Permitted Assignment by the Emitter), the ICC Contract Counterparty shall at the cost of the Emitter enter into a direct agreement with such person in such form as the ICC Contract Counterparty may approve.

29.3 **No variation**

No variation to the provisions of the Agreement shall be valid unless it is in writing and signed by each Party.

29.4 **Notices**

(a) **Communications in writing**

Any communication to be made under or in connection with the Agreement shall only be effective if it is in writing and is in English. Faxes are not permitted and, unless otherwise expressly stated, website publication is not permitted. Email is permitted.

(b) **Addresses**

The address and (where such communication is expressly permitted by email) email address, and the department or officer (if any) for whose attention the communication is to be made, of each Party for any communication to be made under or in connection with the Agreement is:

- (i) in the case of the Emitter, that identified with its name below: [*insert relevant contact details*]
- (ii) in the case of the ICC Contract Counterparty, that identified with its name below: [*insert relevant contact details*]

provided that a Party may change its notice details on giving notice to the other Party of the change in accordance with this clause 29.4. That notice shall only be effective on the date falling [*period to be determined*] after the notification has been received or such later date as may be specified in the notice.

(c) **Deemed receipt**

Any communication given under the Agreement shall, in the absence of evidence of earlier receipt, be deemed to have been received:

- (i) if delivered by hand, on the Business Day of delivery or on the next Business Day after the date of delivery if delivered on a day other than a Business Day;
- (ii) if sent by first class post within the United Kingdom, on the [*to be determined*] Business Day after the day of posting or, if sent from one country to another, on the [*to be determined*] Business Day after the day of posting; or
- (iii) if sent by email (where such communication is expressly permitted by email), when sent if sent before [*to be determined*] hours on a Business Day or otherwise on the first Business Day after it is sent.

(d) **Service of process**

The provisions of this clause 29.4 shall not apply in relation to any document relating to service of process.

29.5 **No third party rights**

- (a) Subject to clause 29.5(b), the Parties do not intend that any term of the Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to the Agreement.
- (b) The following clauses confer a benefit on certain persons named therein who are not a party to the Agreement (each, for the purposes of this clause 29.5, a Third Party) and, subject to clause 29.5(c), is intended to be enforceable by the Third Parties: [*to be completed*].
- (c) Notwithstanding the provisions of this clause 29.5, the Agreement may be varied in any way and at any time by the Parties only without the consent of any Third Party.

29.6 **Further assurance**

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 the rights given and the transactions contemplated by the Agreement.

29.7 **Emitter cooperation**

- (a) [If the ICC Contract Counterparty is notified or becomes aware that a Subsidy Control Competent Authority or other Competent Authority has decided that the ICC Contract Counterparty or other public body must recover any subsidy granted or paid in relation to the Agreement and that decision has not been annulled, the ICC Contract Counterparty shall, if it is the party to which such order is addressed or if otherwise required by the Secretary of State, promptly notify the Emitter of the sums to be repaid and the Emitter shall repay or procure the repayment of the relevant sums to the ICC Contract Counterparty or as the ICC Contract Counterparty directs without delay.

- (b) The Emitter shall, on reasonable notice, provide the ICC Contract Counterparty with the information and assurances reasonably necessary to comply with the terms of any decision of a Subsidy Control Competent Authority or other Competent Authority pursuant to the Subsidy Control Rules in relation to the Agreement and/or ICC Contracts.]¹⁰⁰

29.8 **No partnership**

Nothing in the Agreement and no action taken by the Parties under the Agreement shall constitute a partnership, joint venture or agency relationship between the Parties.

29.9 **ICC Contract Counterparty contracting as principal**

- (a) The Emitter acknowledges and agrees that the ICC Contract Counterparty is contracting as principal and not on behalf of or as an agent for the Secretary of State or the Delivery Body and the Emitter irrevocably and unconditionally agrees that:
 - (i) it shall not have or bring any claim or action against the Secretary of State or the Delivery Body or the Representatives of the ICC Contract Counterparty or the Delivery Body in respect of the Agreement;
 - (ii) nothing in the Agreement shall impute or impose any liability, duty, responsibility or obligation upon the ICC Contract Counterparty (other than pursuant to and in accordance with the express terms of the Agreement); and
 - (iii) it shall not hold itself out as having any authority to act for or represent the ICC Contract Counterparty in any way, nor act in any way which confers on the Emitter any express, implied or apparent authority to incur any obligation or liability on behalf of the ICC Contract Counterparty.
- (b) The Emitter acknowledges and agrees that none of the ICC Contract Counterparty, the Secretary of State or the Delivery Body is:
 - (i) acting as a fiduciary of the Emitter; or
 - (ii) advising the Emitter as to any financial, legal, tax, investment, accounting or regulatory matters in any jurisdiction,

and shall not have any responsibility or liability to the Emitter with respect thereto.

29.10 **Costs**

Except where otherwise expressly specified in the Agreement, each Party shall bear its own legal costs and other costs associated with the entry into the Agreement, including any costs incidental to the negotiation, preparation and execution of the Agreement.

29.11 **Counterparts**

The Agreement 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 counterpart. Each counterpart shall constitute an original but all of the counterparts together shall constitute one and the same instrument.

¹⁰⁰ Note to Reader: This provision is subject to further review by BEIS including to ensure consistency, insofar as appropriate, with AR4 CfD drafting as it develops.

30. **GOVERNING LAW**

30.1 **Governing law**

The Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.

30.2 **Jurisdiction**

The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims) shall be finally governed by the Dispute Resolution Procedure.

30.3 **Agent for service of process**

If the Emitter is not incorporated within England or Wales and does not have, or ceases to have, a permanent place of business within England or Wales, it shall immediately irrevocably appoint an agent to accept service of process on its behalf within England or Wales.

31. **LANGUAGE**

31.1 **English language**

Unless otherwise agreed in writing by the ICC Contract Counterparty, all information provided by the Emitter under or in connection with the Agreement shall be in English.

31.2 **Translations**

In the case of any information which is translated into English, prior to its being delivered to the ICC Contract Counterparty pursuant to the Agreement, the Emitter shall ensure that any such translation is carried out (at the Emitter's cost) by a recognised and appropriately qualified and skilled translation agent.

31.3 **Translation costs**

Any agreement by the ICC Contract Counterparty under clause 31.1 (English language) may be given conditional upon an undertaking by the Emitter to bear any costs or expenses incurred by the ICC Contract Counterparty in translating the relevant information into English.

SCHEDULE 1

The Installation

[Description of the Installation to be inserted]

SCHEDULE 2

Conditions Precedent

Part A Initial Conditions Precedent

1. Legal Opinion

Delivery to the ICC Contract Counterparty of a legal opinion addressed to the ICC Contract Counterparty, in form and content satisfactory to the ICC Contract Counterparty (acting reasonably), from the legal advisers to the Emitter confirming that the Emitter:

- (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 Agreement.

2. KYC Documentation

Delivery to the ICC Contract Counterparty of evidence, in form and content satisfactory to the ICC Contract Counterparty (acting reasonably) of compliance by the Emitter with "know your customer" or similar identification procedures or checks under all applicable laws and regulations pursuant to the transactions contemplated by the Agreement.

3. The Installation

Delivery to the ICC Contract Counterparty of the following:

- (a) a description of the [Industrial Installation], in form and content satisfactory to the ICC Contract Counterparty (acting reasonably), including an aerial view of the unique geographical location of the [Industrial Installation], whether an extract from the Ordnance Survey map or equivalent, showing the proposed or existing locations of: (a) the [Industrial Installation]; (b) the Capture Plant Metering Equipment; and (c) the Capture Plant Delivery Points;
- (b) a description of the Capture Plant, in form and content satisfactory to the ICC Contract Counterparty (acting reasonably), including:
 - (i) details of the assets comprising the Capture Plant;
 - (ii) an aerial view of the unique geographical location of the Capture Plant, whether an extract from the Ordnance Survey map or equivalent, showing the proposed locations of: (a) the Capture Plant; (b) the CO₂ Metering Equipment; and (c) the CO₂ Delivery Points; and
 - (iii) a process flow diagram of the Capture Plant, demonstrating that the Capture Plant will comply with the CO₂ Metering Specification.

4. Key Project Documents

Delivery to the ICC Contract Counterparty of evidence, in form and content satisfactory to the ICC Contract Counterparty, that the following documents have been entered into or obtained by the Emitter:

- (a) a T&S Connection Agreement signed by the Emitter and the T&S Operator;

- (b) [a T&S Construction Agreement signed by the Emitter and the T&S Operator;]¹⁰¹ and
- (c) applicable planning consents for the Capture Plant and associated infrastructure, with the challenge period having expired (or any challenge having been unsuccessful with no further rights of appeal).

5. **Other**

Delivery to the ICC Contract Counterparty of evidence, in form and content satisfactory to the ICC Contract Counterparty, of the following:

- (a) the Emitter's:
 - (i) Companies Register Certificate of Incorporation;
 - (ii) most recent Annual Return (where available); and
 - (iii) VAT Certificate of Registration;
- (b) a copy of the resolution of the Emitter's board of directors approving the terms of and the transactions contemplated by the Agreement and resolving that it executes, delivers and performs the Agreement;
- (c) [a declaration by the authorised person(s) of the Emitter that it is not in receipt of any other scheme of funding by a Government Entity;]¹⁰²
- (d) [*the supply chain requirements are being considered by BEIS;*]¹⁰³ and
- (e) [others].¹⁰⁴

¹⁰¹ Note to Reader: BEIS is considering the agreements that will be required for projects which involve non-pipeline transportation.

¹⁰² Note to Reader: This provision is subject to further review by BEIS including to ensure consistency, insofar as appropriate, with AR4 CfD drafting as it develops.

¹⁰³ Note to Reader: Supply chain requirements are subject to further consideration by BEIS.

¹⁰⁴ Note to Reader: BEIS is considering whether any further ICPs will be required.

Part B
Operational Conditions Precedent

1. ICC Contract Settlement Services Provider

Delivery to the ICC Contract Counterparty of the following written confirmation from the ICC Contract Settlement Services Provider that:

- (a) it has received all information required by it relating to the terms of the Agreement prior to the Start Date; and
- (b) the Emitter has in place the systems and processes which are necessary for the continued provision of the information required by it relating to the terms of the Agreement.¹⁰⁵

2. CO₂ Capture

Delivery to the ICC Contract Counterparty of the following:

- (a) evidence, in form and content satisfactory to the ICC Contract Counterparty (acting reasonably) that the Emitter is complying in full with the CO₂ Metering Obligations at clause 17 (Emitter's Undertakings: Metering);
- (b) evidence, in form and content satisfactory to the ICC Contract Counterparty (acting reasonably) that the OCP Required CO₂ Capture Rate has been Commissioned;
- (c) [evidence, in form and content satisfactory to the ICC Contract Counterparty (acting reasonably) that the OCP Required CO₂ Capture Volume has been Commissioned;]
- (d) evidence, in form and content satisfactory to the ICC Contract Counterparty (acting reasonably) that the captured CO₂ from the Commissioned Installation complies with the Captured Carbon Dioxide Quality Standards;
- (e) a date and time stamped copy of the schematic diagram, certified as being correct and up to date by a director or company secretary of the Emitter and showing the locations of the CO₂ Metering Equipment (including CO₂ Delivery Points) associated with all assets comprised within the Installation (including details of the type of metering and CO₂ Metering Equipment installed in compliance with the CO₂ Metering Obligation);¹⁰⁶ and
- (f) evidence, in form and content satisfactory to the ICC Contract Counterparty, that the Installation has connected to the T&S Network (where applicable) to enable the export of CO₂ to the T&S Network in accordance with the CO₂ Flow Rate Estimate and CO₂ Capture Volume Estimate, and in accordance with the T&S Operator's compliance requirements ("**T&S Connection Confirmation**"), unless where: (i) the T&S Network is unavailable; and (ii) the Emitter has completed the [necessary T&S Network connection works], this Operational Condition Precedent shall be temporarily waived by the ICC Contract Counterparty until the T&S Network is available.¹⁰⁷ Within [*a period to be determined*] of the Emitter becoming aware that

¹⁰⁵ Note to Reader: This requirement will need to be considered further when further details relating to metering and payment mechanics are finalised.

¹⁰⁶ Note to Reader: BEIS is considering the impact of the inclusion of non-pipeline transportation on metering arrangements.

¹⁰⁷ Note to Reader: BEIS is still considering the costs that will be payable to an Emitter where the T&S Network is not completed in time for the completion/commissioning of the Capture Plant. Please refer to the October Update Document for a further discussion on this issue.

the T&S Network is available, the Emitter shall provide the T&S Connection Confirmation within [*a period to be determined*]; or

- (g) [evidence, in form and content satisfactory to the ICC Contract Counterparty, that the Emitter has established a method of transporting the captured CO₂ from the [Installation] to a storage facility or to or from any CO₂ pipeline network other than by connecting to the T&S Network (where applicable) which, in all cases, complies with all applicable Laws, Directives, Required Authorisations and Industry Documents].

3. **[Capture Plant**

Delivery to the ICC Contract Counterparty of the following:

- (a) evidence, in form and content satisfactory to the ICC Contract Counterparty (acting reasonably) that the Emitter is complying in full with the Capture Plant Metering Obligations at clause 17 (Emitter's Undertakings: Metering); and
- (b) a date and time stamped copy of the schematic diagram, certified as being correct and up to date by a director or company secretary of the Emitter and showing the locations of the Capture Plant Metering Equipment (including Capture Plant Delivery Points) associated with all assets comprised within the Installation (including details of the type of metering and Capture Plant Metering Equipment installed in compliance with the Capture Plant Metering Obligation).]

4. **[Supply Chain**

[*the supply chain requirements are being considered by BEIS*].]¹⁰⁸

5. **[Subsidy Declaration Operational CP**

Delivery to the ICC Contract Counterparty of a written confirmation from the Emitter, in form and content satisfactory to the ICC Contract Counterparty (acting reasonably), that either:

- (a) no Subsidy has been received by the Emitter or by any other person in relation to the costs of the Project (excluding the subsidy arising under the Agreement); or
- (b) Subsidy has been received by the Emitter or by any other person in relation to the costs of the Project (excluding the subsidy arising under the Agreement), and that such Subsidy has been repaid to the granter of the subsidy in full.]¹⁰⁹

6. **Other Conditions Precedent**

[●]¹¹⁰

¹⁰⁸ Note to Reader: Supply chain requirements are subject to further consideration by BEIS.

¹⁰⁹ Note to Reader: This provision is subject to further review by BEIS including to ensure consistency, insofar as appropriate, with AR4 CfD drafting as it develops.

¹¹⁰ Note to Reader: BEIS is considering whether any further OCPs will be required, including those relating to the Grant Funding Agreement.

SCHEDULE 3

Capex Payment Calculations¹¹¹

1. **DEFINITIONS: CAPEX PAYMENT CALCULATIONS**
 - 1.1 [●]
2. **CALCULATION OF CAPEX PAYMENT**
 - 2.1 [●]
3. **CALCULATION OF SUPPORTING FORMULAE**
 - 3.1 [●]

¹¹¹ Note to Reader: Payment formulae to be confirmed. Please refer to the October Update Document for further information relating to ICC Contract payments, free allowance treatment and other relevant points.

SCHEDULE 4

Opex Payment Calculations¹¹²

1. **DEFINITIONS: OPEX PAYMENT CALCULATIONS**
 - 1.1 [●]
2. **CALCULATION OF OPEX PAYMENT**
 - 2.1 [●]
3. **CALCULATION OF SUPPORTING FORMULAE**
 - 3.1 [●]
4. **CO₂ REFERENCE PRICE SCHEDULE**
 - 4.1 [●]

¹¹² Note to Reader: Payment formulae to be confirmed. Please refer to the October Update Document for further information relating to ICC Contract payments, free allowance treatment and other relevant points.

SCHEDULE 5

Metering Points¹¹³

[Description of the CO₂ Delivery Points and Capture Plant Delivery Points to be inserted.]

¹¹³ Note to Reader: BEIS is still considering the proposed metering arrangements for the quantity of CO₂ captured by an Installation.

SCHEDULE 6

Metering Specifications

Part A

CO₂ Metering Specification

[Description of CO₂ Metering Specification and Captured Carbon Dioxide Quality Standards to be inserted.]

Part B

Capture Plant Metering Specification

[Description of Capture Plant Metering Specification to be inserted.]

SCHEDULE 7

Project Commitments

Delivery to the ICC Contract Counterparty of the following:

- (a) a copy of a resolution of the Emitter's board of directors (or an equivalent management committee or body) to:
 - (i) undertake the Project;
 - (ii) approve the total financial commitments required to commission the Project (the "**Total Project Spend**"); and
 - (iii) approve a timetable for undertaking the Project which demonstrates that the Installation can reasonably be expected to be Commissioned no later than the Longstop Date;
- (b) a Directors' Certificate certifying that:
 - (i) the Emitter has, or will have, sufficient financial resources to meet the Total Project Spend;
 - (ii) any contract entered into and provided as Supporting Information pursuant to the Milestone Requirement Notice, in the reasonable opinion of the Emitter by reference to the facts and circumstances then existing, is:
 - (A) legal, valid and binding; and
 - (B) entered into with one or more counterparties who are each able to perform their obligations under such contract;
 - (iii) the Emitter has a leasehold or freehold interest in the site where the Installation is based (the "**Installation Site**") or a contract to obtain the same;
 - (iv) the Installation 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 Installation Site for the purposes of the Project;
 - (v) there are available to the Installation Site such rights, easements and services as are necessary to undertake the Project and operate the Installation;
 - (vi) the Emitter has identified all necessary consents to undertake the Project (the "**Necessary Consents**");
 - (vii) there is a credible strategy in place to obtain the Necessary Consents and the Necessary Consents are not subject to any condition for which there does not exist a plan to satisfy that condition, such that the Emitter is not aware of any necessary consents and planning permissions which cannot be obtained or complied with; and
 - (viii) [*others*],¹¹⁴

¹¹⁴ Note to Reader: BEIS is still considering whether any additional Installation Requirements will be included in the ICC Contract.

((iii) to (viii), together the "**Installation Requirements**");

- (c) Supporting Information evidencing (i) that the Emitter has, or will have, sufficient financial resources to meet the Total Project Spend and (ii) the Installation Requirements.
- (d) Supporting Information evidencing the following:
 - (i) entry by the Emitter into an engineering, procurement and construction contract for the Installation, providing for the supply and installation of the Material Equipment.
 - (ii) entry by the Emitter into an agreement for the supply of the Material Equipment.
 - (iii) entry by the Emitter 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 schedule, the following definition shall apply to the Agreement:

"Material Equipment" means such equipment, which, acting in accordance with a Reasonable and Prudent Standard, the Emitter could reasonably be expected to have ordered and/or concluded a supply agreement in respect of at the start of the Target Commissioning Window, and in any event, such equipment shall include [*to be determined*].